IN THE SUPREME COURT OF NEVADA

ASSOCIATED HOTELS, LLC, HILV HOLDINGS, LLC, and TRINITY HOTEL ASSET MANAGEMENT,

Petitioners,

vs.

EITH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for the County of Clark County, and THE HONORABLE MARIA A. GALL, District Judge,

Respondents,

and

KARLA SONTOSKI, an individual; MARK SONTOSKI, an individual,

Real Parties in Interest.

District Court No. A-19-802358-C

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Elizabeth A. Brown
Clerk of Supreme Court

PETITIONERS' APPENDIX
VOLUME 1 of 3 (Pages 1-224)

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Docket 85570 Document 2022-34053

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DISTRICT COURT

CLARK COUNTY, NEVADA

KARLA SONTOSKI, an individual; MARK SONTOSKI, an individual, Plaintiffs, vs. ASSOCIATED HOTELS LLC, a foreign limited liability company d/b/a HOOTERS CASINO HOTEL; HILV HOLDINGS LLC, a Delaware limited liability company d/b/a HOOTERS CASINO HOTEL; TRINITY HOTEL ASSET MANAGEMENT, L.L.C., a foreign limited liability company d/b/a HOOTERS CASINO HOTEL; DOE EMPLOYEE, an individual; DOES 1 through 10, inclusive; ROE CORPORATIONS 11 through 20, inclusive; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendants.	CASE NO: A-19-802357-C DEPT NO. Department 32 **COMPLAINT**

COMES NOW, Plaintiffs, KARLA SONTOSKI and MARK SONTOSKI ("Plaintiffs"), by and through their counsel, Brian D. Nettles, Esq., Christian M. Morris, Esq., and Keivan A.

Case Number: A-19-802357-C

Roebuck, Esq. of NETTLES | MORRIS, and for their causes of action against Defendant above captioned, complains and alleges as follows:

STATEMENT OF JURISDICTION AND VENUE

1. The Eighth Judicial District Court has jurisdiction over this civil tort action pursuant to NRCP 8(a)(4), NRS 13.040, and NRS 41.130 as the occurrence giving rise to this case took place in Clark County, Nevada and the amount in controversy exceeds $15,000.00.

GENERAL ALLEGATIONS

2. Plaintiff KARLA SONTOSKI ("Mrs. Sontoski") is, and at all relevant times was, an individual residing in Beaumont, California.

3. Plaintiff MARK SONTOSKI ("Mr. Sontoski") is, and at all relevant times was, an individual residing in Beaumont, California.

4. Upon information and belief, Defendant ASSOCIATED HOTELS LLC is, and at all relevant times was, a foreign limited liability company doing business in Clark County, Nevada as Hooters Casino Hotel.

5. Upon information and belief, Defendant HILV HOLDINGS LLC is, and at all relevant times was, a Delaware limited liability company doing business in Clark County, Nevada as Hooters Casino Hotel.

6. Upon information and belief, Defendant TRINITY HOTEL ASSET MANAGEMENT, L.L.C. is, and at all relevant times was, a foreign limited liability company doing business in Clark County, Nevada as Hooters Casino Hotel (hereinafter, collectively with ASSOCIATED HOTELS LLC and HILV HOLDINGS LLC, referred to as "Defendant Hooters").

7. Upon information and belief, Defendant DOE EMPLOYEE is, and at all relevant times was, an individual residing in Clark County, Nevada.

8. On information and belief, Defendant Hooters is, and at all relevant times was, the owner, operator and/or manager of the Hooters Casino Hotel, located at 115 E Tropicana Avenue, Las Vegas, Nevada 89109 (hereinafter, "Subject Premises").

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9. The true names and capacities, whether individual, corporate, associate, governmental or otherwise, of defendants Does 1 through 10, Roe Corporations 11 through 20 and ABC Limited Liability Companies 21 through 30 ("Does/Roe/ABC"), inclusive, are unknown to Plaintiffs at this time, whom therefore sues said defendants by such fictitious names. When the true names and capacities of said defendants have been ascertained, Plaintiffs will amend this Complaint accordingly.

10. On information and belief, Doe/Roe/ABC Defendants participated in the design, construction, maintenance, ownership, management, control, operation, care, and/or upkeep of the Subject Premises; Doe/Roe/ABC Defendants include, but are not limited to, owners, operators, occupiers, lessees, managers, manufacturers, developers, producers, general contractors, subcontractors, security companies, maintenance companies, material providers, equipment providers, architects, designers, engineers, governmental authorities, insurers, lenders, investors, and their agents, servants, representatives, employees, partners, joint venturers, related companies, subsidiaries, parents, affiliates, predecessors, partners and/or successors in interest.

11. On information and belief, Does/Roe/ABC are responsible, negligently or in some other actionable manner, for the events and happenings hereinafter referred to, and caused injuries and damages proximately thereby to Plaintiffs as hereinafter alleged.

12. On or about October 1, 2017, Plaintiffs were a guest/patron/invitee at the Subject Premises.

13. At approximately the same time, an unknown group of individuals were dangerously and hazardously fleeing the Subject Premises as a result of a disturbance in the crowd (hereinafter, "Subject Condition").

14. As the unknown group of individuals approached Plaintiffs, Mrs. Sontoski was pushed by DOE EMPLOYEE, causing severe physical injuries ("Subject Incident").

15. Upon information and belief, at all times relevant, Defendant Hooters owned, maintained, managed, operated, inspected, controlled, installed, constructed and/or was otherwise responsible for the Subject Premises and/or was otherwise responsible for the area where the

Subject Incident occurred, and/or was otherwise responsible for the Subject Incident leading to Mrs. Sontoski's injuries.

16. The Subject Condition, which was unattended and without warning, and/or was a condition of which Defendant Hooters had actual or constructive notice prior to the Subject Incident.

17. Defendant Hooters did not remedy or warn Plaintiffs of the dangerous Subject Condition prior to the Subject Incident.

18. The acts and/or omissions of Defendant Hooters' employees/agents in their dealings with Plaintiffs were within the course and scope of their employment, and/or were ratified by Defendants.

19. The conduct, actions, omissions, and breaches by Defendant Hooters' employees were negligent, grossly negligent, intentional, willful, wanton, oppressive, malicious, and done with conscious disregard to the rights and safety of Plaintiffs.

20. On information and belief, the possibility of assaults and batteries was a condition of which the Defendants, and each of them, had actual or constructive notice prior to the time of the assault and battery on Mrs. Sontoski. As such, Defendants are liable for the injuries suffered by the Plaintiffs.

21. These negligent acts were committed by Defendant Hooters' employees and/or agents acting in the course and scope of their employment for Defendant Hooters' under its direction and control, and thus the Defendant Hooters' are vicariously liable for these acts pursuant to the doctrine of *respondeat superior*.

22. As a direct and proximate result of the negligence of the Defendants, and each of them, Plaintiffs suffered physical injury, pain and suffering, loss of income, and loss of consortium.

23. As a direct and proximate result of the negligence of the Defendants, and each of them, Mrs. Sontoski was required to obtain medical services and treatment and may, in the future, be required to obtain additional medical services and treatment.

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24. As a direct and proximate result of the negligence of the Defendants, and each of them, Plaintiffs have been damaged in an amount in excess of $15,000.00.

25. As a direct and proximate result of the negligence of the Defendants, and each of them, Plaintiffs have had to retain the services of NETTLES | MORRIS to pursue this action and is entitled to recover costs of suit and reasonable attorney's fees incurred therein.

FIRST CAUSE OF ACTION

(Negligence/Premises Liability)

26. Plaintiffs repeat and re-allege paragraphs 1 through 25 as though fully set forth herein.

27. At all times relevant hereto, Defendant Hooters was in control of the Subject Premises and had a non-delegable duty to maintain the Subject Premises for the care, safety, and protection of those persons present on said Subject Premises, including Mrs. Sontoski.

28. At all times herein mentioned, Defendant Hooters knew or should have known of the Subject Condition because the Subject Condition occurred in an area where it should have been discovered by present employees and staff through routine inspection.

29. On information and belief, Defendant Hooters breached its duty to Mrs. Sontoski by failing to employ proper emergency procedures and/or negligently staffing and/or supervising the Subject Premises, allowing dangerous conditions like the Subject Condition to exist and persist on the Subject Premises prior to Mrs. Sontoski's Subject Incident, and by consciously, deliberately, and/or negligently failing to take any measure to remedy or to warn of the existence of the dangerous conditions.

30. These negligent acts were committed by Defendant Hooters's employees and/or agents acting in the course and scope of their employment for Defendant Hooters under their direction and control, and thus Defendant Hooters is vicariously liable for these acts pursuant to the doctrine of *respondeat superior*.

31. Defendants' breach of their duties was the legal cause of Mrs. Sontoski's injuries.

32. As a direct and proximate result of the negligence of the Defendants, and each of them, Mrs. Sontoski suffered physical injury and pain and suffering.

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33. As a direct and proximate result of the negligence of the Defendants, and each of them, Mrs. Sontoski was required to obtain medical services and treatment and may, in the future, be required to obtain additional medical services and treatment.

34. As a direct and proximate result of Defendants' negligence, Plaintiffs have been damaged in an amount in excess of $15,000.00, including, but not limited to, bodily injury, severe pain and suffering, loss of income, and loss of consortium.

35. As a direct and proximate result of the negligence of Defendants, Plaintiffs have had to retain the services of NETTLES | MORRIS to pursue this action and are entitled to recover costs of suit and reasonable attorney's fees incurred therein.

SECOND CAUSE OF ACTION

(Respondeat Superior)

36. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 35 as though fully set forth herein.

37. It is further alleged that DOE EMPLOYEE was an agent/employee of Defendant Hooters acting under Defendant Hooters's direction and control in the scope of his/her employment at the time of the Subject Incident.

38. Under the doctrine of *respondeat superior,* Defendant Hooters is liable for acts and omissions of DOE EMPLOYEE because he/she was an employee/agent/contractor of Defendant Hooters and was acting under Defendant Hooters' direction and control within the scope of his/her employment at the time of the Subject Incident, causing physical injury to Mrs. Sontoski.

39. Defendants' breach of their duties was the legal cause of Plaintiffs' injuries.

40. As a direct and proximate result of the acts or omissions of Defendants, and each of them, Mrs. Sontoski has suffered injuries to her body, as well as pain and suffering.

41. As a direct and proximate result of the acts or omissions of Defendants, and each of them, Mrs. Sontoski was required to obtain medical services and treatment and may, in the future, be required to obtain additional medical services and treatment.

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42. As a direct and proximate result of Defendants' negligence, Plaintiffs have been damaged in an amount in excess of $15,000.00, including, but not limited to, bodily injury, severe pain and suffering, loss of income, and loss of consortium.

43. As a direct and proximate result of the acts or omissions of Defendants, and each of them, Plaintiffs have been damaged in an amount in excess of $15,000.00.

44. As a direct and proximate result of the acts or omissions of Defendants, and each of them, Plaintiffs have had to retain the services of the law offices of Nettles | Morris to pursue this action and is entitled to recover costs of suit and reasonable attorney's fees incurred herein.

THIRD CAUSE OF ACTION

(Negligent Hiring, Training, Retention, and Supervision)

45. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 44 as though fully set forth herein.

46. Defendant Hooters owed a non-delegable duty to Plaintiffs to exercise due care in the selection, training, oversight, direction, retention, and control of their employees/agents/contractors, including DOE EMPLOYEE.

47. Defendant Hooters breached this non-delegable duty owed to Plaintiffs by failing to provide proper oversight, training, direction, hiring, retention, and control of or to these employees/agents/contractors responsible for performing these duties, allowing dangerous conditions like the Subject Condition to exist and persist on the Subject Premises prior to the Subject Incident, and by consciously, deliberately, and/or negligently failing to take any measure to remedy or to warn of the existence of the dangerous conditions. Defendants lack of hiring, training, and supervision is conscious and reckless disregard for the safety of others, putting Plaintiffs and other guests/invitees/patrons at unnecessary risk of harm.

48. Had Defendant Hooters performed these duties in a reasonable manner or to a reasonable degree it could have prevented the Subject Incident, and thus Mrs. Sontoski's injuries.

49. These negligent acts were committed by Defendant Hooters's employees and/or agents acting in the course and scope of their employment for Defendant Hooters under its

direction and control, and thus Defendant Hooters is vicariously liable for these acts pursuant to the doctrine of respondeat superior

50. Defendant Hooters's breach of its duties was the legal cause of Plaintiffs' injuries.

51. As a direct and proximate result of the acts or omissions of Defendants, and each of them, Mrs. Sontoski has suffered injuries to her body, as well as pain and suffering.

52. As a direct and proximate result of the acts or omissions of Defendants, and each of them, Mrs. Sontoski was required to obtain medical services and treatment and may, in the future, be required to obtain additional medical services and treatment.

53. As a direct and proximate result of Defendants' negligence, and each of them, Plaintiffs have been damaged in an amount in excess of $15,000.00, including, but not limited to, bodily injury, severe pain and suffering, loss of income, and loss of consortium.

54. As a direct and proximate result of the acts or omissions of Defendants, and each of them, Plaintiff has been damaged in an amount in excess of $15,000.00.

55. As a direct and proximate result of the acts or omissions of Defendants, and each of them, Plaintiff has had to retain the services of the law offices of Nettles | Morris to pursue this action and is entitled to recover costs of suit and reasonable attorney's fees incurred herein.

FOURTH CAUSE OF ACTION

(Negligent Security)

56. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 55 as though fully set forth herein.

57. Defendants, and each of them, owed a duty to Plaintiffs to use due care to prevent or warn of dangerous conditions on the Subject Premises.

58. Defendants, and each of them, breached that duty by failing to use due care in preventing and/or protecting Mrs. Sontoski from the Subject Incident and the Subject Condition that occurred on the Subject Premises. More specifically, Defendants failed to employ proper procedures to control its guests/patrons/invitees during disturbances in the crowd, which was a foreseeable dangerous condition.

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59. Breach of this duty of care by Defendants, and each of them, was the actual and proximate causes of each of Mrs. Sontoski's injuries.

60. As a direct and proximate result of the negligence of the Defendants, and each of them, Mrs. Sontoski suffered physical injury and pain and suffering.

61. As a direct and proximate result of the negligence of the Defendants, and each of them, Mrs. Sontoski was required to obtain medical services and treatment and may, in the future, be required to obtain additional medical services and treatment.

62. As a direct and proximate result of Defendants' negligence, Plaintiffs have been damaged in an amount in excess of $15,000.00, including, but not limited to, bodily injury, severe pain and suffering, loss of income, and loss of consortium.

63. As a direct and proximate result of the negligence of the Defendants, Plaintiffs have had to retain the services of NETTLES | MORRIS to pursue this action and are entitled to recover costs of suit and reasonable attorney's fees incurred therein.

FIFTH CAUSE OF ACTION

(Loss of Consortium)

64. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 63 as though fully set forth herein.

65. Mr. Sontoski is and was at all times relevant hereto Mrs. Sontoski's spouse and, as such, lives and cohabitates with her.

66. As set forth above, Defendants owed Mr. Sontoski and Mrs. Sontoski a duty of reasonable care in the operation of the Subject Premises.

67. As set forth above, Defendants breached these duties causing injury to Mrs. Sontoski.

68. As a direct and proximate result of Defendants' actions, and each of them, Mr. Sontoski has been caused, presently and in the future, to suffer a loss of consortium.

69. As a direct and proximate result of the negligence of Defendants, and each of them, Plaintiffs have had to retain the services of the law offices of NETTLES | MORRIS to pursue this action and are entitled to recover costs of suit and reasonable attorney's fees incurred herein.

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WHEREFORE, Plaintiffs prays for relief against Defendants, and each of them, as follows:

1. For damages in excess of $15,000.00 for medical expenses, pain and suffering, loss of income, and loss of consortium;
2. For a sum in excess of $15,000.00 for punitive damages;
3. For interest as permitted by law;
4. For reasonable attorney's fees and costs of suit; and
5. For such other and further relief as the court deems just and proper.

Dated this 19th day of September 2019.

NETTLES | MORRIS

/s/ Keivan A. Roebuck

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DISTRICT COURT
CLARK COUNTY, NEVADA

Karla Sontoski, an individual; et al. *Plaintiff(s)* **vs** **Associated Hotels LLC, a foreign limited liability company d/b/a Hooters Casino Hotel; et al.** *Defendant(s)*	Case No.: **A-19-802357-C** Dept. No.: **32** Date: Time:

AFFIDAVIT OF SERVICE

Denorris Britt, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age and not a party to or interested in the proceeding in which this affidavit is made. The affiant received **1** copy(ies) of the **Summons to HILV Holdings LLC d/b/a Hooters Casino Hotel; Complaint** on the **15th** day of **October**, **2019** and served the same on the **16th** day of **October**, **2019** at **12:30 pm** by serving the **Defendant**, **HILV Holdings LLC, a Delaware limited liability company d/b/a Hooters Casino Hotel** by personally delivering and leaving a copy at **The Corporation Trust Company, 1209 Orange St., Wilmington, DE 19801** with **Amy McLaren** pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the state of Nevada that the foregoing is true and correct.
Executed this 17 day of October 2019

Denorris Britt
Process Server

WorkOrderNo **1908365**

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

KARLA SONTOSKI, an individual; MARK SONTOSKI, an individual, Plaintiff, vs. ASSOCIATED HOTELS LLC, a foreign limited liability company d/b/a HOOTERS CASINO HOTEL; HILV HOLDINGS LLC, a Delaware limited liability company d/b/a HOOTERS CASINO HOTEL; TRINITY HOTEL ASSET MANAGEMENT, L.L.C., a foreign limited liability company d/b/a HOOTERS CASINO HOTEL; DOE EMPLOYEE, an individual; DOES 1 through 10, inclusive; ROE CORPORATIONS 11 through 20, inclusive; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendant.	CASE NO. 2-20-cv-00271 **DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT**

COME NOW Defendants ASSOCIATED HOTELS LLC d/b/a HOOTERS CASINO HOTEL, HILV HOLDINGS LLC d/b/a HOOTERS CASINO HOTEL; TRINITY HOTEL ASSET MANAGEMENT, L.L.C. d/b/a HOOTERS CASINO HOTEL ("Defendants"), by and through their attorneys, Josh Cole Aicklen, Esq. and Sharon A. Parker, Esq. of LEWIS

BRISBOIS BISGAARD & SMITH LLP, hereby answer PLAINTIFFS' Complaint as follows:

STATEMENT OF JURISDICTION AND VENUE

1. Answering Paragraph 1 of Plaintiffs' Complaint, Defendants object as the allegations are legal conclusions and, upon said grounds, deny each and every allegation set forth therein.

GENERAL ALLEGATIONS

2. Answering Paragraphs 2, 3, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24 and 25 of Plaintiffs' Complaint, Defendants are without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegations contained therein and, upon said grounds, deny the same.

3. Answering Paragraph 4 of Plaintiff' Complaint, Defendants admit.

4. Answering Paragraphs 5, 6 and 8 of Plaintiff's Complaint, Defendants deny.

5. Answering Paragraph 18 of Plaintiffs' Complaint, Defendants object as the allegations are legal conclusions and, upon said grounds, deny each and every allegation set forth therein.

RESPONSES TO FIRST CAUSE OF ACTION

(Negligence/Premises Liability)

6. Answering Paragraph 26 of Plaintiffs' Complaint, Defendants repeat and reallege their responses to Paragraphs 1 through 25 of Plaintiffs' Complaint as if fully set forth herein.

7. Answering Paragraphs 27, 28, 29, 30, 31, 32, 33, 34 and 35 of Plaintiff's Complaint, Defendants are without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegations contained therein and, upon said grounds, deny the same.

RESPONSES TO SECOND CAUSE OF ACTION

(Respondeat Superior)

8. Answering Paragraph 36 of Plaintiffs' Complaint, Defendants repeat and reallege their responses to Paragraphs 1 through 35 of Plaintiffs' Complaint as if fully set

forth herein.

9. Answering Paragraphs 37, 38, 39, 40, 41, 42, 43 and 44 of Plaintiffs' Complaint, Defendants are without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegations contained therein and, upon said grounds, deny the same.

RESPONSES TO THIRD CAUSE OF ACTION

(Negligent Hiring, Training, Retention, and Supervision)

10. Answering Paragraph 45 of Plaintiffs' Complaint, Defendants repeat and reallege their responses to Paragraphs 1 through 44 of Plaintiffs' Complaint as if fully set forth herein.

11. Answering Paragraphs 46, 47, 48, 49, 50, 51, 52, 53, 54 and 55 of Plaintiffs' Complaint, Defendants are without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegations contained therein and, upon said grounds, deny the same.

RESPONSES TO FOURTH CAUSE OF ACTION

(Negligent Security)

12. Answering Paragraph 56 of Plaintiffs' Complaint, Defendants repeat and reallege their responses to Paragraphs 1 through 55 of Plaintiffs' Complaint as if fully set forth herein.

13. Answering Paragraphs 57, 58, 59, 60, 61, 62 and 63 of Plaintiffs' Complaint, Defendants are without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegations contained therein and, upon said grounds, deny the same.

RESPONSES TO FIFTH CAUSE OF ACTION

(Loss of Consortium)

12. Answering Paragraph 64 of Plaintiffs' Complaint, Defendants repeat and reallege their responses to Paragraphs 1 through 63 of Plaintiffs' Complaint as if fully set forth herein.

13. Answering Paragraphs 65, 66, 67, 68 and 69 of Plaintiffs' Complaint, Defendants are without sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegations contained therein and, upon said grounds, deny the same.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

That it has been necessary for Defendants to employ the services of an attorney to defend this action and a reasonable sum should be allowed Defendants as and for attorney's fees, together with their costs expended in this action.

SECOND AFFIRMATIVE DEFENSE

Defendants allege that the negligence of Plaintiffs exceeds that of the Defendants, if any, and that Plaintiffs are thereby barred from any recovery.

THIRD AFFIRMATIVE DEFENSE

Defendants allege that Plaintiffs failed to name a party necessary for full and adequate relief essential in this action.

FOURTH AFFIRMATIVE DEFENSE

Defendants allege that the damages, if any, suffered by Plaintiffs as set forth in their Complaint, were caused in whole or in part by the negligence of a third party over which Defendants had no control.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to mitigate their damages and, therefore, any recovery must be reduced accordingly.

SIXTH AFFIRMATIVE DEFENSE

The incident which is the subject matter of this action was unavoidable; therefore, Plaintiffs are barred from any recovery against Defendants.

SEVENTH AFFIRMATIVE DEFENSE

That the damages, if any, incurred by the Plaintiffs are not attributable to any act, conduct or omission on the part of the Defendants. Defendants deny that they were

negligent in any manner or in any degree with respect to the matters set forth in Plaintiffs' Complaint.

EIGHTH AFFIRMATIVE DEFENSE

Some or all of Plaintiffs' reported injuries were not proximately caused by the incident which is the subject of Plaintiffs' Complaint.

NINTH AFFIRMATIVE DEFENSE

Defendants allege that at the time and place alleged in the Complaint, Plaintiffs did not exercise ordinary care, caution or prudence to avoid said incident and the resulting injuries, if any, complained of were directly and proximately contributed to and caused by the fault, carelessness and negligence of the Plaintiffs thereby reducing and/or barring Plaintiffs' recovery.

TENTH AFFIRMATIVE DEFENSE

The allegations contained in the Complaint fail to state a cause of action against Defendants upon which relief can be granted.

ELEVENTH AFFIRMATIVE DEFENSE

The injuries claimed to have been suffered by Plaintiffs were caused by preexisting and/or unrelated medical conditions.

TWELFTH AFFIRMATIVE DEFENSE

Defendants allege that Plaintiffs' causes of action as set forth in the first Amended Complaint are barred by the Statute of Limitations as contained in Chapter 11 of the Nevada Revised Statutes.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovery against these Defendants because their comparative fault is greater than any comparative fault of the Defendants.

FOURTEENTH AFFIRMATIVE DEFENSE

Upon information and belief, all or part of the cost of Plaintiffs' medical care, loss of earnings or other damages have been paid, replaced or indemnified in whole or in part from collateral sources or with reasonable certainty, will be replaced or indemnified in the

future from such collateral sources and to that extent, Defendants request that in the event Plaintiffs recover any judgment herein, that such amounts as have been or may be recovered in whole or in part from collateral sources as defined by state law to be determined by the Court and the amounts Plaintiffs recover be reduced by said amounts.

FIFTEENTH AFFIRMATIVE DEFENSE

That the Complaint fails to state facts sufficient to entitle Plaintiffs to an award of punitive or exemplary damages against these answering Defendants. The Complaint, to the extent that it seeks exemplary or punitive damages, violates these answering Defendants' respective right to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of Nevada, and fails to state a cause of action upon which either punitive or exemplary damages can be awarded.

SIXTEENTH AFFIRMATIVE DEFENSE

That the Complaint, to the extent that it seeks exemplary or punitive damages, violates these answering Defendant's respective right to protection from excessive fines as provided in the Eighth Amendment of the United States Constitution, Article I, Section 17, of the Constitution of the State of Nevada, and violates Defendants' right to substantive due process as provided in the Fifth and Fourteenth Amendment of the United States and Nevada Constitutions, and this fails to state a cause of actions supporting an award of punitive or exemplary damages.

SEVENTEENTH AFFIRMATIVE DEFENSE

That the Complaint fails to state facts sufficient to constitute a cause of action in that Plaintiffs have asserted claims for punitive damages which, if granted, would violate the prohibition against laws impairing the obligations of contracts set forth in Article I, Section 10, of the United States Constitution.

EIGHTEENTH AFFIRMATIVE DEFENSE

That Plaintiffs' claims for punitive or exemplary damages, if any, alleged by Plaintiffs are barred by the "double jeopardy" clause of the Fifth Amendment to the United

States Constitution, as applied to the States through the Fourteenth Amendment.

NINTEENTH AFFIRMATIVE DEFENSE

Defendants hereby incorporate by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendants reserve the right to seek leave of Court to amend this Answer to specifically assert any such defense. Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defense.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment as follows:

1. That the Court dismiss Plaintiffs' Complaint against Defendants in its entirety with prejudice;

2. That the Court award Defendants their costs and attorneys' fees incurred in the defense of this action; and

3. For such other and further relief as this Court deems just and proper.

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DEMAND FOR JURY TRIAL

The answering Defendants demand a jury trial pursuant to Federal Rule of Civil Procedure 38(b) on all issues in this action.

DATED this 7th day of February, 2020

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Josh Cole Aicklen

JOSH COLE AICKLEN
Nevada Bar No. 007254
SHARON A. PARKER
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6385 S. Rainbow Boulevard, Suite 600
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Tel. 702.893.3383
Attorneys for Defendants ASSOCIATED HOTELS LLC, HILV HOLDINGS LLC and TRINITY HOTEL ASSET MANAGEMENT, L.L.C.

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of Lewis Brisbois Bisgaard & Smith LLP and that on this 7TH day of February, 2020, a true copy of **DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT** with the Clerk of the court through Case Management/Electronic Filing System and placed the foregoing in the United States Mail, with first class postage prepaid thereon, and addressed as follows:

Brian D. Nettles, Esq.
Nevada Bar No. 7462
Christian M. Morris, Esq.
Nevada Bar No. 11218
Keivan A. Roebuck, Esq.
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1389 Galleria Drive, Suite 200
Las Vegas, Nevada 89014
Attorney for Plaintiffs

By: /s/ Lorraine Tollerud
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

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6/22/2022 3:16 PM
Steven D. Grierson
CLERK OF THE COURT

MSJD
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Attorneys for ASSOCIATED HOTELS, LLC, HILV HOLDINGS LLC and TRINITY HOTEL ASSET MANAGEMENT

DISTRICT COURT

CLARK COUNTY, NEVADA

KARLA SONTOSKI, an individual; MARK SONTOSKI, an individual,

Plaintiffs,

vs.

ASSOCIATED HOTELS LLC, a foreign limited liability company d/b/a HOOTERS CASINO HOTEL; HILV HOLDINGS LLC, a Delaware limited liability company d/b/a HOOTERS CASINO HOTEL; TRINITY HOTEL ASSET MANAGEMENT, L.L.C., a foreign limited liability company d/b/a HOOTERS CASINO HOTEL; DOES 1 through 10, inclusive; ROE CORPORATIONS 11 through 20 inclusive; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive,

Defendants.

CASE NO.: A-19-802358-C
DEPT. NO.; 32

DEFENDANTS ASSOCIATED HOTELS, LLC, HILV HOLDINGS LLC AND TRINITY HOTEL ASSET MANAGEMENT'S MOTION FOR SUMMARY JUDGMENT

HEARING REQUESTED

Defendants ASSOCIATED HOTELS LLC, HILV HOLDINGS LLC and TRINITY HOTEL ASSET MANAGEMENT L.L.C. (collectively referred to as "Defendants") by and through their counsel of record, and pursuant to NRCP 56, respectfully move this Honorable Court for summary judgment as a matter of law as no genuine issue of material fact exists to support Plaintiffs' claims against Defendants in this matter.

This Motion is based upon the attached Memorandum of Points and Authorities, the Statement of Undisputed Facts, the pleadings and papers on file, the Declaration of Sharon A. Parker, Esq. submitted herewith, and any oral argument the Court deems appropriate at the time of hearing of this matter.

DATED this 22nd day of June, 2022.

Respectfully Submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Sharon A. Parker

JOSH COLE AICKLEN
Nevada Bar No. 007254
SHARON A. PARKER
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Attorneys for Defendants ASSOCIATED HOTELS LLC, HILV HOLDINGS LLC and TRINITY HOTEL ASSET MANAGEMENT, L.L.C.

DECLARATION OF SHARON A. PARKER, ESQ. IN SUPPORT OF DEFENDANTS ASSOCIATED HOTELS, LLC, HILV HOLDINGS LLC AND TRINITY HOTEL ASSET MANAGEMENT'S MOTION FOR SUMMARY JUDGMENT

STATE OF NEVADA)
) ss.:
COUNTY OF CLARK)

I, Sharon A. Parker, Esq., being first duly sworn, depose and state as follows:

1. I am a duly licensed attorney practicing law in the State of Nevada, and a partner in the law firm of LEWIS BRISBOIS BISGAARD & SMITH LLP. I am competent to testify to the matters set forth in this Declaration and will do so if called upon. I am an attorney of record for Defendants ASSOCIATED HOTELS LLC, HILV HOLDINGS LLC and TRINITY HOTEL ASSET MANAGEMENT, L.L.C. in the subject lawsuit.

2. I make this Affidavit on behalf of Defendants in support of their Motion for Summary Judgment.

3. Attached as **Exhibit A** is a true and correct copy of Plaintiff MARK SONTOSKI's voluntary statement.

4. Attached as **Exhibit B** is a true and correct copy of Plaintiffs' Complaint.

5. Attached as **Exhibit C** is a true and correct copy of the Transcript of William Schoen's May 16, 2022 Deposition.

6. Attached as **Exhibit D** is a true and correct copy of defense expert Ron Williams' initial expert report dated January 10, 2022.

7. Attached as **Exhibit E** is a true and correct copy of defense expert Ron Williams' supplemental report dated May 16, 2022.

8. Attached as **Exhibit F** is a true and correct copy of Lopez v. McDonalds Corp., case no. D004619.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 22nd day of June, 2022.

/s/ Sharon A. Parker

SHARON A. PARKER, ESQ.

Notary Not Required Pursuant to NRS 53.045.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs allege that this action arises out of the tragic events which occurred in Las Vegas, Nevada on October 1, 2017. That evening, a lone terrorist gunman opened fire from the Mandalay Bay hotel into the crowd of concertgoers at the Route 91 Harvest music festival across the street. The gunman repeatedly fired on the crowd leaving many dead, but even more brutally injured. The instant case revolves around an injury which allegedly occurred over one mile away from the site of the Route 91 Harvest music festival at the Hooters Casino Hotel, while concert attendees were running for their lives trying to seek safety in nearby hotels and casinos.

Shortly after 10 PM that evening, hordes of people rushed into and through Hooters to escape the barrage of bullets from Mandalay Bay. The sudden onslaught of people, along with the screams about a "shooter" caused hysteria and trepidation. The once calm patrons of the hotel erupted into panic. Many patrons began to flee, while many others tried to hide under tables and behind slot machines.

Plaintiffs MARK AND KARLA SONTOSKI (hereinafter referred to as "Plaintiffs") were staying at the Hooters Casino Hotel on the evening of October 1, 2017. See **Exhibit A.** Plaintiffs were in the casino playing slot machines when the initial surge of people fleeing from the shooting first made their way into the casino. Id. Plaintiffs stated they heard people shouting that there was a shooter outside and so the Plaintiffs did as everyone else did that evening and ran or hid, concerned for their lives. Mr. Sontoski even left the casino floor without his wife to seek cover before filing his personal injury claim on her behalf the following morning. Id. Plaintiffs left their cards and cash in the machines they were playing and evacuated from the area as quickly as possible. Id. Nearly twenty minutes later, Mr. Sontoski returned to get the cash and cards they left in the machines. Id. It was at this time, Plaintiffs allege that a Hooters Casino Hotel employee "ran" into Karla Sontoski's right shoulder, causing an injury. Id.

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Noteworthy, the alleged perpetrator has never been identified or disclosed, nor has any Hooters employee ever come forward admitting that he or she knocked a patron to the ground in the hysteria of that evening causing an alleged serious injury. However, Plaintiffs' lack of credibility is not the subject of this Motion. This Motion is legally sound as none of the events giving rise to Plaintiffs' alleged injury were ever foreseeable in the first place, as admitted to by Plaintiffs' own expert, William Schoen.

II. STATEMENT OF UNDISPUTED FACTS

1. As a mass of people entered the casino on the evening of October 1, 2017 , many were shouting "there is a shooter outside." Plaintiffs got up from the slot machines they were playing and also ran through the casino to escape the mass shooter, at which time Mr. Sontoski alleges his wife was injured See, **Exhibit A.**

2. The October 1, 2017 shooting and persons subsequently running for their lives to escape the mass terror was not foreseeable. See, **Exhibit C**, p. 25:18-19 and p. 26:3-6.

3. Plaintiffs' alleged "injury" was not captured on surveillance video nor otherwise independently verified.[1] See**, Exhibit D**.

4. "Since Pollard made no threats and did not telegraph his intentions his heinous terrorist attack could not have been anticipated." See, **Exhibit E.**

III. LEGAL ARGUMENT

A. STANDARD FOR SUMMARY JUDGMENT

Nevada Rule of Civil Procedure 56 sets forth the relevant summary judgment standard. It provides, in pertinent part:

> (b) For defending party. A party against whom a claim, counterclaim or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without

[1] Defendants produced hours of surveillance video from the subject night under a stipulated confidentiality and protective order. Due to the graphic nature of the surveillance footage and in light of the confidentiality order, Defendants are not attaching the videos to this Motion but will submit to the Court to review *in camera* upon the Court's request. However, it is undisputed that Plaintiffs' alleged "incident" is not captured in the surveillance video.

> supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.
>
> (c) Motion and proceedings thereon. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law...

See, NRCP 56.

When a motion for summary judgment is made and supported by the facts appearing in the record, a party "may not rest upon the mere allegations of his pleading, but must, by affidavit or otherwise, set forth facts demonstrating the existence of a genuine issue for trial." Garvey v. Clark County, 91 Nev. 127, 130, 532 P.2d 269, 271 (1975). The United States Supreme Court, through its interpretation of the identical federal rule for summary judgment, has held that entry of summary judgment is required when the opposing party fails to identify facts supporting the elements of his claim for relief. See, Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548 (1986).

The Nevada Supreme Court has made it clear that summary judgment cannot be regarded as a disfavored procedural device, and must be granted when the circumstances warrant. See, Wood v. Safeway, Inc., 121 Nev. Adv. Op. No. 73, 121 P.3d 1026, 1031 (2005). In Wood, the Nevada Supreme Court stated:

> While the pleadings and other proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to "do more than simply show that there is some metaphysical doubt" as to the operative facts in order to avoid summary judgment being entered in the moving party's favor. The nonmoving party "must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." The nonmoving party "is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture."

See, Wood v. Safeway, Inc., 121 Nev. Adv. Op. No. 73, 121 P.3d 1026, 1031 (2005) (Internal citations omitted).

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The Nevada Supreme Court explicitly and unequivocally eliminated the "slightest doubt" standard and held that the party opposing a motion for summary judgment must show facts sufficient to demonstrate that a reasonable jury could find that the party has sufficient evidence to prove each element of his claim. Id. Further, after adequate time for discovery, if the plaintiff fails to make a showing sufficient to establish the existence of an element essential to their case, then the court must summarily enter judgment against them. See, Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S.Ct. 2548 (1986); see also, NGA #2 Ltd. Liab. Co. v. Rains, 113 Nev. 1151, 946 P.2d 163 (1997).

Specifically, with respect to negligence causes of action, a moving defendant only needs to show that one of the elements of negligence is "clearly lacking as a matter of law." See, Scialabba v. Brandise Construction Co., 112 Nev. 965, 968, 921 P.2d 928, 930 (1996) (citing Sims v. General Telephone & Electric, 107 Nev. 516, 521, 815 P.2d 151, 154 (1991)).

B. Plaintiffs Must Demonstrate that Defendants Owed Plaintiff KARLA SONTOSKI a Duty to Prevail on their Causes of Action Against Defendants

Plaintiffs' causes of action against Defendants ASSOCIATED HOTELS LLC, HILV HOLDINGS LLC and TRINITY HOTEL ASSET MANAGEMENT L.L.C. include:

(1) Negligence/Premises Liability;

(2) Respondeat Superior;

(3) Negligent Hiring, Training, Retention, and Supervision;

(4) Negligent Security; and

(5) Loss of Consortium.

See, **Exhibit B**, generally. Other than respondeat superior, which is a derivative action, all of Plaintiffs' causes of action against Defendants ASSOCIATED HOTELS LLC, HILV HOLDINGS LLC and TRINITY HOTEL ASSET MANAGEMENT L.L.C. require a showing that Defendants owed a duty of care. Because Plaintiffs cannot demonstrate that Defendants owed a duty of care to Plaintiff KARLA SONTOSKI during a terrorist event, all

of Plaintiffs' theories of recovery must fail. Moreover, Plaintiffs' attempts to recover from Defendants ASSOCIATED HOTELS LLC, HILV HOLDINGS LLC and TRINITY HOTEL ASSET MANAGEMENT L.L.C. under a theory of vicarious liability also fail for additional reasons, discussed more fully in subsection "D" below.

1. Negligence-Based Causes of Action

In order to prevail in their claim for negligence/premise liability, Plaintiffs must show that Defendants owed a legal duty, that Defendants breached that duty, that the breach was the legal cause of Plaintiffs' injuries, and that Plaintiffs suffered damages. See, Doud v. Las Vegas Hilton Corporation, 109 Nev. 1096 (1993); see also Perez v. Las Vegas Medical Center, 107 Nev. 1 (1991). Negligent security causes of action require that Plaintiffs demonstrate the same four elements mentioned above. See, Doud, 109 Nev. 1096; Symeonidis v. AMC, LLC, 2017, 133 Nev. 1081, 2017 Nev. App. Unpub. LEXIS 900 (2017). "To succeed on a claim for negligent hiring, retention, [training] and supervision of employees, a plaintiff must establish that: (1) defendant owed a duty of care to the plaintiff; (2) defendant breached that duty [in] hiring, retaining, [training] and/or supervising an employee even though defendant knew, or should have known, of the employee's dangerous propensities; (3) the breach was the cause of plaintiff's injuries; and (4) damages." Peterson v. Miranda, 57 F.Supp.3d 1271, 1280 (D. Nev. 2014) (citing Hall v. SSF, Inc., 112 Nev. 1384, 930 P.2d 94, 99 (1996)). Thus, to prevail on their negligence-based causes of action alleged in their Complaint, Plaintiffs must first establish that Defendants ASSOCIATED HOTELS LLC, HILV HOLDINGS LLC and TRINITY HOTEL ASSET MANAGEMENT L.L.C. owed a duty of care, which Plaintiffs cannot do.

2. Loss of Consortium

Loss of consortium is a derivative claim for the "lost opportunity for marital love, support, and sex." See, Bouvier Law Dictionary - Loss of Consortium. A defendant cannot be held liable for loss of consortium damages without a showing that the

defendant caused the loss of consortium damages, either by negligence or another wrongful act. See, Turner v. Mandalay Sports Entm't, LLC, 124 Nev. 213, 221-22, 180 P.3d 1172, 1178 (2008) (affirming summary judgment on plaintiff's claim for loss of consortium due to also affirming summary judgment on plaintiff's negligence action). Thus, Plaintiff MARK cannot succeed on his claim for loss of consortium without proving that Defendants were liable for Plaintiff KARLA SONTOSKI's alleged injuries. As previously mentioned and explained fully below, they cannot. As such, Plaintiffs' loss of consortium claim also fails as a matter of law.

C. Summary Judgment is Warranted Because Plaintiffs Cannot Prove the Elements of Duty and Breach.

An accident occurring on the property does not in and of itself establish negligence. Gunlock v. New Frontier Hotel, 78 Nev. 182, 370 P.2d 682 (1962). Nor is a landowner liable for an injury to a person resulting from a danger, which was obvious or should have been observed in the exercise of reasonable care. Id. See also Harrington v. Syufy Enterprises, 931 P.2d 1378 (Nev. 1997). Further, the mere fact that there was an accident and someone was injured is not in and of itself sufficient to predicate liability. See generally, Sprague v. Lucky Stores, Inc., 109 Nev. 247, 849 P.2d 320 (1993). The law in Nevada is quite clear regarding the duty owed by an occupier of property. It has long been held that a property owner must exercise ordinary care and prudence to render the premises safe for business purposes. Twardowski v. Westward Ho Motels, 86 Nev. 784, 746 P.2d 946 (1970), citing to the earlier case of Hotel El Rancho v. Pray, 64 Nev. 591, 187 P.2d 568 (1947).

"As a general rule, a private person does not have a duty to protect another from a criminal attack by a third person." Scialabba v. Brandise Construction Co., 112 Nev. 965, 968, 921 P.2d 928, 930 (1996) (citing Kline v. 1500 Massachusetts Ave. Apartment Corp., 439 F.2d 477 (D.C. Cir. 1970)). A landowner owes an invitee a duty of care if the landowner exercised control over the premises and the criminal attack was reasonably

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foreseeable. See, Scialabba at 969. Foreseeability is determined on a totality-of-the-circumstances basis. Doud at 1102.

In Lopez v. McDonald's Corp., 193 Cal. App. 3d 495, 504, 238 Cal. Rptr. 436, 440, (Cal. Ct. App 1987), the Court of Appeal in California was asked to determine the boundaries of the duty to protect between a restaurant and its customers in connection with a mass shooting. In that case, a gunman entered a San Ysidro McDonalds and began to open fire at the customers and employees within. The gunman did not have any other motive than to massacre as many individuals inside as he could before he was later killed by a police sharpshooter. Id. at 193 Cal. App. 3d 495, 500-501, 238 Cal. Rptr. 436, 438. Survivors and surviving family members brought suit against McDonalds under theories of negligence and premises liability, alleging that McDonalds was aware its San Ysidro location was in a high crime area and employees were concerned with criminal activity. Id. at 193 Cal. App. 3d 495, 501, 238 Cal. Rptr. 436, 438. The employees solicited a private security firm, which determined the restaurant was at risk due to the high crime area, gang activity, and nearby violent crimes and therefore recommended that McDonalds hire a security officer. Id. McDonalds declined to hire a security officer based on economic reasons. Id.

The court explained that McDonalds had a duty to protect customers against reasonably foreseeable harm. Id. at 193 Cal. App. 3d 495, 504, 238 Cal. Rptr. 436, 440 (emphasis added). However, the court found that such a duty did not extend to cover a massacre, such as a mass shooting because such an event is so unlikely, "that a reasonably prudent business enterprise would not consider its occurrence in attempting to satisfy its general obligation to protect business invitees from reasonably foreseeable criminal conduct." Id. at 193 Cal. App. 3d 495, 509-510, 238 Cal. Rptr. 436, 445.., 68th Leg. (Nev., June 10, 1995)). The Nevada Supreme Court likened the standard created by NRS 651.015(3) to Nevada's totality of the circumstances test established in Doud. Id.

In their Complaint, Plaintiffs refer to the "Subject Condition" as "an unknown group of individuals [that] were dangerously and hazardously fleeing the Subject Premises as a

result of a disturbance in the crowd." See, **Exhibit B** at ¶ 13. Plaintiffs allege that Defendants "knew or should have known of the Subject Condition because the Subject Condition occurred in an area where it should have been discovered by present employees and staff through routine inspection." Id. at ¶ 28. Throughout their Complaint, Plaintiffs also claim that Defendants breached their duty by "allowing dangerous conditions like the Subject Condition to exist and persist." Id. at ¶¶ 29 and 47. Thus, it is clear that Plaintiffs are claiming that their damages were a result of the hordes of people running for their lives during and/or following the October 1, 2017 mass shooting at the Route 91 Harvest festival.

The October 1, 2017 mass shooting at the Route 91 Harvest festival, which was the deadliest mass shooting in modern American history[2], and the resulting panic from the shooting, was in no way foreseeable, as conceded to by Plaintiffs' own expert.

At the time of the shooting, individuals fleeing the scene ran into Hooters to take cover. The casino changed from its routine and ordinary activity and divulged into chaos and mass panic, which caused people to jump up and run away. Such events have never occurred at Hooters before and could never have been reasonably foreseeable. It cannot be overstated that Plaintiffs' own expert has conceded as such:

> A specific active shooter event is not foreseeable.
>
> . . .
>
> So the active shooter events on October 1st, 2017, as far as Hooters was concerned, that specific event of Stephen Paddock opening fire on a crowd on Las Vegas Boulevard, that was not foreseeable.

See, **Exhibit C**, p. 25:18-19 and p. 26:3-6, Deposition of Plaintiffs' Security Expert, William Schoen. As explained by Lopez, massacres which result from mass shootings are not reasonably foreseeable as a matter of law. Lopez v. McDonald's Corp., 193 Cal. App. 3d

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[2] See, https://www.reviewjournal.com/crime/shootings/las-vegas-woman-becomes-60th-victim-of-october-2017-mass-shooting-2123456/.

495, 509, 238 Cal. Rptr. 436, 445 (Cal. Ct. App 1987). There is simply no way anyone could have ever foreseen a lone terrorist renting a room from a top story of a Las Vegas hotel and shooting down upon a concert festival with the intent of killing as many persons as possible. This is a once in a lifetime type massacre (hopefully) which was remote and unexpected. It is only logical that personal injuries resulting from mass shootings are also not reasonably foreseeable. This is all the more true in this instance when the festival site was over one mile away from Hooters, which again renders it all the more impossible to foresee that crowds of people running away from the massacre would rush through a casino one mile away.

Plaintiffs also fail to show that such act was foreseeable by way of presenting similar previous instances. It would be impossible to do so as a there are fortunately no similar events: a mass shooting such as the one forming the basis of Plaintiffs' claims has never before occurred within the Las Vegas Valley or even the country, let alone at Hooters. The boundaries of the Defendants' duty as a hotel does not extend to cover mass acts of violence occurring miles away off property, and Defendants cannot be held to guarantee the absolute safety of all patrons on the premises from a stampede caused by a mass shooting.

The actions which occurred when individuals were fleeing and panicking could never have been foreseeable to Defendants. As noted, Plaintiffs' own expert, William Schoen, testified that the subject mass shooting was not foreseeable. See, **Exhibit C** at 26:3-6. Because the subject event was not foreseeable, Defendants did not have a duty to protect Plaintiffs beyond rendering the premises safe for business purposes. "If an injury is unforeseeable, then the innkeeper owes no duty, and the district court has no occasion to consider the remaining elements of the plaintiff's cause of action." Humphries v. New York-New York Hotel & Casino, 403 P.3d 358, 361 (Nev. 2017) (citing Estate of Smith v. Mahoney's Silver Nugget, Inc., 127 Nev. 855, 859, 265 P.3d 688, 691,

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(Nev. 2011)). Here, a mass shooting and the hordes of people trying to escape the shooting in Hooters were not foreseeable and Defendants are therefore entitled to summary judgment.

IV. CONCLUSION

Based on the foregoing, Defendants ASSOCIATED HOTELS LLC, HILV HOLDINGS LLC and TRINITY HOTEL ASSET MANAGEMENT L.L.C. respectfully request that this Honorable Court grant summary judgment in favor of Defendants with respect to Plaintiffs' Complaint in its entirety.

DATED this 22nd day of June, 2022.

Respectfully Submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By */s/ Sharon A. Parker*

JOSH COLE AICKLEN
Nevada Bar No. 007254
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Tel. 702.893.3383

Attorneys for ASSOCIATED HOTELS, LLC, HILV HOLDINGS LLC and TRINITY HOTEL ASSET MANAGEMENT

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Lewis Brisbois Bisgaard & Smith LLP and that on this 22nd day of June, 2022, I did cause a true copy of **DEFENDANTS ASSOCIATED HOTELS, LLC, HILV HOLDINGS LLC AND TRINITY HOTEL ASSET MANAGEMENT'S MOTION FOR SUMMARY JUDGMENT** to be served by electronic service with the Eighth Judicial District Court e-filing system to the parties on the Electronic Service List, addressed as follows:

Brian D. Nettles, Esq.
Nevada Bar No. 7462
Christian M. Morris, Esq.
Nevada Bar No. 11218
Kimberly A. Nelson, Esq.
Nevada Bar No. 15295
NETTLES MORRIS
710 South 4th Street
Las Vegas, Nevada 89101
Attorney for Plaintiffs

By */s/ Linda Gilman*
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

EXHIBIT A

HOOTERS
Casino Hotel ◆ Las Vegas

Room #1147

VOLUNTARY STATEMENT

Karla/Mark Sovtaski — Name (Print)
532 Wellwood Avenue — Home address
F- 1/19/72
M- 12/10/59
Beaumont CA 92223 — City / State / Zip
Date of Birth
Department / Shift
Home Phone
951-665-2365 — Cell Phone
10/2/17 — Date of Statement
10:45 Am — Time of Statement

NARRATIVE

Describe in your own words what occurred

At appoximately 10:05pm on 10/1/17 my wife, Karla, was injured at her right shoulder when an employee of Hooters ran into her after the shooting occured at Mandalay Bay.

We were both gambling on two machines across from Sports bar (# 101693 & 101560) when the mass of people entering the casino came in with many shouting "There is a shooter outside" We got up to run and left our cards and money in these two machines. We estimate about $120 was total in both machines. I came back about 10-15 minutes to get cards and money but money was gone.

At this same time is when my wife was ran into by a casino employee on her right side resulting in an injury to her right shoulder. She currently can't raise her arm or shoulder due to pain.

She will see her own physician when we return to Southern California tomorrow due to the current state of hospitals in this area.

Mark Sov
Signature of person filling out statement

Oct 2, 2017
Date

Witness 1613

10-2-17
Date

PLTF 00252

EXHIBIT B

Electronically Filed
9/19/2019 9:34 AM
Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

KARLA SONTOSKI, an individual; MARK SONTOSKI, an individual, Plaintiffs, vs. ASSOCIATED HOTELS LLC, a foreign limited liability company d/b/a HOOTERS CASINO HOTEL; HILV HOLDINGS LLC, a Delaware limited liability company d/b/a HOOTERS CASINO HOTEL; TRINITY HOTEL ASSET MANAGEMENT, L.L.C., a foreign limited liability company d/b/a HOOTERS CASINO HOTEL; DOE EMPLOYEE, an individual; DOES 1 through 10, inclusive; ROE CORPORATIONS 11 through 20, inclusive; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendants.	CASE NO: A-19-802357-C DEPT NO. Department 32 **COMPLAINT**

COMES NOW, Plaintiffs, KARLA SONTOSKI and MARK SONTOSKI ("Plaintiffs"), by and through their counsel, Brian D. Nettles, Esq., Christian M. Morris, Esq., and Keivan A.

Case Number: A-19-802357-C

Roebuck, Esq. of NETTLES | MORRIS, and for their causes of action against Defendant above captioned, complains and alleges as follows:

STATEMENT OF JURISDICTION AND VENUE

1. The Eighth Judicial District Court has jurisdiction over this civil tort action pursuant to NRCP 8(a)(4), NRS 13.040, and NRS 41.130 as the occurrence giving rise to this case took place in Clark County, Nevada and the amount in controversy exceeds $15,000.00.

GENERAL ALLEGATIONS

2. Plaintiff KARLA SONTOSKI ("Mrs. Sontoski") is, and at all relevant times was, an individual residing in Beaumont, California.

3. Plaintiff MARK SONTOSKI ("Mr. Sontoski") is, and at all relevant times was, an individual residing in Beaumont, California.

4. Upon information and belief, Defendant ASSOCIATED HOTELS LLC is, and at all relevant times was, a foreign limited liability company doing business in Clark County, Nevada as Hooters Casino Hotel.

5. Upon information and belief, Defendant HILV HOLDINGS LLC is, and at all relevant times was, a Delaware limited liability company doing business in Clark County, Nevada as Hooters Casino Hotel.

6. Upon information and belief, Defendant TRINITY HOTEL ASSET MANAGEMENT, L.L.C. is, and at all relevant times was, a foreign limited liability company doing business in Clark County, Nevada as Hooters Casino Hotel (hereinafter, collectively with ASSOCIATED HOTELS LLC and HILV HOLDINGS LLC, referred to as "Defendant Hooters").

7. Upon information and belief, Defendant DOE EMPLOYEE is, and at all relevant times was, an individual residing in Clark County, Nevada.

8. On information and belief, Defendant Hooters is, and at all relevant times was, the owner, operator and/or manager of the Hooters Casino Hotel, located at 115 E Tropicana Avenue, Las Vegas, Nevada 89109 (hereinafter, "Subject Premises").

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9. The true names and capacities, whether individual, corporate, associate, governmental or otherwise, of defendants Does 1 through 10, Roe Corporations 11 through 20 and ABC Limited Liability Companies 21 through 30 ("Does/Roe/ABC"), inclusive, are unknown to Plaintiffs at this time, whom therefore sues said defendants by such fictitious names. When the true names and capacities of said defendants have been ascertained, Plaintiffs will amend this Complaint accordingly.

10. On information and belief, Doe/Roe/ABC Defendants participated in the design, construction, maintenance, ownership, management, control, operation, care, and/or upkeep of the Subject Premises; Doe/Roe/ABC Defendants include, but are not limited to, owners, operators, occupiers, lessees, managers, manufacturers, developers, producers, general contractors, subcontractors, security companies, maintenance companies, material providers, equipment providers, architects, designers, engineers, governmental authorities, insurers, lenders, investors, and their agents, servants, representatives, employees, partners, joint venturers, related companies, subsidiaries, parents, affiliates, predecessors, partners and/or successors in interest.

11. On information and belief, Does/Roe/ABC are responsible, negligently or in some other actionable manner, for the events and happenings hereinafter referred to, and caused injuries and damages proximately thereby to Plaintiffs as hereinafter alleged.

12. On or about October 1, 2017, Plaintiffs were a guest/patron/invitee at the Subject Premises.

13. At approximately the same time, an unknown group of individuals were dangerously and hazardously fleeing the Subject Premises as a result of a disturbance in the crowd (hereinafter, "Subject Condition").

14. As the unknown group of individuals approached Plaintiffs, Mrs. Sontoski was pushed by DOE EMPLOYEE, causing severe physical injuries ("Subject Incident").

15. Upon information and belief, at all times relevant, Defendant Hooters owned, maintained, managed, operated, inspected, controlled, installed, constructed and/or was otherwise responsible for the Subject Premises and/or was otherwise responsible for the area where the

Subject Incident occurred, and/or was otherwise responsible for the Subject Incident leading to Mrs. Sontoski's injuries.

16. The Subject Condition, which was unattended and without warning, and/or was a condition of which Defendant Hooters had actual or constructive notice prior to the Subject Incident.

17. Defendant Hooters did not remedy or warn Plaintiffs of the dangerous Subject Condition prior to the Subject Incident.

18. The acts and/or omissions of Defendant Hooters' employees/agents in their dealings with Plaintiffs were within the course and scope of their employment, and/or were ratified by Defendants.

19. The conduct, actions, omissions, and breaches by Defendant Hooters' employees were negligent, grossly negligent, intentional, willful, wanton, oppressive, malicious, and done with conscious disregard to the rights and safety of Plaintiffs.

20. On information and belief, the possibility of assaults and batteries was a condition of which the Defendants, and each of them, had actual or constructive notice prior to the time of the assault and battery on Mrs. Sontoski. As such, Defendants are liable for the injuries suffered by the Plaintiffs.

21. These negligent acts were committed by Defendant Hooters' employees and/or agents acting in the course and scope of their employment for Defendant Hooters' under its direction and control, and thus the Defendant Hooters' are vicariously liable for these acts pursuant to the doctrine of *respondeat superior*.

22. As a direct and proximate result of the negligence of the Defendants, and each of them, Plaintiffs suffered physical injury, pain and suffering, loss of income, and loss of consortium.

23. As a direct and proximate result of the negligence of the Defendants, and each of them, Mrs. Sontoski was required to obtain medical services and treatment and may, in the future, be required to obtain additional medical services and treatment.

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24. As a direct and proximate result of the negligence of the Defendants, and each of them, Plaintiffs have been damaged in an amount in excess of $15,000.00.

25. As a direct and proximate result of the negligence of the Defendants, and each of them, Plaintiffs have had to retain the services of NETTLES | MORRIS to pursue this action and is entitled to recover costs of suit and reasonable attorney's fees incurred therein.

FIRST CAUSE OF ACTION

(Negligence/Premises Liability)

26. Plaintiffs repeat and re-allege paragraphs 1 through 25 as though fully set forth herein.

27. At all times relevant hereto, Defendant Hooters was in control of the Subject Premises and had a non-delegable duty to maintain the Subject Premises for the care, safety, and protection of those persons present on said Subject Premises, including Mrs. Sontoski.

28. At all times herein mentioned, Defendant Hooters knew or should have known of the Subject Condition because the Subject Condition occurred in an area where it should have been discovered by present employees and staff through routine inspection.

29. On information and belief, Defendant Hooters breached its duty to Mrs. Sontoski by failing to employ proper emergency procedures and/or negligently staffing and/or supervising the Subject Premises, allowing dangerous conditions like the Subject Condition to exist and persist on the Subject Premises prior to Mrs. Sontoski's Subject Incident, and by consciously, deliberately, and/or negligently failing to take any measure to remedy or to warn of the existence of the dangerous conditions.

30. These negligent acts were committed by Defendant Hooters's employees and/or agents acting in the course and scope of their employment for Defendant Hooters under their direction and control, and thus Defendant Hooters is vicariously liable for these acts pursuant to the doctrine of *respondeat superior*.

31. Defendants' breach of their duties was the legal cause of Mrs. Sontoski's injuries.

32. As a direct and proximate result of the negligence of the Defendants, and each of them, Mrs. Sontoski suffered physical injury and pain and suffering.

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33. As a direct and proximate result of the negligence of the Defendants, and each of them, Mrs. Sontoski was required to obtain medical services and treatment and may, in the future, be required to obtain additional medical services and treatment.

34. As a direct and proximate result of Defendants' negligence, Plaintiffs have been damaged in an amount in excess of $15,000.00, including, but not limited to, bodily injury, severe pain and suffering, loss of income, and loss of consortium.

35. As a direct and proximate result of the negligence of Defendants, Plaintiffs have had to retain the services of NETTLES | MORRIS to pursue this action and are entitled to recover costs of suit and reasonable attorney's fees incurred therein.

SECOND CAUSE OF ACTION

(Respondeat Superior)

36. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 35 as though fully set forth herein.

37. It is further alleged that DOE EMPLOYEE was an agent/employee of Defendant Hooters acting under Defendant Hooters's direction and control in the scope of his/her employment at the time of the Subject Incident.

38. Under the doctrine of *respondeat superior,* Defendant Hooters is liable for acts and omissions of DOE EMPLOYEE because he/she was an employee/agent/contractor of Defendant Hooters and was acting under Defendant Hooters' direction and control within the scope of his/her employment at the time of the Subject Incident, causing physical injury to Mrs. Sontoski.

39. Defendants' breach of their duties was the legal cause of Plaintiffs' injuries.

40. As a direct and proximate result of the acts or omissions of Defendants, and each of them, Mrs. Sontoski has suffered injuries to her body, as well as pain and suffering.

41. As a direct and proximate result of the acts or omissions of Defendants, and each of them, Mrs. Sontoski was required to obtain medical services and treatment and may, in the future, be required to obtain additional medical services and treatment.

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42. As a direct and proximate result of Defendants' negligence, Plaintiffs have been damaged in an amount in excess of $15,000.00, including, but not limited to, bodily injury, severe pain and suffering, loss of income, and loss of consortium.

43. As a direct and proximate result of the acts or omissions of Defendants, and each of them, Plaintiffs have been damaged in an amount in excess of $15,000.00.

44. As a direct and proximate result of the acts or omissions of Defendants, and each of them, Plaintiffs have had to retain the services of the law offices of Nettles | Morris to pursue this action and is entitled to recover costs of suit and reasonable attorney's fees incurred herein.

THIRD CAUSE OF ACTION

(Negligent Hiring, Training, Retention, and Supervision)

45. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 44 as though fully set forth herein.

46. Defendant Hooters owed a non-delegable duty to Plaintiffs to exercise due care in the selection, training, oversight, direction, retention, and control of their employees/agents/contractors, including DOE EMPLOYEE.

47. Defendant Hooters breached this non-delegable duty owed to Plaintiffs by failing to provide proper oversight, training, direction, hiring, retention, and control of or to these employees/agents/contractors responsible for performing these duties, allowing dangerous conditions like the Subject Condition to exist and persist on the Subject Premises prior to the Subject Incident, and by consciously, deliberately, and/or negligently failing to take any measure to remedy or to warn of the existence of the dangerous conditions. Defendants lack of hiring, training, and supervision is conscious and reckless disregard for the safety of others, putting Plaintiffs and other guests/invitees/patrons at unnecessary risk of harm.

48. Had Defendant Hooters performed these duties in a reasonable manner or to a reasonable degree it could have prevented the Subject Incident, and thus Mrs. Sontoski's injuries.

49. These negligent acts were committed by Defendant Hooters's employees and/or agents acting in the course and scope of their employment for Defendant Hooters under its

direction and control, and thus Defendant Hooters is vicariously liable for these acts pursuant to the doctrine of respondeat superior

50. Defendant Hooters's breach of its duties was the legal cause of Plaintiffs' injuries.

51. As a direct and proximate result of the acts or omissions of Defendants, and each of them, Mrs. Sontoski has suffered injuries to her body, as well as pain and suffering.

52. As a direct and proximate result of the acts or omissions of Defendants, and each of them, Mrs. Sontoski was required to obtain medical services and treatment and may, in the future, be required to obtain additional medical services and treatment.

53. As a direct and proximate result of Defendants' negligence, and each of them, Plaintiffs have been damaged in an amount in excess of $15,000.00, including, but not limited to, bodily injury, severe pain and suffering, loss of income, and loss of consortium.

54. As a direct and proximate result of the acts or omissions of Defendants, and each of them, Plaintiff has been damaged in an amount in excess of $15,000.00.

55. As a direct and proximate result of the acts or omissions of Defendants, and each of them, Plaintiff has had to retain the services of the law offices of Nettles | Morris to pursue this action and is entitled to recover costs of suit and reasonable attorney's fees incurred herein.

FOURTH CAUSE OF ACTION

(Negligent Security)

56. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 55 as though fully set forth herein.

57. Defendants, and each of them, owed a duty to Plaintiffs to use due care to prevent or warn of dangerous conditions on the Subject Premises.

58. Defendants, and each of them, breached that duty by failing to use due care in preventing and/or protecting Mrs. Sontoski from the Subject Incident and the Subject Condition that occurred on the Subject Premises. More specifically, Defendants failed to employ proper procedures to control its guests/patrons/invitees during disturbances in the crowd, which was a foreseeable dangerous condition.

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59. Breach of this duty of care by Defendants, and each of them, was the actual and proximate causes of each of Mrs. Sontoski's injuries.

60. As a direct and proximate result of the negligence of the Defendants, and each of them, Mrs. Sontoski suffered physical injury and pain and suffering.

61. As a direct and proximate result of the negligence of the Defendants, and each of them, Mrs. Sontoski was required to obtain medical services and treatment and may, in the future, be required to obtain additional medical services and treatment.

62. As a direct and proximate result of Defendants' negligence, Plaintiffs have been damaged in an amount in excess of $15,000.00, including, but not limited to, bodily injury, severe pain and suffering, loss of income, and loss of consortium.

63. As a direct and proximate result of the negligence of the Defendants, Plaintiffs have had to retain the services of NETTLES | MORRIS to pursue this action and are entitled to recover costs of suit and reasonable attorney's fees incurred therein.

FIFTH CAUSE OF ACTION

(Loss of Consortium)

64. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 63 as though fully set forth herein.

65. Mr. Sontoski is and was at all times relevant hereto Mrs. Sontoski's spouse and, as such, lives and cohabitates with her.

66. As set forth above, Defendants owed Mr. Sontoski and Mrs. Sontoski a duty of reasonable care in the operation of the Subject Premises.

67. As set forth above, Defendants breached these duties causing injury to Mrs. Sontoski.

68. As a direct and proximate result of Defendants' actions, and each of them, Mr. Sontoski has been caused, presently and in the future, to suffer a loss of consortium.

69. As a direct and proximate result of the negligence of Defendants, and each of them, Plaintiffs have had to retain the services of the law offices of NETTLES | MORRIS to pursue this action and are entitled to recover costs of suit and reasonable attorney's fees incurred herein.

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WHEREFORE, Plaintiffs prays for relief against Defendants, and each of them, as follows:

1. For damages in excess of $15,000.00 for medical expenses, pain and suffering, loss of income, and loss of consortium;
2. For a sum in excess of $15,000.00 for punitive damages;
3. For interest as permitted by law;
4. For reasonable attorney's fees and costs of suit; and
5. For such other and further relief as the court deems just and proper.

Dated this 19th day of September 2019.

NETTLES | MORRIS

/s/ Keivan A. Roebuck

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EXHIBIT C

DISTRICT COURT

CLARK COUNTY, NEVADA

KARLA SONTOSKI, an individual; MARK SONTOSKI, an individual,

Plaintiff,

vs

ASSOCIATED HOTELS LLC, a foreign limited liability company dba HOOTERS CASINO HOTEL; HILV HOLDINGS LLC, a Delaware limited liability company dba HOOTERS CASINO HOTEL; TRINITY HOTEL ASSET MANAGEMENT, LLC, a foreign limited liability company dba HOOTERS CASINO HOTEL; DOE EMPLOYEE, an individual; DOES 1 through 10, inclusive; ROE CORPORATIONS 11 through 20, inclusive; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive,

Defendants.

Case No. A-19-802357-C
Dept. No. 9

CERTIFIED COPY

REMOTE VIDEOCONFERENCE DEPOSITION OF

WILLIAM JAMES SCHOEN

Taken on Monday, May 16, 2022

At 10:00 a.m.

WITNESS APPEARING REMOTELY FROM LAS VEGAS, NEVADA

NEVADA FIRM NO: 028F

Reported by: Karen Bryson, CCR No. 120

APPEARANCES

For the Plaintiff:

KIMBERLY A. NELSON, ESQ.
(PRESENT VIA VIDEOCONFERENCE)
Nettles Morris
1389 Galleria Drive
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Las Vegas, Nevada 89014

For the Defendants:

SHARON A. PARKER, ESQ.
(PRESENT VIA VIDEOCONFERENCE)
Lewis Brisbois Bisgaard & Smith LLP
6385 South Rainbow Blvd.
Suite 600
Las Vegas, Nevada 89118

Also Present Via Videoconference:

ERIKA NITTOLI, ZOOM HOST
All-American Court Reporters

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PURSUANT TO NOTICE, on Monday, May 16, 2022, at the hour of 10:00 a.m., of said day, at the offices of before me, Karen Bryson, a notary public, appeared WILLIAM JAMES SCHOEN, via videoconference.

--oOo--

THE ZOOM HOST: The attorneys participating in this proceeding acknowledge that the court reporter is not physically present with the deponent or counsel, and that she will be reporting this proceeding remotely.

Counsel, if you are in agreement to the remote deposition, please state your appearance and consent for the record. Then the court reporter will swear in the deponent remotely.

MS. NELSON: This is Kimberly Nelson for plaintiffs. I consent.

MS. PARKER: Sharon Parker for defendants. I consent.

WILLIAM JAMES SCHOEN,

produced as a witness, being first duly sworn, was examined and testified as follows:

///

///

EXAMINATION

BY MS. PARKER:

Q Good morning, Mr. Schoen.

Could you please state and spell your full name for the record.

A William James Schoen. And that's W-i-l-l-i-a-m. Middle name is James, J-a-m-e-s. Last name, Schoen, S-c-h-o-e-n.

Q Sir, have you ever had your deposition taken before?

A Yes, I have.

Q On how many occasions?

A Two occasions.

Q Okay. And when were those depositions?

A One was in 1999, and that was regarding an auto accident that I was in. The other was as an expert witness on January 2nd, 2022.

Q And what was the nature of that case that you were -- your deposition was taken as an expert on January 7th, 2020?

A It was a negligence security case.

Q Is that case still ongoing?

A I believe it is.

Q With you only having your deposition taken twice though, are you comfortable skipping the

admonitions, the rules for the deposition process, or would you like me to review them?

A I'm comfortable skipping them.

Q Okay. Sir, have you ever testified in a court in Clark County, Nevada?

A Yes.

Q Okay. On how many occasions?

A I would say several dozen, if not close to a hundred.

Q Have you ever testified in a court in Clark County, Nevada, as an expert witness?

A No.

Q Okay. Was that -- the testimony that you just mentioned, was that in your capacity as an officer for the Las Vegas Metropolitan Police Department?

A Yes, ma'am.

Q Okay. So that would have been part of your work with Metro for 20 some odd years, or however long?

A Yes.

Q Have you ever testified in a court of law in any other jurisdiction?

A No.

Q Have you ever been retained as a security expert in any other jurisdiction?

A No.

Q Have you ever been retained as a security expert on behalf of any other law firm other than Nettles and Morris?

A Yes.

Q And what other firms, sir?

A That would be -- if you give me one moment, please. The attorney was Alison Brasier. It was her firm. And the name escapes me.

Q I think it's Hicks, Brasier.

Does that sound right?

A You're right. Yes, you're right. It is.

Q How many times have you been retained by Hicks, Brasier?

A Just one.

Q Is that an ongoing case?

A Yes.

Q Is it a negligence security case?

A Yes.

Q Have you authored an opinion or report in that case yet?

A Yes.

Q Okay. And what is the name of that case?

A Stand by.

That is Alisha, and that's spelled A-l-i-s-h-a. Last name Rosinek, R-o-s-i-n-e-k, versus Desert Palace

LLC, dba Caesar's Palace.

Q Do you have the case number as long as you're looking at the document?

A I can get that. Give me one moment.

Q Okay.

A It's case -- and it's in district court -- A-20-824943-C.

Q Have you given a deposition in that case yet?

A No.

Q I assume you're also retained on behalf of the plaintiff in that case, Ms. Rosinek?

A Yes.

Q Do you have your deposition scheduled in that case at all yet?

A No.

Q Okay. Other than, I guess, two cases with Nettles Morris, one case with Hicks and Brasier, have you been retained or designated as an expert in any other security cases in Clark County, Nevada?

A No.

Q Have you ever been disqualified as an expert that you're aware of?

A No.

Q Did you do anything to prepare for your deposition?

A Yes.
Q And what did you do, sir?
A I reviewed my reports and I spoke with Ms. Nelson.
Q When did you speak with Ms. Nelson?
A I believe that was last week.
Q Did you review any other documents to prepare for your deposition today?
A I reviewed my -- the two reports that I authored. And I believe that that's it.
Q And what was the nature of your discussion with Ms. Nelson last week?
A It was basically just, you know, things that I would go over. Things in my report.
Q How long did you speak with her for?
A Oh, probably about 15 to 20 minutes.
Q Have you ever spoken with Mr. Winder regarding this case?
A I'm sorry, who?
Q Ed Winder.
A Initially. But he left the case really soon after I took it.
Q When were you initially retained in this matter?
A It was around New Year's of 2022, maybe late

December even of 2021.

Q Okay. And at the time of your initial retention what did you understand the scope of your retention to be?

A That it would be reviewing documents having to do with the case, to include security policies, voluntary statements, deposition transcripts, and then make a determination as to forming an expert opinion on the matter.

Q And what do you mean when you say the matter?

A The case. You know, forming an expert opinion on essentially what happened.

Q And when you say on what happened, I guess, are you referring to Mrs. Sontoski's specific allegations and complaints, or are you referring to, you know, the night of October 1st, 2017, in general?

A I think it would be her allegation as well as the response of Hooters.

Q Have you ever met Ms. Sontoski?

A No.

Q Have you ever spoken with Ms. Sontoski?

A No.

Q How much have you billed for your work on this file to date?

A Doing just today's deposition?

Q No. In total.
A Oh, in total?
Q Yes.
A I don't -- I can look that up.
Would you like me to look that up?
Q Yeah, if you could, that'd be great, as long as it'll be brief if you have it readily accessible.
A I'll try to be quick.
So I should tell you that I was retained by an expert witness firm.
Q Oh, okay.
A Not retained, but -- I don't exactly know what you would call it. But she found me and put me in touch with Ms. Nelson's law firm.
So that being said, whatever Ms. Nelson's law firm paid may not match up to what I billed, if that makes sense.
Q Totally makes sense.
What is the name of the firm that you were located through?
A Expert Strategy Group.
Q Okay. So your billing is all done through them?
A Yes.
Q Okay. And do you have the total that you

billed to date?

A I am trying to pull that up right now. Sorry for the wait.

Q Oh, no problem.

A My computer's thinking.

Okay. It finally opened. Hold on one second.

I believe it's approximately 3800.

Q Okay. And that -- does that include your time for preparing today?

A Yes. And it also includes today's deposition.

Q Oh, okay.

A Sorry for the wait.

Q No, no problem. I understand.

Court rules do require you to just produce your invoices as part of your job file, so if you could just turn those over to Ms. Nelson to get them produced, that would be great.

A So per my contract with Expert Strategy Group, I'm not allowed to provide invoices to her firm. That would have to be through Expert Strategy Group. And I know that that sounds funky, but I'm contractually bound not to provide invoices to Ms. Nelson's law firm.

So I don't -- I don't know. I think that would probably -- I can surely contact Expert Strategy Group and advise them of what you're saying if you'd like.

Q I just say that is con -- I've actually never heard that. That's contrary to court rules. They do require these things to be produced.

If you would like to contact someone there regarding that, or if you have the name or phone number of whoever's in charge of billing there, myself or Ms. Nelson can contact them because it does go against court rules regarding --

A Okay.

MS. NELSON: Bill, I'll contact them.

THE WITNESS: Okay. And I'm sorry to be a problem. I don't mean to be a problem but I have to abide by that.

BY MS. PARKER:

Q I completely understand. There's no problem. And I don't want to put you in a bad position, so.

A Thanks.

Q Ms. Nelson and I can deal with that directly with them.

A Okay.

Q You have authored two reports in this matter dated February 15th and May 9th, 2022; is that correct?

A Yes.

Q Okay. Do those reports contain the totality of your opinions in this matter?

A Yes.
Q Do you anticipate authoring any other reports or doing any other substantive investigation work prior to trial in this matter?
A I don't anticipate that.
Q Do you know Galen Swenson?
A No.
Q Do you know Gil Chavez?
A Just by reading his deposition.
Q Do you know -- do you know or recall him from the police force at all?
A He was on North Las Vegas Police Department, and I was --
Q Oh.
A -- in Metro.
I never met the man.
Q Okay. You were still employed with Las Vegas Metropolitan Police Department on the evening of October 1st, 2017, correct?
A Yes.
Q Were you a first responder, sir?
A I was a detective, but I was called out to the scene. So I did respond that night.
Q Okay. And what was the purpose of your being called to the scene that night?

A The department wasn't sure if there were multiple active shooters, so they mobilized almost everyone to respond to the situation.

Q Do you recall what time you were mobilized or asked to respond to the situation?

A Approximately 10:30 or 10:45.

Q Do you recall what time you got down to -- well, I guess when you were called a first responder, what was your specific role when you got down there? What did you do?

A I first responded to our office, which was at police headquarters.

Q Okay.

A And then from there my entire section went to the staging area, which was in the parking lot of the south central area command on Las Vegas Boulevard and Russell.

Q Okay. So essentially a parking lot on the corner of Las Vegas Boulevard and Russell?

A Near there. It was a little bit south of Russell, I guess, kind of by the welcome to Las Vegas sign.

Q Oh, okay.

A And then from there different sections were deployed to different areas depending on the need. And my

section was dispatched to the Southern Hills Hospital to take statements from victims who were transported to that hospital.

Q Oh, okay.

How long did you work that night or the next day, sir?

A We worked all night. I probably left at about 9:00 a.m.

Q Okay. And about how long were you at that area of the parking lot on Russell and Las Vegas Boulevard before you were dispatched to the hospital?

A Approximately 45 minutes.

Q Oh, okay. So very brief?

A Yes.

Q Were you on the strip at all that night?

A No.

Q And that would be because the strip was closed, correct?

A More so because I wasn't needed there, and we were following our orders to deploy from headquarters to the parking lot of south central area command.

Q Oh, okay.

A More so just because of the orders we received.

Q Did you receive those orders from your supervisors at Metro, from some federal agency, or from

businesses that were impacted by this terrorist event?

A It was an order given to us by our sergeant.

Q And who was your sergeant at the time?

A Craig Dunn, D-u-n-n.

Q Is Mr. Dunn still employed with Metro?

A Yes.

Q And is it your understanding that Metro also worked in conjunction with the casinos and the hotels that were impacted by this terrorist event in formulating the investigative plan, the first responders, saving lives, and anything else that evening?

A I'm not sure if I understand the scope of your question, but it's my understanding that there was communication between the department and properties that night.

And I don't know if that answered your question. I'm sorry.

Q That actually does perfectly answer my question. Segues into the next one.

As far as dealing with terrorist events, mass shootings like this, and everything, my understanding -- and correct me if I'm wrong, you're the expert -- is that the hierarchy would be the businesses take their orders from Metro who may take their orders from federal agencies that are involved.

So essentially we have a mass casualty event -- and, again, correct me if I'm wrong about this -- the businesses do whatever they do in responding to events -- and we'll get into that all and everything and -- but eventually when the law enforcement agencies step in, be it Metro, whatever police agencies, FBI, or whatnot, then the businesses work in conjunction with the law enforcement agencies and/or take their orders or instructions from the law enforcement agencies.

Would that be accurate?

A I think in general that would be accurate.

Q Okay. So you were at Southern Hills Hospital basically 90 percent of that evening just taking statements from people that had been at the festival that had been shot or injured in some way; is that correct?

A I'd say for the majority, yes.

Q Okay. Other than that night did you have any other role or involvement in investigating or responding to this terrorist event?

A Yes.

Q And what was that?

A My sergeant, Sergeant Dunn, and I responded afterwards to the Tropicana Hotel for some follow-up investigation. And that --

Q Did you --

A I'm sorry.
Q Okay. Go ahead. I'm sorry. I interrupted you.
A And that was, I believe, the next day or the day after. And I believe it was in order to get some video. Forgive me if I don't know exactly what that was for, I can't remember, but I think it was to obtain video. And I don't remember what that video was.
Q How long were you at the Tropicana Hotel the next day or the day after?
A Probably about 30 minutes.
Q Okay. So it was brief.
A Yes.
Q And do you recall the video that you obtained or what it was all about?
A I don't. I'm sorry.
Q It's my understanding -- and correct me if I'm wrong on this, too -- that the Tropicana did in fact shut and lock their doors that night, didn't let people in; is that correct?
A I don't have first knowledge of that information.
Q Okay. Is there anywhere, I guess -- if I wanted to get this information, is there anywhere through Metro or some government agency or somewhere I could other

than having to go through the hotel?

A I don't know. I don't know.

Q Okay. So other than the night of October 1st when you were at the hospital taking statements and obtaining video from the Tropicana Hotel, did you have any other role in investigating or responding to the October 1st terrorist attack?

A No.

Q And, like you said, my understanding of -- my layperson's understanding -- what I've gotten from the news and everything is that basically the entire Metro Department, all police officers in the city, were called up, all first responders, paramedics; is that correct?

A Yes.

Q Did you go to Hooters at all that evening on October 1st, 2017?

A No.

Q Have you been retained as an expert or consultant in any other litigation derived from the October 1st, 2017, terrorist attack?

A No.

Q Have you reviewed any documents or expert reports from any other litigation derived from the October 1st, 2017, terrorist attack?

A No.

Q Okay. Sir, turning to your curriculum vitae, you have a very lengthy career with Las Vegas Metropolitan Police Department, correct?

A Yes.

Q Okay. And it appears that the majority of your career was as a detective investigating business operations, business licensing issues, a short circuit investigating government employees, elected officials, correct?

A Yes.

Q While at Las Vegas Metropolitan Police Department, did you ever -- and other than this October 1st event -- did you ever participate and respond to an active shooter event?

A No.

Actually, no, that's not true. There was a shooting on Charter Circle.

Q When was that?

A I'm sorry, what was your question?

Q When was that?

A That was in the early 2000s. I don't remember the exact date. But there was someone in an apartment complex shooting from a balcony, and I responded to it. I was a plain clothes detective. I responded to the shooting along with a lot of other officers.

And the -- there was a gun battle that ensued. Fire was exchanged between our department and the suspect. I was present for the gunfire. I did not fire myself. The suspect was accidently killed by SWAT, I believe.

Q Was anyone else killed that evening?

A I don't believe so. I could be wrong about that. I don't remember. I just remember the outcome of the suspect.

Q Okay. Other than this particular event, were there any other times during your employment with Las Vegas Metropolitan Police Department where you responded to an active -- and let's just leave it at mass shooting event?

A No.

Q While -- during the tenure of your employment at Las Vegas Metropolitan Police Department, did you ever investigate or respond to a terrorist event?

A No.

Q While you were at Las Vegas Metropolitan Police Department, were you ever suspended or disciplined for any reason?

A Yes.

Q And what is that, sir?

A When I was a control room operator in 1994 I received a written reprimand for calling in sick when I

wasn't sick.

Q Okay. Anything else?

A No.

Q And you retired two years ago; is that correct?

A Yes.

Q Have you ever prepared a terrorist response plan for a hotel or casino?

A No.

Q Have you ever prepared an active shooter plan for a hotel or casino?

A No.

Q Other than your involvement in the investigation response on October 1st, 2017, have you ever executed a terrorist response plan for a hotel or casino?

A No.

Q And, again, excluding your work on the evening of October 1st, 2017, have you ever executed an active shooter plan for a hotel or casino?

A No.

Q Okay. Sir, turning to your information sources, your information source number one, LVMPD, IDF code card?

What is that?

A That is -- basically it's a piece of paper that has all of the codes that LVMPD uses. For example, 401

means accident. 402 means fire. 403 means prowler.
Q Okay.
A So I believe that I referenced that because one of the security guards said over the radio that there was a 413, which is person with a gun.
Q Okay.
A So that's why I referenced that.
Q Is that the only reason that is referenced here?
A Yes.
Q And then your information sources, you go on to cite looks like 14 different newspaper articles; is that correct?
A I don't know the exact number.
Q I'm just looking at two through 15.
A Some of them weren't newspaper articles. Some were YouTube videos. Then I believe another one was a certificate I received for attending an active shooter preparedness workshop.
Q Oh, okay. Yeah, I apologize. I see that.
All right, sir. What about these newspaper articles provide the basis for your opinions in this case?
A If I may, can I just review where I've footnoted those, please --
Q Sure.

A -- so I can answer?

Okay. So on those newspaper articles, referenced events, that were active shooter events that I referenced in my report, and the reason that I referenced all those was to show that these active shooter events that are in my report are publicized events that are publicly -- they're public information that someone could access or that they would probably hear about in the security industry.

Q Okay. And I guess I'm still not getting the link as to what about these public events that -- and everything provided a basis for your opinions in this matter?

A So based on Mr. Chavez' deposition, there wasn't an active shooter plan until after October 1st, 2017. So I cited these events with the articles that report them just to show that an active shooter event is a foreseeable event. A specific active shooter event is not foreseeable.

So to draw an analogy, an auto accident -- a particular auto accident is not foreseeable. But the potential of an auto accident is; therefore, cars are equipped with seat belts, if that makes any sense.

Q Okay. So I guess, what if your -- difference in your mind, you just mentioned an active shooter event

versus a specific active shooter event? I don't know what you're trying to say.

A So the active shooter events on October 1st, 2017, as far as Hooters was concerned, that specific event of Stephen Paddock opening fire on a crowd on Las Vegas Boulevard, that was not foreseeable.

However, the potential of an active shooter situation based on the fact that active shooter events have -- they've been a thing for several years now, and the government has, you know, tried to promote preparedness, that's something that somebody in the security industry ought to take note of and ought to have prepared a plan to react to.

Q Okay. So all these newspapers articles, I guess, are just citing to different events kind of as exemplar events showing the potential that people can get shot?

A Yes, ma'am.

Q Okay. Why do you think Hooters lacked the capability to effectively carry out a terrorist response plan? And by Hooters, you understand Hooters, I know since has changed ownership.

A I don't think that they had the capability to not respond to it, but the problem is that they didn't have one. Had they had a plan, they very well may have

been capable of carrying it out.

Q Upon what do you base your opinion they did not have an active shooter plan?

A I base that on the Gil Chavez deposition.

Q And is that the sole reason why you believe that Hooters lacked the cap -- or, I guess, that Hooters didn't have the capability to carry out an active shooter response plan that particular evening?

A Well, I think that they may have been able to carry the plan out if they had a plan. But they didn't. So I'm sorry if my answer is not fully connecting or answering your question?

The other side of that though is, and I think that this is a large component here, the doors were either not equipped with locks to lock them or doors with locks were not locked or the keys to lock the doors were lost and their locations were not known.

Q Okay. And we'll get to all that.

But, I guess, I mean, at the end of the day and I -- but since you brought it up, is it your opinion that Hooters should have locked the doors and left people outside to get shot at and die?

A I don't think that's a fair question with all due respect.

Q Okay. Why is that not a fair question?

A Because if I were to answer yes they should have locked there doors, the other part of my answer would imply that I think that they should be left outside to get shot.

And they -- the people who were seeking refuge inside Hooters, they were not -- they were not shot. I mean, some of them were shot -- that's not what I meant. Some of them were shot, yes.

However, when they went inside Hooters, let's not forget that Gil Chavez also gave the order not to provide medical care to anyone who came in.

So my position is, number one, take care of your own guests first. They failed to do that. They left their doors open, or stayed open for anyone to rush in, including a potential active shooter.

In the run, hide, fight doctrine, the hide portion really relies on a barrier between the shooter and someone who is hiding. So if that barrier is removed, that removes a large component of protection for a potential victim.

So if we have no locked doors, we have just people rushing in, and including a potential active shooter, and at that point everyone is just captive inside a building to be shot. And that's not protecting your own guests.

Q So what should Hooters have done? I mean, is it your opinion they should have looked the doors and left --

A Yes.

Q -- everybody outside?

A Yes.

Q Okay. And then what about Mr. Chavez' testimony that they actually set up the triage area in Hooters because it was the closest place to get injured people, to get the ambulances in and out, to get those people to the hospital?

What would have -- what should have happened with all those people?

A So I understand what you're saying. Those people could have gone to another property or called 911 from a cell phone, found another property with a -- I don't know.

Q Sir, the strip was closed.

A I understand what you're saying but I respectfully disagree. Hooters had a responsibility to take care of their own guests first. And in implementing a run, hide, fight doctrine, that includes locking the doors, locking the facility down.

Q Okay. And what is your -- what authority are you relying upon that they should have locked the doors?

A In my report I cite several sources, to include the federal government's best practices.

Q And what is -- what source is that on your information sources page?

A Bear with me one moment, please.

On June 23, 2016, there was an active shooter preparedness workshop that I attended, and that was taught by Department of Homeland Security.

Q Okay. So that's number -- is it on your information source page?

A Yes, ma'am.

Q Okay. Any other authority that you're relying upon that Hooters was -- Hooters had an obligation to lock their doors and lock out dying and injured people?

A That's not a fair question, ma'am.

Q Well, I'm asking what other sources there are.

Is that -- is that the sole source you're relying upon that Hooters should have locked its doors?

A No. There are other governmental agencies throughout the country that also advocate locking -- placing a locked barrier between the shooter and potential victims that would -- I'm sorry, go ahead?

Q Okay. But, like I said, where on your information sources is that? Where -- if I want to find the basis for this opinion, where can I look at it on

here?

A Those would be two -- or, that would be a -- two YouTube videos, one produced by the LA County Sheriff's Office, and another produced by Department of Homeland Security in August of 2017.

Q So that's number 14?

A The LA County Sheriff video is 13. And 14 is the DHS video.

Q Okay. Number 12. Number 14. Okay.

A There's also another video, and that was produced by the City of Houston under a Department of Homeland Security grant in 2012. And that would be -- the link would be footnote number three.

Q Number three?

A Yes.

Q Okay. Sir, you mentioned -- as far as your reference number 12, you mentioned that you had attended that workshop because you were working security at your children's private school.

What school was that?

A I wasn't working security. I was on the safety committee. And that was -- that was Cornerstone Christian Academy.

Q The one in Henderson?

A No. It's on Eldora.

Q What's the student body number at Cornerstone Christian Academy?

A Several hundred. I don't have an exact number, I'm sorry.

Q All right. Sir, turning to your February 15, 2022, report, turn to the last paragraph, Hooters management was or should have been well-aware that an active shooter situation could have taken place at their property and they should have prepared for such an event.

On what do you base your opinion that Hooters was well-aware that an active shooter situation could have taken place at their property?

A Based on the large amount of newspaper articles, news media coverage of similar events, many of which --

Q Sir --

A What's that?

Q Turning to page four where you itemize, one, two, three, seven isolated shootings in America, are you comparing these shootings to the October 1st shooting here saying they're similar?

A I'm saying that they're active shooter situations.

Q But you just used the word similar. What's similar about them?

A Well, I mean, the -- let's take the one in Mumbai. That was -- the casualty count for that was twice as much. So I understand what you're saying, as far as casualties, most of them are lower.

Mumbai happens to be higher, but similar as in there is an active shooter who's going on a rampage indiscriminately killing people with a weapon.

Q Okay. Well, my understanding is that -- and I don't know a lot about the Mumbai shooting in all fairness -- but a lot of these were not isolated, random shootings.

They were actually very targeted shootings such as the Pulse Nightclub in Orlando which targeted, you know, a significant portion of our population.

That -- I mean, these shootings to me seem entirely distinct from someone climbing -- going up to the 64 floor of the Mandalay Bay and shooting at a concert down the street.

A I mean, I think they all have their unique circumstances, of course.

Q So the basis of your opinion Hooters' management should have been aware that an active shooter situation could have taken place at their property are the newspaper articles and YouTube videos you cite in your report; is that correct?

A Yes.
Q Any other basis for that opinion?
A Other than just, you know, general knowledge.
Q What general knowledge?
A General knowledge of active shooters in general. But if we want to hone in on what's in my report, we can use those examples, sure.
Q Okay. So, again, the basis for your opinion that Hooters' management should have been aware an active situation could have taken place at the property are the YouTube videos and the newspaper articles you cite in your report, correct?
A Yes.
Q Okay. You discuss the run, fight -- I guess it's run, hide, and fight concept in your February 15 report, correct?
A Yes.
Q Then you also mention that you did in fact review the surveillance video showing people were running. People were hiding under the casino tables. People were trying to get to the back of Hooters for a safe place. People were going upstairs to the hotel rooms seeking safety.

So what I guess about what was going on in that night that you read in the deposition transcript or the

surveillance video doesn't adhere to the run, fight, and hide concept that you discussed?

A It's my opinion that Hooters didn't really do anything to reinforce the hide component of that doctrine. Yes, people were running. People were hiding. But Hooters really didn't take any initiative to do anything on their own to forward that doctrine. Had they -- go ahead.

Q Other than locking the doors, what other initiative should they have done for that doctrine?

A Shepherd everyone to a location away from the doors that was not visible to the doors.

Q Okay. I thought that they did do that, telling everyone to go to their rooms or go to the back of the casino.

A Yeah, but if you look at the video, there's also a large portion of time where there was no initiative taken by security. Everyone is kind of left to their own devices diving under tables.

Q Is that the three minutes you reference in your report?

A I'm not sure about the exact time, but I think that's -- that's -- I think -- I do remember that was one of the time frames. I think that there were three groups of people who came running in yelling active shooter.

And I think it was -- it may have been Mr. or Mrs. Sontoski who even gave a time lapse of ten minutes between the first person and Mrs. Sontoski getting up and heading over toward the elevator.

So the time frame may have -- may be a little bit nebulous. But I think that I -- I can tell you I had a little bit of a difficult time because none of the surveillance video that Hooters provided was time stamped, so that made matters a bit difficult as well.

Q Okay. So in that ten minutes between when the first wave of people came in and Mrs. Sontoski remained at the slot machine, or anything like that, again, it's my layperson's understanding just from what I read about in the media and everything like that is everyone was still trying to figure out what was going on; isn't that correct?

A I think to a degree, but there were also people coming and yelling active shooter.

Q Okay. And you believe in those few minutes security should have been more, I guess, proactive as far as ushering everyone away from the doors?

A Yes.

Q Are you critical of all of Mr. Chavez' testimony about how he handled that evening?

A Am I critical about it?

Q Yes.
A I think that prior to the incident he should have had a plan in place. But as far as how he reacted that night, I do believe that he should have given an order to lock the building down.
Q Is that your only criticism of him that evening?
A I don't know if I agree with his order to not give anyone medical treatment, because, I mean, after all, if it's our goal to save as many people as possible, that would probably be an important thing.
Q Okay. And I haven't reviewed his testimony yet. I don't recall that he specifically ordered people not to give medical treatment.
My understanding -- and, again, I haven't looked at his testimony in a while -- was that he had instructed everyone to get everyone to safety, get them to the triage area so they could get in the ambulances and get medical treatment.
Am I misunderstanding?
A Well, you're partly right. But he did give the order to not treat anyone. And he stated that he was the only one who was a certified EMT.
Q And you understand though that Mr. Chavez and what he was doing that night, he was working very, very

conjunction -- closely in conjunction with a lot of -- with all the various police departments as well as I believe the FBI at some point, correct?

A I don't have firsthand knowledge of that, so I can't --

Q He testified -- he testified to that.

A He did testify to that, but as to whether or not as to the level of closeness that he worked with the police department, I don't know. I wasn't there to observe that.

Q Okay. But you are familiar with his testimony that he was heading home that night, got the call, headed right back down to the strip immediately, and was stationed outside on the strip directing and doing whatever first responders do in that situation that I couldn't even imagine with the Metro Police Department.

You are aware of that testimony, correct?

A Yes, ma'am.

Q Okay. So other than making a decision not to lock the doors and what you believe the security was not proactive enough in ushering people away from the doors, is there any other criticism of Hooters in your opinion they did not adhere to this run, fight, and hide concept that evening?

A I think that that's covers it.

Q Okay. Page 24 of your report, I'm looking at your first paragraph of conclusion.

While Hooters may have had the best intention by keeping its doors open to help wounded people, security never intended to provide medical care.

Is that statement based solely on Chavez' testimony?

A Yes.

Q What do you mean by your statement in that paragraph, the last two lines, what substantive assistance did Hooters have to offer people that they could not get on their own or group first responders?

A Just that -- I mean, I'm not -- I fail to see if they're not receiving medical aid and they're not receiving shelter behind a locked door, what could they get there that they couldn't get at the property next door or across the street. I fail to see what --

Q What about the fact that they set up the triage area and offered the access to the ambulances to get in and out of the property to take people to the hospital? Is that not -- is that -- is that not substantive assistance?

A Yeah, but they could get -- they could have gotten an ambulance by waiting in valet as opposed to being ushered into kind of a captive area, so to speak, if

an active shooter were to walk around the corner.

I still -- I fail to see what assistance they provided other than maybe providing a bottled water or a blanket that these people couldn't have gotten from other first responders in the area because it was flooded with first responders there, or, another -- another property that was open or another business or dialing 911 themselves or just seeking out an ambulance.

Q So as of -- is it your opinion that as opposed to a coordinated response and a place to put severely injured people with access to ambulances to get to one of the few trauma centers in this hospital, essentially what I'm hearing you say everyone should have been left to their own devices waiting in valet on concrete sidewalks while they were bleeding out as opposed to at least being able to go inside and being offered a blanket or a bottle of water while they were waiting for first responders?

A And while they were --

Q If I understand --

MS. NELSON: I'm going to object to the form of the question as argumentative. And compound.

But you can go ahead and answer, Bill.

THE WITNESS: So I think to answer your question, they could have gone inside, gotten a bottle of water, and gotten a blanket and bled out on the side while

the Hooters' guests were left without a barrier between them and the outside.

Or they could have had the same results or similar at another property or in valet or somewhere else, while the guests of Hooters, who Hooters should be thinking of first, had that locked door between them and the outside and were able to potentially hide so that if an active shooter came around the corner, they wouldn't be able to just stroll right on in and open fire.

BY MS. PARKER:

Q Bear with me a minute.

On page 25, upon what do you base the opinion that Hooters created panic?

A I believe they created panic by not immediately locking down the property. They also failed to --

Q You don't think people were already panicked being shot at a festival from someone at the top floor of a casino?

MS. NELSON: Objection. Argumentative.

Go ahead and answer, Bill.

THE WITNESS: So taking the guests inside the casino, let's -- so my focus is on the guests already inside. Yes, people running in, bloody, shot, that's going to create panic.

However, a passive security force that fails to

address this and fails to lock down the property, that exasperates the problem when more people come in, so now the guests are even in more panic and fear.

BY MS. PARKER:

Q Sir, I take issue with your referring to the security company as passive. This is the worst mass shooting in America. No one could have ever foreseen anything like this happening.

So upon what do you -- and I think -- and everyone I've spoken to, everyone was just doing the best they could under the circumstances in an unprecedented time -- so what do you base the opinion that my client's security was passive?

A Well, wouldn't it have been better if a plan for an active shooter was in place. Which it wasn't. Which is a large component to my expert opinion that Hooters failed in their obligation to provide safety and security for their guests, Mrs. Sontoski being one of them.

Q Your active shooter plan is this -- your suggested active shooter plan is this run, hide, fight concept, correct?

A Yes.

Q Okay. So, again, we have people running. We have people hiding. Nobody's going to fight that night

obviously.

So I guess I'm still failing to see why you do not think there was an active shooter plan in place, or why my client's security force was, quote, unquote, passive.

MS. NELSON: I'm going to object. Compound.

You can go ahead and answer, Bill.

THE WITNESS: The security director, Gil Chavez, stated in his deposition that there was not a plan in place prior to October 1st, 2017. So I don't know what more I can --

BY MS. PARKER:

Q But again --

A What's that?

Q But again, coming back full circle, as we said at the beginning, general understanding, I'm not a law enforcement, is that in terrorist situations, mass shooting situations, there is a hierarchy of command.

And when law enforcement agencies get involved, they trump and work in conjunction with businesses, correct?

A In this context, no.

Q You already said at the beginning of your deposition Mr. Chavez said it.

A Yeah, but so now what you're trying to do --

it's my opinion that you're trying to place the fact that this wasn't locked down on law enforcement. There should have been a plan in place.

That's like saying it's okay not to have a fire evacuation plan in place because the hotel, they're going to get their marching orders from the Clark County Fire Department.

Q I'm not placing the fact that it wasn't locked down blame on anyone because I don't -- my layman's opinion is I don't think it should have been locked down.

But what I am saying is that all of these decisions were made in conjunction with law enforcement agencies, correct?

A I disagree.

Q Okay. You believe that Hooters in and of itself decided how it was going to respond that night.

A Initially, yes, before law enforcement had time to make contact with properties. I'm not -- even before Mr. Chavez showed up to the command post.

Q Okay. And it's also my understanding Mr. Chavez and law enforcement agencies were there pretty quickly. I don't have the exact time. But, I mean, everyone got there as soon as -- immediately almost, or as soon as they could.

A Yeah, but I mean, in those first 15 to 20

minutes, that's a critical time. So to have no plan in place for those 15, 20 minutes while Hooters is kind of on its own, I think that kind of paved the way for chaos.

Q All right. Sir, turning to your May 9th, 2022, report.

Page two, your first opinion was that this situation was foreseeable.

Upon what do you base this opinion this event was foreseeable?

A Such an event was foreseeable. This event was not foreseeable. And I think that there's a very distinct difference. And I think that we've discussed it.

An active shooter situation in general is a foreseeable event, whereas Stephen Paddock on October 1st, 2017, opening fire from Mandalay Bay, that was not foreseeable.

Q Thank you.

A That was my --

Q Opinion number 14, you're critical of, I guess, Mr. -- Hooters not taking a proper report?

You are aware Mr. Sontoski never reported the incident until the following day, correct?

A I am aware of that.

Q You're aware Mrs. Sontoski never reported the incident or spoke with security, correct?

A I am aware of that.
Q Okay. So what are you critical about with -- you've got the voluntary statement Mr. Sontoski filled out, PLTF252?
What are you critical about with this report?
A Well, I believe that security should have followed up, and when Mr. Sontoski reported this, which it was the next day, but, I mean, you yourself said this was a horrific mass tragedy incident and there was a lot going on. I believe that it was security's duty to follow-up and basically follow their own security plan and take a report.
Q And do what? Follow-up with what? In your report you mention -- there's, what, 15 different items that should have -- that should be on a report.
We've got the date and time of incident on the voluntary statement, 10/2/17, 10:45 a.m. -- well, I guess that would be the next day he reported it. Date and time reported.
Oh, we've got the time of the incident. First line, 10:05 p.m., 10/1. Exact location of incident. He noticed the numbers of the slot machines where his wife was sitting and where she fell. And they testified to their deposition.
Photo taken. There's hours of surveillance

video we produced in this case. So, I mean, I think that would suffice for photos. Physical disabilities. Corrective lenses. I mean, that's at issue.

What in this report is lacking or should have been followed up on in your opinion that you're so critical about Hooters about?

A So I'm glad that you brought up the video surveillance because had security followed up with the Sontoskis, I believe that it may have been possible at that time to pull the video surveillance for that area.

But because that was never done, you know, here we are months, years later, and when we go back to view that surveillance footage, that area was not covered. I shouldn't say it wasn't covered. It wasn't produced.

Q Well, everything was produced, all of the surveillance video that night.

I've been around and around with your counsel on that -- not Ms. Nelson -- Ms. Nelson -- her predecessors on the file.

A So let me -- I'm sorry, I don't mean to interrupt you, but not -- maybe produced wasn't the right word. But looked for contemporaneously by the surveillance personnel.

So the surveillance guy testified in his deposition that not all of the video was saved. He just

kind of went through, and, you know, picked things here and there that he thought would be of value moving forward later on, months, years ahead, which was a good thing.

However, where Mrs. Sontoski was injured, that area, he didn't save that at the time. And that would have been very, very helpful, and critical to this case had he done that if security asked him to do that by taking a report and following up with Mr. and Mrs. Sontoski at the time, more so than just handing him a voluntary statement, and then him completing it and them collecting it.

Q Okay. And you read the surveillance gentleman's testimony that he saved as much footage as he could that evening, that he was focused on the severely injured, focused on, you know, the major, major events going on. And that's what he was trying to capture and preserve?

A Yes, I do.

Q Do you take issue then, or are you critical with, I guess, his process in how he captured or preserved the surveillance video?

A I'm not critical of him because he was never made aware of Mrs. Sontoski's claim. Had security followed up with him, you know, the next day, maybe even the next week -- I'm not sure what their video retention

schedule is -- but now years later we can't go back and save that video because it's been purged.

So the secur -- I'm sorry, the surveillance gentleman himself, I'm not critical of him. He didn't know to go back and look at the camera that may have captured this and saved that. He was never made aware by security to do so.

Q So I guess I'm still confused as to given Mr. Sontoski's statement, basically conforms with the outline that you have on page four of your report, what you're critical about in this idea that we didn't take a proper report.

A A report was not taken.

Q It's right here, sir. Voluntary statement.

A Ma'am, a voluntary statement is not a report.

Q Oh. So you just believe there should have been another document?

A Is there another document that is yet to be produced?

Q No.

I'm saying is that your opinion that there should have been -- there's been another document outlining what you say in page four of your report?

A Yes, ma'am, that would answer all the questions in their security policy 14.3.5.5, personal injury. Those

questions can't be answered by a claimant or a guest filling out a voluntary statement.

Q Okay. Well, I guess we can respectfully disagree on that, too, because I believe that the statement does in fact answer the vast majority of those questions. And what it doesn't, certainly is answered by whatever else was going on that night.

Have you reviewed the reports of my expert, Ron Williams, in this matter?

A Yes.

Q Do you have any comment or criticism of Mr. Williams' opinions?

A Other than he bases his opinion on conjecture.

Q What do you mean he bases his opinions on conjecture?

A Well, he states that the Sontoskis essentially plotted this and planned to defraud Hooters by offering no substantive testimony whatsoever. It's very -- I'm very surprised that someone with his background would completely discount the run, hide, fight doctrine.

Q Why do you believe he is discounting the run, hide, fight doctrine?

A Because he does not agree that the door should have been locked, that the property should be locked down.

Q Is there any other way that you think that

Mr. Williams is discounting the run, hide, fight doctrine?

A No.

MS. PARKER: That is all the questions I have for you today.

Thank you for your time, sir.

THE WITNESS: Thank you, ma'am.

MS. NELSON: Hey, Bill, I have maybe two minutes of questions, and then I'll be done with you.

EXAMINATION

BY MS. NELSON:

Q Quick question.

In the run, hide, fight doctrine, method, is the hide factor affected when the doors remain open?

A Yes.

MS. PARKER: Object as to the form.

BY MS. NELSON:

Q And how is it affected?

MS. PARKER: Same objection.

THE WITNESS: Well, what you want to do in the hide portion is to do everything that you can to put barriers between you and the suspect.

An open door is -- I mean, it's almost an invitation for someone to walk through and go into the room and see what's in there.

And then in this situation, that -- the person walking through the door could have potentially been a shooter, and what's in the room are the victims or potential victims hiding from that shooter.

Here we see Mrs. Sontoski's situation that, you know, thank goodness it wasn't a shooter, yet it was a group of people who -- you know, multiple groups of people rushing into the casino.

BY MS. NELSON:

Q And then I believe you mentioned at the beginning of your deposition that you are or were on a safety committee for your children's school.

A Yes.

Q Okay. And part of that safety committee, is it developing plans for safety incidents that may happen at the school?

A Yes.

Q Is there an active shooter plan for your children's school?

A The school that they did go to, the Cornerstone Christian Academy?

Q Yes.

A That, I don't know. We left the school prior to the implementation of that, so I don't think that there was. That was probably about three years ago. I don't

know the answer to that. We ended up leaving the school prior to me having an opportunity to write one.

MS. NELSON: Those are all the questions I have.

Thank you.

THE WITNESS: Thank you.

MS. PARKER: No more questions.

Thank you.

THE WITNESS: Thank you, ma'am.

THE ZOOM HOST: William, would you like to review your transcript, or would you like to waive signature today?

THE WITNESS: I'll waive.

THE ZOOM HOST: Okay. Perfect.

And, Ms. Nelson, would you like a copy of today's transcript?

MS. NELSON: Yes, please. An E transcript.

THE ZOOM HOST: Okay. Perfect.

Thank you, everyone.

That's all the questions I have.

MS. PARKER: Could I get a rough transcript, please?

THE ZOOM HOST: Yes. No problem. I'll make note of that.

(Exhibits A through G marked.)

(SIGNATURE WAIVED.)

(Thereupon, the remore videoconference deposition was concluded at 11:19 a.m.)

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STATE OF NEVADA,)
COUNTY OF WASHOE) ss.

I, Karen Bryson, a Certified Court Reporter and notary public in and for the County of Washoe, State of Nevada, do hereby certify:

That on Monday, May 16, 2022, appeared WILLIAM JAMES SCHOEN, via videoconference, who was duly sworn by me, was thereupon deposed in the matter entitled herein;

That the foregoing transcript is a full, true, and correct transcript of my stenotype notes of said deposition to the best of my knowledge, skill, and ability.

I further certify that I am not an attorney or counsel for any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

Karen Bryson, CCR No. 120

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EXHIBIT D

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Subject Matter Expert: Certification

I, Ronald T. Williams, certify that I spent 23 years in the United States Secret Service, and retired as a supervisor GS-14 grade, with a title of Assistant to the Special Agent in Charge of the Los Angeles Field Office.

I received training at the Treasury Law Enforcement Center in Washington DC on law enforcement protocols, procedures, and laws regarding investigations, arrest, search warrants, and criminal procedures. I attended the U.S. Secret Service academy and was trained in conducting security risk assessments for the President of the United States and Foreign Heads of State as well as conducting threat assessments.

During my federal law enforcement career, I investigated numerous cases of violence regarding threats against the President of the United States, as well as violations of counterfeit money statues, credit card fraud, identity theft, and cybercrimes.

I worked undercover on the counterfeit money squad and commanded that unit as well as the financial fraud unit in Los Angeles, California.

I served on the Presidential Protection Detail, and commanded the elite Counter Assault Team, an anti-terrorist attack squad. As an advance agent for the President of the United States, I conducted numerous security risk assessments for hotels, and other critical infrastructure locations. As the agent in charge of Presidential & Foreign Heads of State visits to Los Angeles, I supervised the security risk assessments of major hotels in Los Angeles such as the Century Plaza, Four Seasons Beverly Hills, Biltmore Hotel, JW Marriott and numerous other hotels in the LA metropolitan area.

I testified in Federal Court 40 times as an expert on threats against the President, counterfeit money cases, and financial fraud cases.

During my career with the Secret Service, I received the Director's award for excellence 8 times.

On retirement, I founded three security related companies, Talon Executive Services Inc., Talon Cyber Tec LLC, and Secure Strategies International LLC.

Using my training in the Secret Service, Talon developed a "Targeted Violence Prevention & Active Threat Response Training Program" that is patterned after Secret Service protocols and procedures in dealing with treats. Talon's program is certified by the California Bar Association for MCLE credits

I have a certification from Sandia Labs in Security Risk Assessments for critical infrastructure, and a certification from Homeland Security in Emergency Response Planning.

I have conducted over 70 Security Risk Assessments for critical infrastructure and government agencies as well as companies and corporations.

I have been retained as an expert on numerous occasions as an expert in security related matters, including violent assaults occurring on premises. I have been deposed and testified in State and Federal court as a subject matter expert.

Synopsis

On October 1, 2017, Steven Pollard, a guest at the Mandalay Bay Hotel, opened fire with an assault rifle on a crowd across the street attending an open-air concert titled Route 91. The perpetrator fired 1,000 bullets and killed 60 people and wounded 411 participants at the music festival. It was the worst mass shooting in United States history.

Folks attending the festival had nowhere to hide from the gunshots, so they did the next best thing, they ran down the street to attempt to get out of the line of fire. Some of the people made their way into the Hooters hotel.

Karla Sontoski, a guest at the hotel, claims that she was pushed or shoved by an unidentified Hooters employee, and she suffered a severe injury to her right shoulder. A review of all video cameras throughout the hotel that memorialized the evening of October 1, 2017, at Hooters was reviewed and there is no evidence that an employee of Hooters was running as described by the plaintiff, and there is no evidence of anyone being shoved by a Hooters employee.

In all the depositions reviewed, no one was identified as being a percipient witness to the incident as described by the plaintiff, including her husband. Additionally, the plaintiff did not go immediately to a hospital or see a doctor until four days after the alleged incident. By the plaintiff's own testimony in the deposition, she and her husband stayed at Hooters and the next day they played the slot machines.

Throughout Mrs. Sontoski's deposition she could not remember particulars regarding the incident and could not recall any facts concerning her previous insurance claims.

Hotel security does not have an overarching standard of care for security policies and standard procedures. This is because every hotel operates differently, and any security and emergency plans have to be custom made for the particular venue. Additionally, unarmed security guards are not crime interventionalists or crime suppression trained. Their job is to observe and report and in emergency situations to direct people to a safe environment. The actions of the Hooters guard force on the evening of October 1, 2017, as directed by the security director, Gilbert Chavez, was exactly what they should have done to save lives in this tragic incident.

Documents Reviewed

Camera videos 1 through 8
Video # 1-778 South Lot
Video # 2-Lobby
Video # 3-Valet
Video # 4-Casino
Video # 5-Casino
Video # 6-Lobby/Casino/Casualty Collection Point
Video # 7-Casino/Elevator Area
Video # 8-Valet/Ambulance Area

Depositions:
Karla Sontoski
Gilbert Chavez
Ryan O'Sullivan
Steven Perez
Jessica Irlas

Summary of Facts

On the night of the shooting on October 1, 2017, a lone gunman opened fire from a window at Mandalay Bay killing 60 people and wounding 411 who were attending an open-air concert dubbed Route 91. Pandemonium at the venue occurred and people did the only thing they could have done, they ran to attempt to escape the line of fire. Many of those folks came into the Hooters Hotel seeking shelter, and some entered needing first aid.

Hooters did not initiate a lockdown which would have left many people stranded outside concerned about their safety and their security. Although there had been no designed basis threat assessment for an active shooter of this magnitude, Gilbert Chavez, the Hooters Security Director, directed his guard force to set up checkpoints at entry & exit points to assist in getting folks to safety. He directed several guards to set up a casualty collection

point for those folks who were wounded or injured. He also directed guards to make sure the money at all gambling tables was secured.

In his deposition, Chavez advised that he developed an emergency action plan, an active shooter response plan, and an evacuation plan.

Chavez advised that to his knowledge no one reported being pushed or struck by a Hooters employee on October 1, 2017. A review of the pictures provided by the videos did not capture a Hooters employee hitting, shoving, or running in the hotel.

The depositions of Hooter guards, Steven Perez, Ryan O'Sullivan, Jessica Irlas, supported the fact that Hooters provided security manuals, and a security mentoring program to train new guards according to Hooters post orders.

Videos that memorialized events at Hooters on October 1, 2017, were reviewed. Although the folks coming from the crime scene were obviously frightened, once they entered the hotel, they were orderly, walking, and cognizant of their surroundings. In all the videos the patrons and guest appeared calm after they entered the hotel.

In video number 7, a Hooters security guard is filmed assisting injured guest at the makeshift casualty center in the lobby of the hotel. In video number 8, Hooter guards are seen assisting injured folks in wheelchairs by leading them out to ambulances at the valet entrance.

Analysis & Opinion

Richard Hudak, a retired F.B.I. agent, and noted expert in hotel and resort security opined in the shooting on October 1, 2017, at Mandalay Bay, "there is no universal standard of care for hotels because each hotel property is different." Security protocols and procedures have to be tailored to fit the needs of each hotel property.

There are some security factors that remain constant from one hotel to another. The concept of three circular rings for establishing a secure environment is standard. The outer ring is where the property line begins and that is called curtilage. For insurance purposes this is where liability begins. The middle perimeter is the property between the curtilage line and the entry into the facility. This would be your valet entry and parking lots. The inner circle is the interior of the facility.

All hotels with casinos in Las Vegas have state of the art cameras that cover the three circles of security concern. They are both overt and covert cameras primarily to catch gambling cheaters, and to memorialize events on property.

All hotels with casinos in Las Vegas have a guard force to interface with technology to maintain a safe and secure environment for their guest.

The difference between hotels with casinos in Las Vegas is the security protocols and procedures that establish post orders for the guards. The one size fits all does not apply to hotel security because each property operates differently.

In the instant matter, Karla Sontoski has filed a lawsuit against Hooters for a shoulder injury that she allegedly incurred on October 1, 2017, while she was a guest with her husband at the Hooters Hotel and Casino. She thinks she was physically contacted by a Hooters employee while waiting for an elevator. In her deposition she was unable to adequately describe the employee and did not capture the name of the employee. There has been no percipient witness to the alleged incident as of this date. Oddly, her husband was not present when the alleged incident occurred, yet he was the person who filed an injury report with the hotel.

Mrs. Sontoski alleged she was in pain from the shoulder injury, yet she did not seek an examination of her shoulder until four days after she came home. The Sontoski's spent the night on October 1 at the Hooters hotel, and the next morning played the slot machines at the hotel and walked around the strip in Las Vegas.

From my perspective as a security expert, I find that Mrs. Sontoski's allegations do not match up to the facts in this case:

Facts

- There is no video evidence memorializing the alleged incident
- There are no percipient witnesses to the alleged incident as of this date
- The plaintiff did not seek medical assistance until four days after she arrived home.
- After the alleged incident the plaintiff and her husband remained at the hotel, gambled the following day, and walked around the strip.
- There is no evidence of malevolence or dereliction of duty by any Hooters employee.
- Actions taken by the security director on October 1, assisted in saving lives and establishing a safe and secure environment for folks fleeing the crime scene.

Since both Mr. & Mrs. Sontoski were unemployed on October 1, it is my opinion that they contrived the shoulder injury story to collect on an unproven claim.

That Mrs. Sontoski had a damaged shoulder is not in dispute. But her shoulder could have been impaired prior to their stay at Hooters, or during the four days after they returned home. There is certainly no evidence or witnesses to cooaborate her allegation that she was injured on Hooters property.



Ronald T. Williams
United States Secret Service-Retired
CEO
Talon Companies

January 10, 2022

Addendum A
Contract Information

Addendum B
CV & Bio

Addendum C
Relevant expert cases

Addendum A

I was retained as a subject matter expert in the case, by the Lewis Brisbois Law Firm, Las Vegas, Nevada.

By contract my billing rate is $300.00 per hour for document examination, on site survey, and report writing.

My fee for deposition and court appearances is $350 per hour.

I was issued a $1,200 nonrefundable retainer.

Addendum B

Ronald T. Williams

After successful 22-year tenure with United States Secret Service, Ron Williams entered private sector security, opening what has become a premier security consulting suite of companies, Talon Companies. As Chief Executive Officers of Talon Executive Services, Inc., Secure Strategies International, LLC and Talon Cyber Tec, LLC, Williams is involved with all aspects of security consulting, including critical infrastructure protection requiring Top Secret clearance.

During his career with the Secret Service, Williams had the opportunity to work and supervise all divisions of the Secret Service in the Los Angeles Field Office, including supervision of the credit card, cyber security, financial fraud squad, the counterfeit squad, the Presidential Protection Squad, and the elite Counter Assault Team (CAT) to combat terrorism.

Mr. Williams was responsible for all advance security plans and logistics coordination for Presidential, Vice-Presidential, and foreign heads-of-state visits to Los Angeles, personally protecting Presidents Ford, Reagan, Bush, and Clinton, as well as such noted dignitaries as Queen Elizabeth, Yitzhak Shamir, and Pope John Paul. Williams was the recipient of numerous awards including the United States Secret Service Director's Award for Special Achievement on eight occasions.

In 1994, his focus turned toward private security and he formed what would become the first of the Talon Companies, Talon Executive Services, Inc., a private security consulting firm that combined best practices of private sector security with Secret Service protection protocols.

In the wake of 9/11, Talon was called upon to conduct Risk & Vulnerability Assessments to critical infrastructures such as water districts and transportation authorities, resulting in a specialized branch of security now handled by Secure Strategies International, LLC. As a Talon company, Secure Strategies has access to all the resources of Talon while specializing on projects that require top-secret security clearance.

As the evolution of security assessments and protection continued, the need to blend physical security with IT security became increasingly evident. As new protocols were developed and this blend of security more clearly defined, Talon Cyber Tec, LLC was created to oversee specific projects.

Because of his expertise in the field of anti-terrorism, Mr. Williams was asked by the California Gubernatorial delegation in 2002, to meet with Tom Ridge regarding homeland

security. His association with AFAUSSS (Association of Former Agents of the United States Secret Service), ASIS (American Society of Industry Security), ATAP (Association of Threat Assessment Professionals) American Water Works Association (AWWA) Association of California Water Agencies (ACWA) to name a few, keeps him abreast of all matters involving security and threat assessment. He is also an active member of the FBI's InfraGard program, U.S. State Department Overseas Advisory Council (OSAC) and OCPST (Orange County Private Sector Terrorist Response).

Mr. Williams frequently appears on Fox News Channel as well as other national shows as a security analyst and terrorism expert. He was also the keynote speaker at the Alabama Governor's Conference on Violence in the Workplace Prevention, has made presentations to the California Association of Water Agencies which included a White Paper, and continues to educate organizations on various security issues through specialized seminars and training.

EDUCATION/CERTIFICATIONS

RONALD T. WILLIAMS

Presently hold Top Secret Security Clearance
Treasury Law Enforcement/United States Secret Service School
RAM-W (Sandia) U.S./Canada Joint Certification No. 0037351
Certified Examiner of Questioned Documents (Handwriting Expert)
Certified Fraud Specialist (CFS)
The National Emergency Response & Rescue Training Center
Bachelor of Arts – Southern Nazarene University

EXPERIENCE

Security Consultant (1993 – Present)

- Talon Companies: As CEO of Talon Companies, parent company of four separate private security and consulting firms, oversees all operations, including: risk & vulnerability assessments for corporations and municipalities, protection and investigative services, information security services, workplace violence prevention & mitigation, emergency planning services, and appears in print and throughout the media as an expert on a variety of security topics.
- Secure Strategies International, LLC (A Talon Company): CEO, providing security consultation services to government and industry, specializing in critical infrastructure protection and homeland security projects.

United States Secret Service (1972 – 1993)

- USSS (Managerial): Supervised Fresno, and Riverside California Secret Service offices as Resident Agent in Charge. Fraud Squad, Counterfeit Currency Squad, and the Protection Squad in Los Angeles. Retired as Assistant to the Special Agent in Charge of Los Angeles.
- USSS (Protection): As part of CAT (Counter Assault Team) for anti-terrorism, investigated threats against the President of the United States. Assigned to Presidential Protective Division. Responsible for security advances for Gerald Ford and the Presidential family. Assigned to protect Pope John Paul, Queen Elizabeth and Presidents Nixon, Ford, Carter, Reagan, and Bush. Investigated threats against the President of the United States and foreign heads of state.
- USSS (Investigative): As Agent in Charge of the Counterfeit Squad in Los Angeles directed the largest seizure of counterfeit money in any single investigation, 23.5 million dollars. Worked successfully as an undercover agent of the Fraud Squad in Los Angeles, investigated telemarketing, computer, ATM, and credit card fraud.

ORGANIZATIONAL AFFILIATIONS

- Orange County Private Sector Terrorist Response (OCPST)
- American Society of Industrial Security (ASIS)
- Association of Threat Assessment Professionals (ATAP)
- Southern California Fraud Investigations Association (SCIFA)
- Maritime Security Council (MSC)

AWARDS

- United States Secret Service Director's Award for Special Achievement in years: 1977, 1979, 1986, 1989, 1990, 1991, 1992
- Nominated Federal Executive of the year for Law Enforcement in Los Angeles, 1989
- Nominated Law Enforcement Officer of the Year to the International Footprint Association, 1990

Addendum C

Expert Case History

1.	**John Stephans Esq** john@sf-lawyers.com 949-468-3200 office 714-337-1872 cell 4695 MacArthur Court Suite 310 Newport Beach, Ca. 92660	**Goat Hill Tavern Case** **Expert Witness-Use of force on behalf of Goat Hill Tavern** **This case consisted of a Violence in the Workplace assault of customers attacking employees** **I testified for the Defense** **Case was won**
2.	**Patrick E. Broom Esq.** pebroom@hmpmlaw.com 520-792-3836 office 520-850-6832 One Church Street Suite 900 Tucson, Arizona 85701	**Tarango Vs. Circle K et al** **Expert Witness-Plaintiff** **Plaintiff shot by Security Guard** **Arbitrated in favor of Plaintiff. 2010**
3.	**Lisa McMains Esq.** Lisa.mcmains@wdbmlaw.com 714-542-5400 1551 N. Tustin Ave. Suite 900 Santa Ana, Ca. 92705	**Albertsons Grocery Case** **Expert Witness-Violence in the Workplace** **Arbitrated in favor of Albertsons**
4.	**Michael McLain Esq.** mclain@lbbslaw.com 231-680-5009 office **231-614-0500 cell** 221 North Figueroa St. LA CA 90012-2601	**Southland Corporation Case** **Expert Witness for defense- Southland Corp.** **Violence in the Workplace Assault case.**
5.	**Jane Flynn Esq** Senior Attorney Federal Express Corporation 2601 Main Street Suite 340 Irvine, Ca. 92614 949-862-4643 949-246-8484	**Fed Ex Corporation** **Expert Witness for the defense.** **Drugs in the workplace.** **Wrongful termination**
6.	**Michael Leight Esq** 6700 E. Pacific Coast Hwy. Suite 237 Long Beach, California 90803 562-430-1009 562-430-1010	**Farmers & Merchant Bank** **Expert witness for the defense in** **Bank shooting of customer.** **Bank prevailed in the lawsuit**
7.	**Steven K. Luther Esq.** 221 North Figueroa Ste. Suite 1200 Los Angeles, Ca. 213-250-7900	**Patrick T. Kiely vs. SBE** **Entertainment Group** **Expert witness for defense – Assault at nightclub**

8. **Joseph Watson Esq.**
1661 N. Swan Suite 250
Tucson, Arizona 85712
520-882-9115

Maria Sklias Vs. Walmart
Retained by Plaintiff in the
beating and robbery of Ms. Skilas
In front of Walmart.

9. **Patrick Broom Esq.**
pebroom@hmpmlaw.com
520-792-3836 office
520-850-6832
One Church Street Suite 900
Tucsonn, Arizona 85701

Guernea vs. Pima County Et Al
Expert Witness-Plantiff
Police served search warrant and
shot and killed the homeowner.
Adjudicated in favor of the plaintiff.

10. **Will Klatte Esq.**
ewklatte@kbvlaw.com
20341 SW Birch Street Suite 200
Newport Beach, Ca. 92660-1514
949-221-8700
714-746-0629

Lioneel Mares VS FED-EX Ground
Violence in the Workplace
Termination for Threats

11. **Devera L. Petak Esq.**
Devera.Petak@LewisBrisbois.com
333 Bush Street Suite1100
San Francisco, Ca. 94104
415-438-6605

Randall Lee Sherwood et al VS
Starwood Capital Group et al
Expert Witness – Defense
Plaintiffs wife was beaten with a baseball bat
at a shopping center and killed

12. **Michael Lehman Esq.**
mlehman@ericksenarbuthnot.com
2440 W Shaw Ave. Ste 101
Fresno, Ca. 93711
559-449-2600

Yurdunyan VS Extended Stay America
Expert Witness-Defense
Yurdunyan shot in parking lot of ESA
Alleged security malfeasance

13. **Danielle Sweets Esq.**
D.Sweets@RKMlaw.net
Rose, Klein, Marias LLP
801 S. Grand Ave. 11th Floor
Los Angeles, Ca. 90017
213-626-0571

Natasia Sullivan & Dave Sullivan
Vs. Expert Premier Security Services
& Topanga Community Center

14. **Cory Eichelberger Esq.**
Cory.eichelberger@lewisbrisbois.com
6385 South Rainbow Blvd. Suite 600
Las Vegas, Nevada 89118
702-693-4395

Bullard VS. CPI Security
Expert Witness-Defense
Two homicides in a shopping center

15. **Sharon Parker Esq.**
Sharon.Parker@lewisbrisbois.com
6385 South Rainbow Blvd. Suite 600
Las Vegas, Nevada 89118

Wiskowski vs. 7-Eleven
Expert Witness-Defense
Homicide Case

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February 15, 2022

Re: Supplemental Report
Sontoski vs. Hooters Resort & Casino

Synopsis

The following report is an addendum to the original report on the Sontoski vs Hooters Hotel Resort & Casino.

On February 9, 2022, a walk through and familiarization with OYO Hotel, formerly owned and operated under Hooters Resort & Casino was conducted. Robert Gee, Security Director for OYO, Keith Williams, Executive Director of Casino Operations, Jonah Ritter, General Manager for OYO Hotel, and Chris Sommers Esq., Lewis Brisbois Law Firm as well as opposing counsel and the opposing expert security witness also participated in the walk through. As noted, there were a number of internal changes made to the premises from the date of the alleged incident, October 1, 2017, and the current internal location now known as OYO Hotel & Casino.

Mr. Gee provided a security manual that he inherited covering the date of October 1, 2017. Mr. Gee also provided a signed statement that the security manual with the moniker of OYO Hotel & Casino formerly was the security manual in effect on October 1, 2017, under the moniker, Hooters Hotel Resort & Casino.

The security manual was reviewed, and it is a comprehensive document that provides security guidelines, post orders, security training, and emergency operation plans.

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Additional Facts and Information

Robert Gee advised that on October 1, 2017, the configuration of the hotel was slightly different than it currently exist. For instance, the current Cargo retail shop was a computer training area.

The overall property size for the admin side is 91,700 square feet. The overall property size for the hotel/casino side is 313,500 square feet. Duke Ellington Street separates the two sides. The casino itself is approximately 73,000 square feet; each floor of Oceanview tower is approximately 13,000 square feet; and each floor of Bayview tower is approximately 13,400 square feet. Between both towers there are 657 rooms, which hasn't changed. On October 1, 2017, there were 330 slot machines and currently there are 305 slot machines configured differently on the casino floor. Keith Williams explained that they reconfigured the slot machines to provide more walk around space and spacing to give a better availability for the customer to play the machines. An examination of the Bayside elevators where the alleged incident took place is 117 square feet.

The electronic monitoring station on October 1, 2017, was located on the second floor of the hotel. The electronic system on that date was the Pelco VideoXpert which was an analog camera system. There was camera coverage in the areas of all entrances and exits except for the pool entrance. The cameras in that area mainly covered the deck.

There was camera coverage in the areas of all entrances and exits except for the pool entrance. The cameras in that area mainly covered the deck. There was one person on duty on surveillance the date and time of the incident. The person occupying the monitoring position is not under the Director of Security but is under the direction of the Director of Surveillance.

A walking review of the distance from the Giles Ave gate where the shooting took place on October 1, 2017, to the Hooters Hotel Resort & Casino is .04 miles or a brisk 4–5-minute walk.
Mr. Gee advised that on October 1, 2017, there were six (6) security guards on duty and Robert Vogt was in charge of security at the casino, and the only guard armed with a gun.

There were and still are six entrances and exits to the hotel:

- Front doors-North
- Garage-1 guard assigned
- Pool outside door-1 guard assigned
- Loading dock-East 1 guard assigned
- Housekeeping-1 guard assigned
- Employee entrance-East 1 guard assigned

Robert Vogt was the roving manager of on-site security.
Gil Chavez was the Security Director in an off-site area relaying his security orders to Vogt to implement. As Mr. Chavez advised in his deposition, he could not get to the hotel because the Metropolitan Police had blocked all access to the hotel while the shooting took place and even after the shooting for a post shooting investigation.

Mr. Gee provided a Life Safety Manuel that was in effect on October 1, 2017, under the title Hooters Hotel Resort & Casino. Mr. Gee stated that when OYO Hotel became the owner of the hotel, he changed the moniker on the manual at the top of the page one to reflect OYO Life Safety Manual. Mr. Gee provided a signed statement that he changed the manual name to reflect an OYO document. The manual has a section from page 57-61 directing response to violent incidents and 61-65 dealing with a response to an active shooter. (See attachment 1).

Analysis

An examination and walk through of the hotel did not alter the opinion of this security expert. That is whether a Hooter employee had a physical encounter with the plaintiff in front of the Bayside elevators on October 1, 2017. Mr. Sontoski

was not near his wife when the incident took place and therefore, he did not witness the allegation made by Karla Sontoski that a Hooters employee rammed into her right side resulting in injury to her right shoulder. According to the signed statement, PLTF 000252, authored by Mark Sontoski the incident took place at 10:05pm on October 1, 2017. Yet his statement is dated October 2, 2017, at 10:45am, a good 12 hours after the alleged incident.

Additionally, as addressed in my first report, Mrs. Sontoski could not describe the Hooters employee. It should be noted that Hooters employees wore black shirts, black pants and had their name affixed on the badge worn on their left chest area. She could not even remember what the employee was wearing and did not notice a name badge.

No other percipient witnesses have been identified as of this date that may have witnessed the incident as alleged by Mrs. Sontoski. Mrs. Sontoski stated that she and her husband stayed overnight on October 1, 2017, and spent October 2, 2017, playing the slot machines in Hooters, and walking around Las Vegas.

Mrs. Sontoski did not see a doctor regarding her shoulder for four (4) days after the alleged incident at Hooters.

Based on the facts of this case, there is circumstantial evidence to believe that Mrs. Sontoski injured her shoulder prior to her and her husband's visit to the Hooters Hotel Resort & Casino. Both she and her husband were unemployed at the time of the incident, and she has a history of insurance injury claims. The fact there are no percipient witnesses to her claim, and her husband filed the claim but was not a witness of the alleged incident leads me to conclude that the incident was contrived to extract money from Hooters Hotel Resort & Casino.

Ronald T. Williams



United States Secret Service-Retired
CEO

Attachments

1. Introduction page of the Life Safety Manual October 1, 2017
2. Memo signed by Robert Gee advising his change of the manual name from Hooters to OYO Hotel.
3. Employee Entrance
4. Garage Entrance
5. Housekeeping Entrance
6. Loading Dock Area
7. Main Entrance
8. Pool Gate Area

OYO
HOTEL & CASINO

Life Safety Program

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CONFIDENTIAL

OYO
HOTEL & CASINO
LAS VEGAS

Date: 2/9/2022

Reference: Security Manual

On September 16, 2019 Hooters Casino Hotel was rebranded under new ownership to OYO Hotel & Casino.

The Security Manual was rebranded due to a name change and Hooters of America wanted everything rebranded and the Hooters Casino Hotel brand taken off everything including documentation.

OYO Hotel and Casino does not construe or admit in any form, shape or manner to having any reference or association with the contents of the Security Manual on the date of October 1, 2017.

Robert Gee

Director of Security

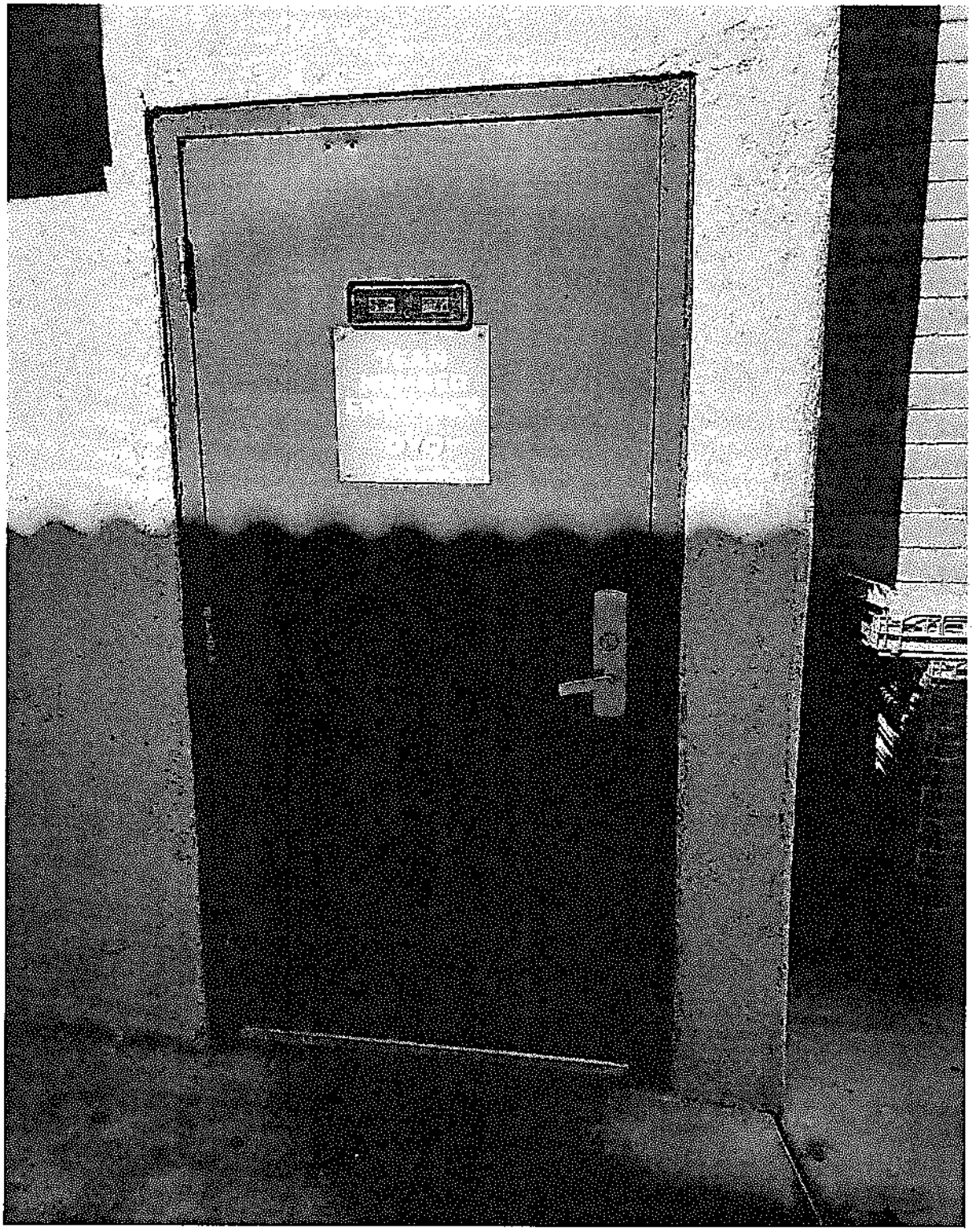
OYO Hotel & Casino

115 E Tropicana Ave

Las Vegas, NV 89109

(702) 597-0664

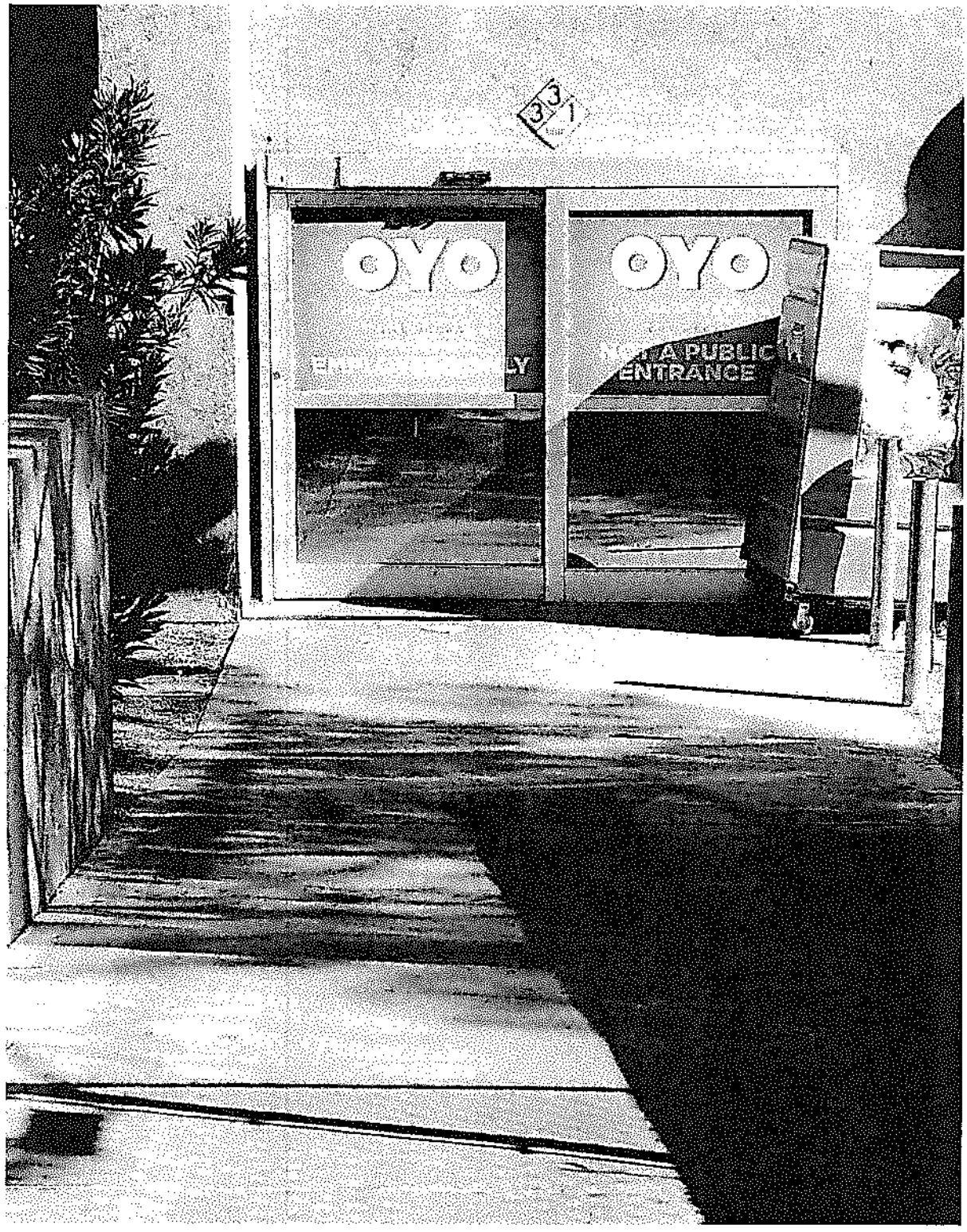
rgee@bayclasvegas.com



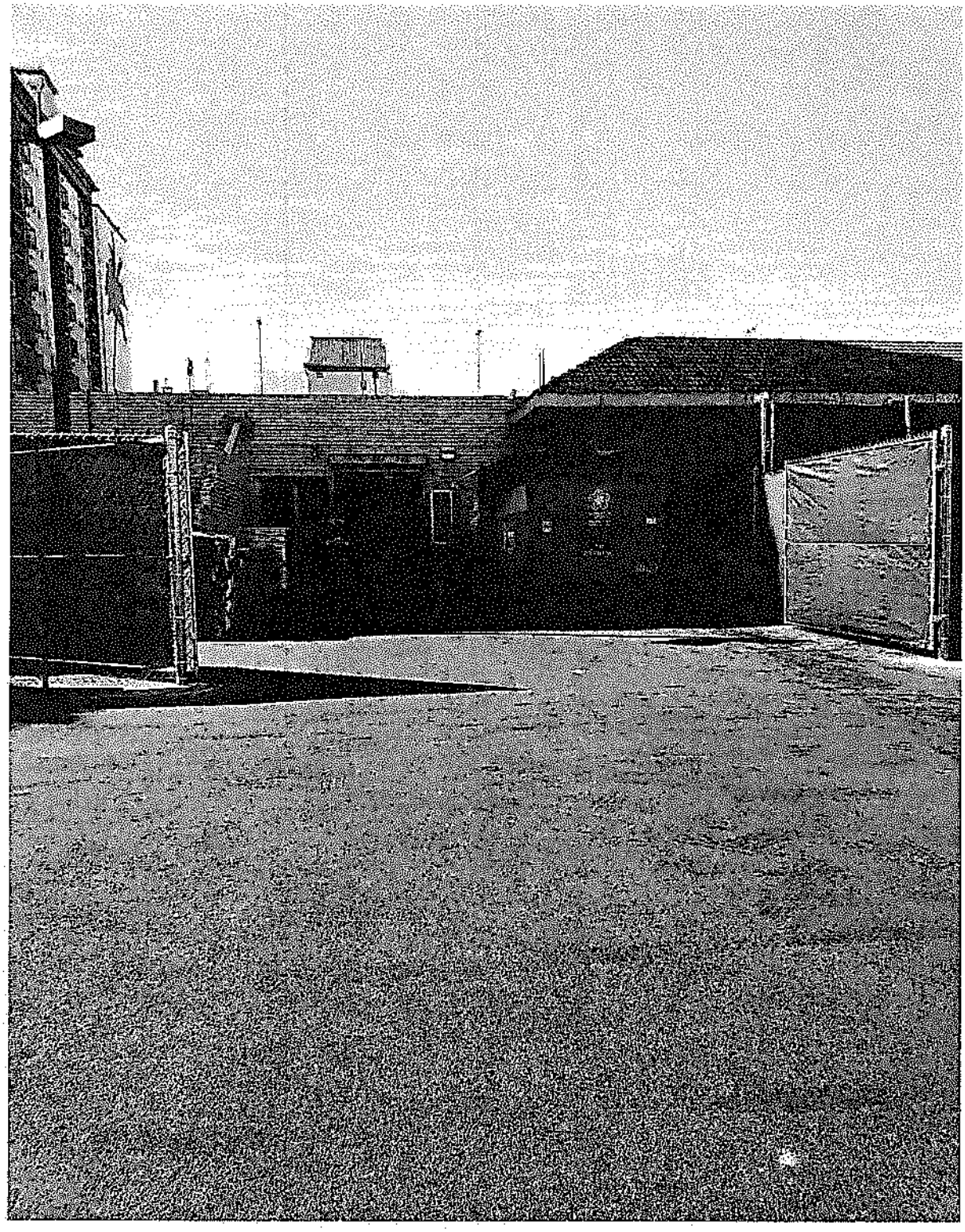
Employee Entrance


NO SOLICITING
NO SOLICITING
AUTOMATIC
CAUTION

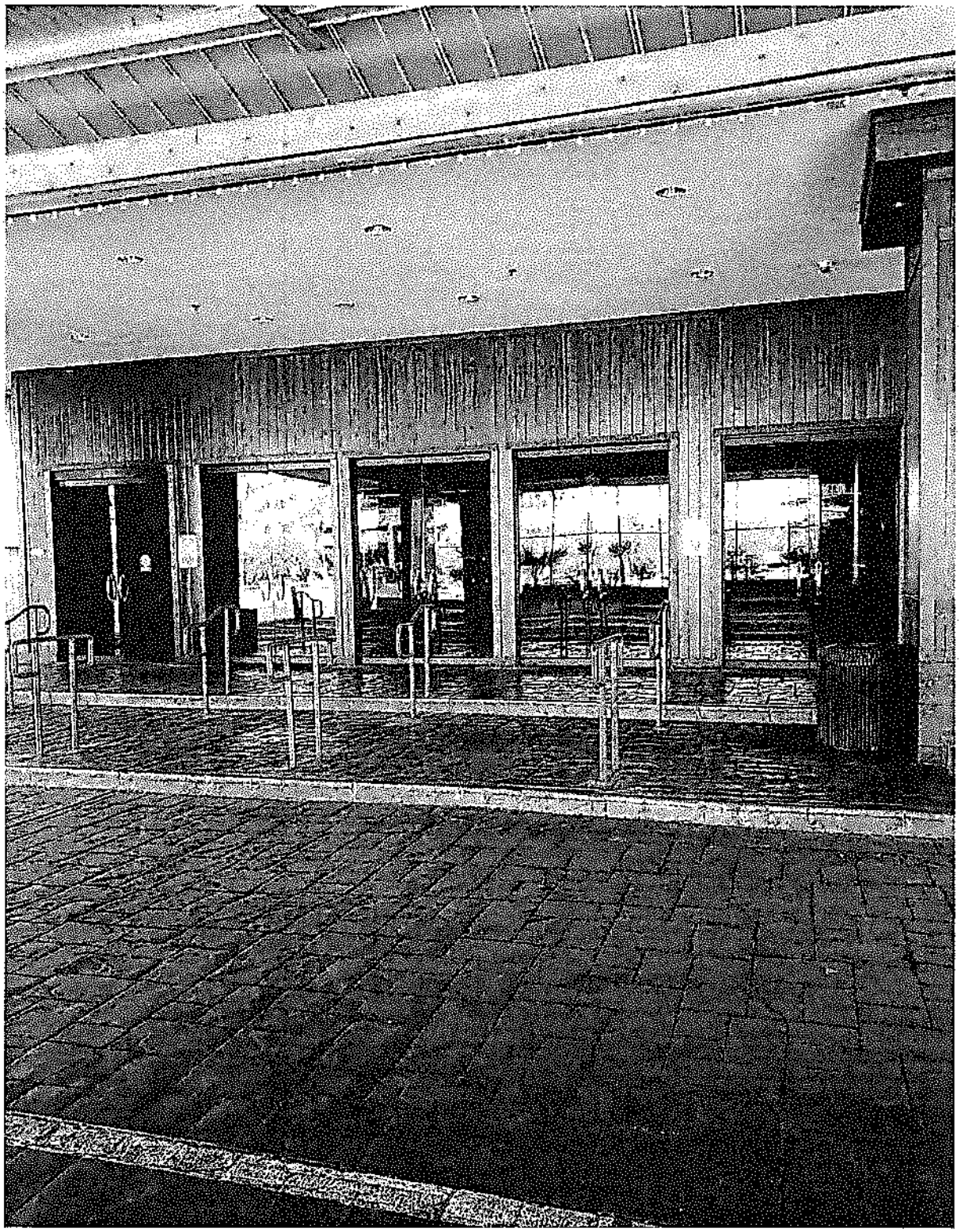
Garage Entrance


OYO
OYO
A PUBLIC
ENTRANCE

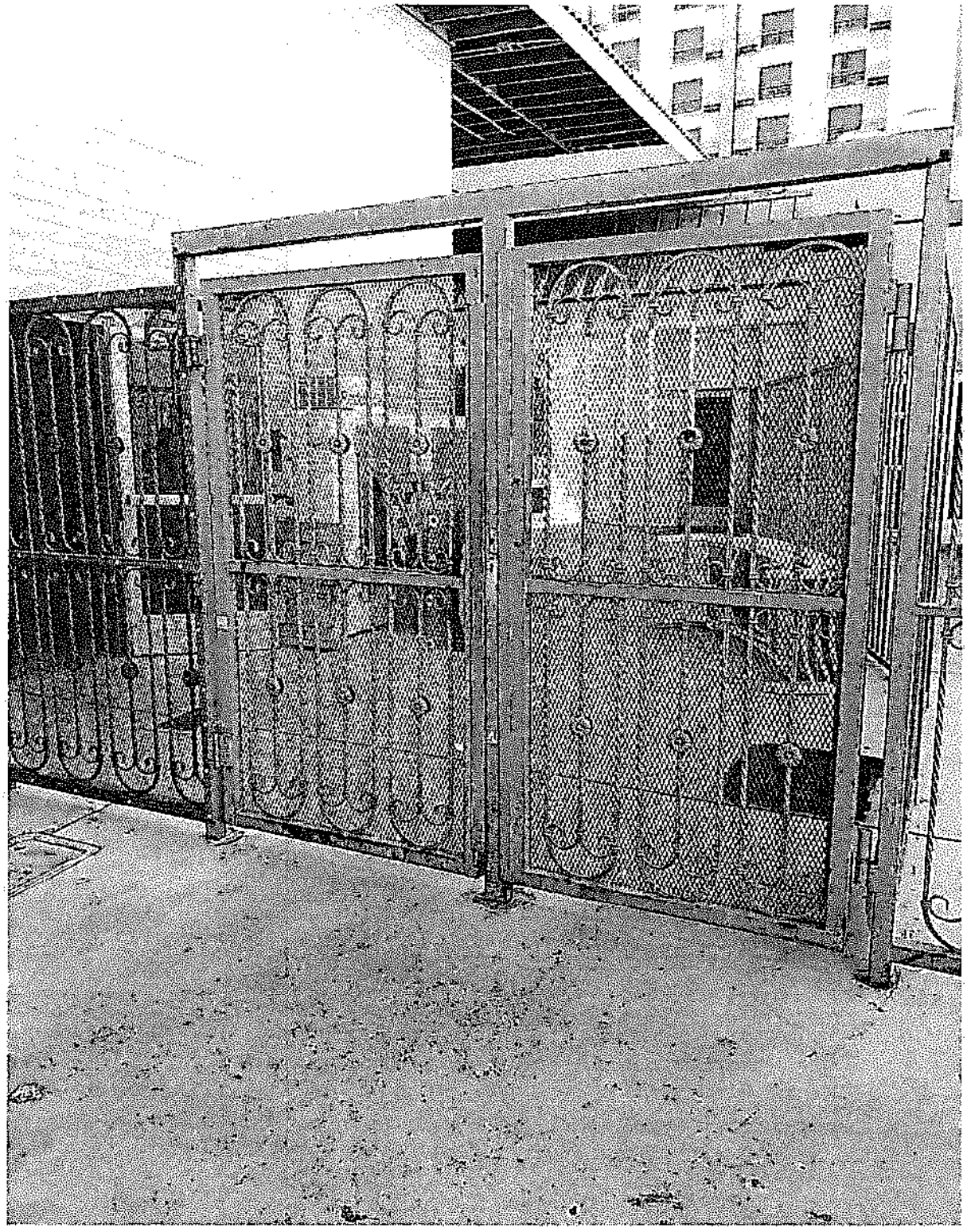
Housekeeping Entrance



Loading Dock Area



Main Entrance



Pool Gate Area

EXHIBIT E

TALON SECURE STRATEGIES INTERNATIONAL LLC

Professional Security & Risk Management

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May 16, 2022

Addendum Report: Sontoski vs Associated Hotels LLC
HILV Holdings, Trinity Hotel Asset Management LLC

Synopsis

This report is in response to the plaintiff's expert witness report authored by William Shoen dated 5/9/2022.

The terrorist act on October 1, 2017, was the deadliest mass shooting in the history of the United States. There is no crime foreseeability to predict this heinous act, and no amount of training could have prepared security personnel to adequately respond to an assault of the magnitude that occurred at 10:05pm on October 1, 2017. Additionally, it would have been a grave mistake to have blocked entrances to Hooters and denied access to those who were running from the carnage looking for a safe place. Some of the victims were severely wounded needing medical attention.

Details

On the night of October1, 2017, Steven Pollard, 64, opened fire on people attending the Route 91 concert. Pollard had rented two suites on the 32nd floor at Mandalay Bay hotel that overlooked the open-air concert directly across the street from the hotel. Pollard fired more than a thousand rounds killing 60 people, wounding 411 and 867 people suffered injuries. When the Metropolitan Police burst into his room, Pollard had shot himself and committed suicide.

A search of Pollard's suites yielded the following weapons:

- **14 AR-15's**
- **12 had 100 round magazines**
- **8 AR-10 type rifles**
- **1 bolt action rifle**
- **1 revolver**

The assault by Pollard does not fit the pattern of targeted violence perpetrators. A study of targeted violence and workplace violence perpetrators indicates that a person or persons follow the progression of:

- **Threat Posturing-making verbal threats or threats on social media. As the threats become more specific, the more dangerous the person becomes. This is referred to as narrowing their focus.**
- **Preparatory Behaviors-stalking, stockpiling weapons, target practicing, planning**
- **Rehearsal Fantasies-perpetrator plays out in his/her mind what they intend to do and telegraphs their intentions by making threats, or discussing heinous acts associated with killing.**

The Metropolitan Police of Las Vegas released two reports on the shooting, one on January 18, 2018 and August 3, 2018 indicating their investigation found no evidence of a conspiracy, and no motive. In January 2018, the Behavioral Analysis Unit of the F.B.I. could not determine a motive or a single factor that caused Pollard to engage in killing patrons at the concert.

Since Pollard made no threats and did not telegraph his intentions this heinous terrorist attack could not have been anticipated.

For reference I offer three examples of targeted violence wherein the perpetrator telegraphed their intentions to commit murder:

- **Columbine High School Shooting, Colorado April 20. 1999**
- **Isla Vistage California Shooting April 23/2014**
- **Christopher Dorner Shootings, California, 2/3/2013 to 2/12/2013**

An examination of the Columbine shootings reveals that Dylan Klebold and Eric Harris planned for a year to bomb the school and then shoot students as they fled the buildings.

- **1996 Harris created a website and a blog discussing how to make bombs.**
- **August 1997 Harris blogs about murderous fantasies.**
- **March 1997 created a journal on going on a killing spree**
- **Klebold wrote a short story about killing other students and submitted it to his psychology teacher who alerted his parents.**
- **Klebold & Harris killed 13 and injured 24**
- **Both committed suicide**

Elliot Roger planned the Isla Vistage, California massacres for over a year.

- **After the rampage police discovered 14 separate incidents that indicated Roger was preparing to kill co-eds at the University of Santa Barbara**

- **December 2012 spent $2,500 to purchase automatic weapons and visited gun ranges.**
- **Roger created a video on YouTube titled "Retribution" outlining his plan to kill co-eds.**
- **Roger posted a 137-page essay laying out his plan and motives to kill co-eds at the university.**
- **On 5/23/2014 Roger killed 6 people**
- **Roger committed suicide**

Christopher Dorner telegraphed his intentions to kill Los Angeles Police Officers.

- **Dorner sent a video to Anderson Cooper at CNN on 2/1/2013 making threats on LAPD officers for being terminated from his job with LAPD,**
- **2/3/2013 Dorner shoots and kills Monica Quan the daughter of Dorner's former commanding officer with LAPD, and her fiancé, Keith Lawrence**
- **2/4/2013 Dorner post on his face book a manifesto on his intentions to kill LAPD officers**
- **2/7/2013 Dorner shoots and kills a Riverside police officer and severely wounds a second officer.**
- **2/12/2013 Dorner shoots and kills a San Bernardino deputy sheriff**
- **Dorner commits suicide.**

The pattern of making angry threats of violence precedes the act of carrying out targeted violence and deadly rampages. Because the perpetrator telegraphs their deadly intentions professional threat management managers can identify red flags and develop a potential crime foreseeability.

In the case of the Route 91 shootings, Pollard did not telegraph his intentions and therefor there was no foreseeability that he would act out and engage in a deadly terrorist rampage. The action taken by Pollard was heinous and could not have been for seen by a design basis threat analogy.

Mr. Shoen suggested that on the evening of the attack, Hooters security should have blocked the entrances to the hotel and denied the victims of the shooting a safe environment. Many of those victims were suffering from gunshot wounds and needed immediate medical care. By allowing victims to retreat inside the hotel they were taken out of the line of fire, and a triage was formed to assist the wounded and injured.

Unarmed uniformed security guards' primary mission is to observe and report, and to act as a deterrent to theft. They are not trained nor or they prepared to engage in crime suppression. However, no amount of training could have adequately dealt with the

magnitude of this terrorist assault. Additionally, the assault did not occur on Hooter's property. Targeted violence training and active shooter response is traditionally focused on reactions to a shooter on property and in the immediate vicinity.

Mr. Shoen poses the question why an investigation was not launched immediately after Mr. Sontoski alleged his wife sustained a shoulder injury caused by an unidentified Hooters employee? The report was filed the next day after she was alleged to have been injured. I submit that the entire staff at Hooters including the security guards were busy with post shooting issues, such as following up with those who were severely wounded. Hooters employees were overwhelmed by the magnitude of the attack as was the city of Las Vegas. The crime scene was blocked off causing roads to be closed around Mandalay Bay and Hooters while the investigation continued.

Additionally, Mrs. Sontoski testified in her deposition that she and her husband gambled in the casino the following day and then walked around Las Vegas. If she was seriously injured on the night of October 1, 2017, as reported on October 2, 2017, it defies logic because she did not report the injury to a doctor until four days after the alleged injury.

Eight videos from different locations located at the Hooter Hotel were reviewed. The people fleeing the shooting scene and coming into the Hooters Hotel appeared anxious and scared, but they were orderly and not panicked and jostling each other as they entered.

The wounded and injured were directed to a triage area in the hotel near the check in and reception area. Ambulances responded to the Hooters Hotel and the video displayed wounded people from the Route 91 shooting being loaded up to be taken to a hospital.

There was no video evidence in the videos reviewed to support the allegations made by Mr. Sontoski that his wife was bumped by a Hooters employee on the night of the shootings, October 1, 2017.

Respectfully Submitted,

Ronald T. Williams
United States Secret Service-Retired
CEO
Talon Secure Strategies International LLC

EXHIBIT F

Caution
As of: June 22, 2022 9:00 PM Z

Lopez v. McDonald's Corp.

Court of Appeal of California, Fourth Appellate District, Division One

July 9, 1987

No. D004619

Reporter
193 Cal. App. 3d 495 *; 238 Cal. Rptr. 436 **; 1987 Cal. App. LEXIS 1913 ***

CRISTIAN TOSCANO LOPEZ, a Minor, etc., et al., Plaintiffs and Appellants, v. McDONALD'S CORPORATION, et al., Defendants and Respondents

Subsequent History: [*1]** Petitions for a Rehearing were Denied August 4, 1987.

Prior History: Superior Court of San Diego County, Nos. 541624 and 545266, Mack P. Lovett, Judge.

Disposition: Judgment affirmed.

Core Terms

restaurant, foreseeability, uniformed, matter of law, licensed, security guard, patrons, armed, deter, reasonably foreseeable, circumstances, injuries, kill, plaintiffs', premises, weapons, theft, resulting injury, crime rate, theft-related, nonfeasance, measures, unarmed, murderous assault, criminal conduct, declaration, causation, slaughter, massacre, causal

Case Summary

Procedural Posture
Plaintiffs, survivors and surviving relatives, sought review of a grant of summary judgment in favor of defendants, corporation and franchisee, by the Superior Court of San Diego County (California) in plaintiffs' action to recover damages following a shooting at defendant franchisee's restaurant.

Overview
A gunman entered defendant franchisee's restaurant and immediately opened fire, killing 21 people and injuring eleven others. Plaintiffs, survivors and surviving relatives, filed suit alleging that defendants, corporation and franchisee, were negligent for failing to provide adequate safety devices or security personnel to protect customers from the criminal conduct of third parties. The trial court granted defendants' motion for summary judgment. The court affirmed, concluding that defendants did not have a duty to protect plaintiff survivors and the deceased victims from the acts of the gunman because the likelihood of a murderous assault was so remote and unexpected that, as a matter of law, it was not reasonably foreseeable. Further, the court determined that there was no causal connection between defendants' failure to provide security and plaintiffs' injuries because no reasonable safety measures could have deterred or prevented the incident.

Outcome
The court affirmed the grant of summary judgment in favor of defendants, corporation and franchisee, because defendants did not have a duty to protect plaintiffs, survivors and relatives of survivors, from the criminal conduct of a gunman who opened fire in defendant franchisee's restaurant. There was no causal connection between defendants' failure to provide security in the restaurant and the murderous assault the gunman committed there.

LexisNexis® Headnotes

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Appropriateness

Civil Procedure > Judgments > Summary Judgment > General Overview

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > General Overview

HN1[] **Entitlement as Matter of Law,**

Appropriateness

A summary judgment may be granted only if no material triable issue of fact exists. The moving parties' affidavits must set forth facts entitling them to a judgment as a matter of law. Similarly, where there are no triable issues of fact and the parties' contentions involve an issue of law, summary judgment is proper.

Civil Procedure > ... > Summary Judgment > Supporting Materials > Affidavits

Civil Procedure > ... > Summary Judgment > Burdens of Proof > General Overview

Civil Procedure > ... > Summary Judgment > Burdens of Proof > Movant Persuasion & Proof

Civil Procedure > ... > Summary Judgment > Opposing Materials > General Overview

Civil Procedure > ... > Summary Judgment > Supporting Materials > General Overview

HN2 **Supporting Materials, Affidavits**

In examining the sufficiency of affidavits filed in connection with a summary judgment motion, the affidavits of the moving party are strictly construed and those of his opponent liberally construed, and doubts as to the propriety of granting the motion should be resolved in favor of the party opposing the motion. Such summary procedure is drastic and should be used with caution so that it does not become a substitute for the open trial method of determining facts. The moving party has the burden to furnish supporting documents establishing the claims of the adverse party are entirely without merit on any legal theory. Finally, where the evidence in support of the summary judgment motion is lacking, the moving party cannot rely on unsupported pleading allegations to prove its case.

Torts > ... > Affirmative Duty to Act > Types of Special Relationships > General Overview

HN3 **Affirmative Duty to Act, Types of Special Relationships**

The special relationship between a business establishment and its customers as a matter of law places an affirmative "duty" on the proprietor to take reasonable precautions to protect patrons from reasonably anticipative criminal conduct of unknown third parties.

Healthcare Law > ... > Actions Against Facilities > Facility Liability > Hospitals

Torts > ... > Elements > Duty > General Overview

Healthcare Law > ... > Actions Against Facilities > Facility Liability > General Overview

HN4 **Facility Liability, Hospitals**

The general rule in California is that all persons have a duty to employ ordinary care to prevent others from being injured as a result of their conduct. Thus, any "duty" analysis begins with the fundamental policy embodied in *Cal. Civ. Code § 1714*, providing liability for injuries to another caused by one's failure to exercise ordinary care under the circumstances. Liability for negligent conduct is, therefore, the rule. No exception is made unless clearly supported by public policy considerations.

Torts > ... > Elements > Duty > General Overview

HN5 **Elements, Duty**

Where a court endeavors to determine the boundaries of "duty", the pertinent inquiry is whether public policy justifies departing from the general rule that persons will be held liable for failing to act reasonably. The issue is one of legal remedy, not duty. Any departure from the fundamental principle involves the balancing of a number of considerations; the major ones are the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.

Torts > ... > Elements > Duty > General Overview

HN6[] Elements, Duty

In determining whether liability can be imposed if negligence is proved, the courts are guided by history, our continually refined concepts of morals and justice, the convenience of the rule, and social judgment as to where the loss should fall.

Torts > ... > Affirmative Duty to Act > Types of Special Relationships > General Overview

HN7[] Affirmative Duty to Act, Types of Special Relationships

One will not be held liable for failing to control third-party conduct or to warn those who may be endangered by that conduct, unless (a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or (b) a special relation exists between the actor and the other which gives the other a right to protection. The relationship between a business establishment and its customers requires the proprietor protect its patrons from third person misconduct on the business premises when there is reasonable cause to anticipate such acts and resulting harm.

Torts > ... > Affirmative Duty to Act > Types of Special Relationships > General Overview

HN8[] Affirmative Duty to Act, Types of Special Relationships

It has long been recognized that a possessor of land who holds it open to the public for entry for business purposes is subject to liability to members of the public while they are upon the land for such a purpose, for physical harm caused by the accidental, negligent, or intentionally harmful acts of third persons and by the failure of the possessor to exercise reasonable care to (a) discover that such acts are being done or are likely to be done, or (b) give a warning adequate to enable the visitors to avoid the harm, or otherwise to protect them against it.

Torts > ... > Duties of Care > Duty On Premises > General Overview

Torts > ... > Affirmative Duty to Act > Types of Special Relationships > General Overview

Torts > ... > General Premises Liability > Duties of Care > General Overview

HN9[] Duties of Care, Duty On Premises

Since the owner of land is not an insurer of the visitor's safety, he is ordinarily under no duty to exercise any care until he knows or has reason to know that the acts of the third person are occurring, or are about to occur. He may, however, know or have reason to know, from past experience, that there is a likelihood of conduct on the part of third persons in general which is likely to endanger the safety of the visitor, even though he has no reason to expect it on the part of any particular individual. If the place or character of his business, or his past experience, is such that he should reasonably anticipate careless or criminal conduct on the part of third persons, either generally or at some particular time, he may be under a duty to take precautions against it, and to provide a reasonably sufficient number of servants to afford a reasonable protection.

Torts > ... > Causation > Proximate Cause > Foreseeability of Harm

Torts > ... > Elements > Duty > General Overview

HN10[] Proximate Cause, Foreseeability of Harm

The question of "duty" is decided by the court, not the jury. The court must weigh the foreseeability of harm with a nonexhaustive list of other factors and policy considerations in determining whether liability should be restricted within the factual context of a specific case. Within this analysis, the court's task -- in determining "duty" -- is not to decide whether a particular plaintiff's injury was reasonably foreseeable in light of a particular defendant's conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed on the negligent party. Viewed in this light, the question of foreseeability in a "duty" context is a limited one for the court, and readily contrasted with the fact-specific foreseeability questions bearing on negligence (breach of duty) and proximate causation posed to the jury or trier of fact.

Torts > ... > Elements > Duty > General Overview

Torts > ... > Proof > Evidence > Province of Court & Jury

HN11 **Elements, Duty**

Where it is one factor to which a court looks in defining the boundaries of "duty", foreseeability of the particular kind of harm is strictly a question of law when evaluated within the general context of whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed on the negligent party. However, foreseeability is a question of fact, which must be decided by a trier of fact, in any case about which reasonable minds can differ within the more focused, fact-specific settings of breach of duty and causation.

Torts > ... > Elements > Duty > General Overview

HN12 **Elements, Duty**

A defendant owes a duty, in the sense of a potential liability for damages, only with respect to those risks or hazards whose likelihood made the conduct unreasonably dangerous, and hence negligent, in the first instance. The obligation turns on whether the offending conduct foreseeably involved unreasonably great risk of harm to the interests of someone other than the actor. The obligation to refrain from particular conduct is owed only to those who are foreseeably endangered by the conduct and only with respect to those risks or hazards whose likelihood made the conduct unreasonably dangerous. Duty, in other words, is measured by the scope of the risk which negligent conduct foreseeably entails. Thus, the court determines whether the risk of harm was reasonably foreseeable, charting out the areas of liability and excluding the remote and unexpected.

Torts > ... > Elements > Duty > General Overview

HN13 **Elements, Duty**

Foreseeability is but one factor to be weighed in determining whether a landowner owes a duty in a particular case and is an elastic factor within a somewhat flexible concept. In other words, the degree of foreseeability necessary to warrant the finding of a duty will thus vary from case to case. For example, in cases where the burden of preventing future harm is great, a high degree of foreseeability may be required. On the other hand, in cases where there are strong policy reasons for preventing the harm, or the harm can be prevented by simple means, a lesser degree of foreseeability may be required. In pursuing this inquiry, it is necessary to review the totality of the circumstances including the nature, condition and location of the defendant's premises, in light of the firmly established rule that what is required to be foreseeable is the general character of the event or harm not its precise nature or manner of occurrence.

Torts > ... > Elements > Duty > General Overview

HN14 **Elements, Duty**

Foreseeability of third-party criminal conduct does not require prior identical or even similar incidents.

Governments > Legislation > Vagueness

Torts > ... > Elements > Duty > Foreseeability of Harm

Torts > ... > Elements > Duty > General Overview

HN15 **Legislation, Vagueness**

Where the burden of preventing future harm is great, a high degree of foreseeability is required. Absent such a high degree of foreseeability, the courts have declined to declare a duty where its imposition would place an extremely onerous burden on both the defendant and the community, and where the defendant is not morally culpable, and where the proposed duty and the measures to be applied in discharge of the duty defy exact delineation and suffer from inherent vagueness .

Torts > Negligence > Elements

Torts > ... > Elements > Causation > General Overview

Torts > ... > Elements > Duty > General Overview

HN16 **Negligence, Elements**

Actionable negligence comprises three distinct elements: Legal duty to use due care, a breach of that duty, and a proximate or legal causal connection between the breach and the injuries suffered by plaintiffs.

Torts > ... > Elements > Causation > General Overview

Torts > Negligence > General Overview

HN17[] Elements, Causation

Where reasonable men will not challenge the absence of causality, the court may treat the question as one of law and take the decision from the jury. The standard is high for finding as a matter of law that the material facts show a lack of causality, but is not unmeetable.

Torts > ... > Duty > Affirmative Duty to Act > Failure to Act

Torts > ... > Elements > Causation > General Overview

HN18[] Affirmative Duty to Act, Failure to Act

Where the actor's tortious conduct consists in a failure to take some precautions which are required for the protection of another's person or land or chattels, if the same harm, both in character and extent, would have been sustained even had the actor taken the required precautions, his failure to do so is not even a perceptible factor in bringing it about and cannot be a substantial factor in producing it.

Torts > ... > Elements > Causation > Causation in Fact

Torts > ... > Elements > Causation > General Overview

Torts > ... > Causation > Proximate Cause > General Overview

HN19[] Causation, Causation in Fact

Cause in fact is but a necessary condition precedent to the determination of whether the negligent act or omission constitutes the proximate or legal cause of a party's injuries. In other words, cause in fact is not necessarily the sine qua non of proximate cause, but the former reflects the necessity of a sufficient factual nexus between the negligent conduct and the injury while the latter represents the legal determination encompassing all the ill-defined considerations of policy which go to limit liability once cause in fact has been established.

Headnotes/Summary

Summary
CALIFORNIA OFFICIAL REPORTS SUMMARY

In wrongful death and personal injury actions by survivors and surviving family members of victims of a massacre at a fast food restaurant, the trial court entered summary judgment for the restaurant. The trial court found that, as a matter of law, the restaurant had no duty to provide protection against mass murderous assaults, even though evidence showed that the restaurant was located in a high crime area and that theft and other offenses had occurred on the restaurant premises. (Superior Court of San Diego County, Nos. 541624 and 545266, Mack P. Lovett, Judge.)

The Court of Appeal affirmed, holding that the boundaries of the restaurant's general duty as a business establishment to take reasonable precautions to protect patrons from reasonably anticipated criminal conduct of unknown third parties did not encompass the burden to protect against once-in-a-lifetime massacres. The court held that the likelihood of the unprecedented murderous assault was so remote and unexpected that, as a matter of law, the restaurant's nonfeasance in failing to provide an unarmed, uniformed security guard did not facilitate its happening. The court held further that as a matter of law the restaurant's breach of duty in failing to provide such security (per Work, J.) was not casually connected to the injuries which resulted from the massacre. (Opinion by Work, J. Separate concurring opinions by Wiener, Acting P. J., and by Butler, J.)

Headnotes
CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to California Digest of Official Reports, 3d Series

CA(1)[] (1)

Summary Judgment § 3—Propriety—Material Triable Issues of Fact.

--A summary judgment may be granted only if no material triable issue of fact exists. The moving parties' affidavits must set forth facts entitling them to judgment as a matter of law. Similarly, where there are no triable issues of fact and the parties' contentions involve an issue of law, summary judgment is proper.

CA(2)[] (2)

Summary Judgment § 11—Affidavits—Sufficiency—Construction.

--In examining the sufficiency of affidavits filed in connection with a summary judgment motion, the affidavits of the moving party are strictly construed and those of his opponent liberally construed. Doubts as to the propriety of granting the motion should be resolved in favor of the party opposing the motion. The moving party has the burden to furnish supporting documents establishing that the claims of the adverse party are entirely without merit on any legal theory.

CA(3)[] (3)

Summary Judgment § 10—Affidavits—Reliance on Pleadings—Evidence Lacking.

--Where the evidence in support of a summary judgment motion is lacking, the moving party cannot rely on unsupported pleading allegations to prove its case.

CA(4a)[] (4a) CA(4b)[] (4b) CA(4c)[] (4c)

Premises Liability § 5—Duty and Standard of Care of Owners or Occupants of Real Property—Acts of Third Persons or Animals—Fast Food Restaurant's Duty to Protect Customers and Employees Against Massacre by Third Person.

--In wrongful death and personal injury actions brought against a fast-food restaurant by the survivors and surviving family members of the victims of a massacre that took place in the restaurant, the trial court properly granted summary judgment to the restaurant on the ground that it had no duty to protect against that kind of criminal activity. The boundaries of the restaurant's duty to take reasonable precautions to protect patrons from reasonably anticipated criminal conduct of unknown third parties did not encompass the burden to protect against once-in-a-lifetime massacres. The likelihood of the unprecedented murderous assault was so remote and unexpected that, as a matter of law, the general character of the restaurant's nonfeasance in not providing security did not facilitate its happening.

CA(5a)[] (5a) CA(5b)[] (5b)

Premises Liability § 5—Duty and Standard of Care of Owners or Occupants of Real Property—Acts of Third Persons or Animals—Criminal Conduct of Unknown Third Parties.

--The special relationship between a business establishment and its customers as a matter of law places an affirmative duty on the proprietor to take reasonable precautions to protect patrons from reasonably anticipated criminal conduct of unknown third parties.

CA(6)[] (6)

Negligence § 9—Elements of Actionable Negligence—Duty of Care—Liability for Negligent Conduct.

--Duty is not sacrosanct or an immutable fact of nature, but only a shorthand expression of the sum total of public policy considerations which lead the law to protect a particular plaintiff from harm. All persons have a duty to employ ordinary care to prevent others from being injured as a result of their conduct. Liability for negligent conduct is, therefore, the rule, and no exception is made unless clearly supported by public policy considerations. The pertinent inquiry is whether public policy justifies departing from the general rule, and, in cases where liability is restricted, other policy interests are seen as being adversely affected if defendants' conduct and decisions are subject to judicial scrutiny and sanctions.

CA(7)[] (7)

Negligence § 9.4—Elements of Actionable Negligence—Duty of Care—Special Relationship—Control of Third Person's Conduct or Right to Protection.

--One will not be held liable for failure to control third-party conduct or to warn those who may be endangered by that conduct, unless a special relation exists between the actor and the third person which imposes a duty

upon the actor to control the third person's conduct, or a special relation exists between the actor and the other which gives the other a right to protection.

CA(8a)[] (8a) CA(8b)[] (8b) CA(8c)[] (8c)

Negligence § 92—Actions—Questions of Law and Fact—Duty of Care—Decision by Court.

--The question of duty is decided by the court, not the jury. The court's task is not to decide whether a particular plaintiff's injury was reasonably foreseeable in light of a particular defendant's conduct, but, rather, to evaluate more generally whether the category of negligent conduct at issue was sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed on the negligent party. The question of foreseeability in a duty context is a limited one for the court, and readily contrasted with the fact-specific foreseeability questions bearing on negligence (breach of duty) and proximate causation posed to the jury or trier of fact. Thus, the court determines whether the risk of harm was reasonably foreseeable, charting out the areas of liability and excluding the remote and unexpected.

CA(9)[] (9)

Negligence § 94—Actions—Questions of Law and Fact—Foreseeability of Harm—Question for Trier of Fact.

--The breadth of duty is decided by the court as a question of law dependent on a variety of relevant factors, including foreseeability of the risk of harm as the principal consideration. Where foreseeability is one factor to which a court looks in defining the boundaries of duty, foreseeability of the particular kind of harm is strictly a question of law when evaluated within the general context of whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed on the negligent party. However, foreseeability is a question of fact, which must be decided by a trier of fact, in any case about which reasonable minds can differ within the more focused, fact-specific settings of breach of duty and causation.

CA(10)[] (10)

Negligence § 9—Elements of Actionable Negligence—Duty of Care—Risks or Hazards Making Conduct Negligent.

--Defendant in a negligence action owes a duty, in the sense of a potential liability for damages, only with respect to those risks or hazards whose likelihood made the conduct unreasonably dangerous, and hence negligent, in the first instance. The obligation turns on whether the offending conduct foreseeably involved unreasonably great risk of harm to the interests of someone other than the actor. The obligation to refrain from particular conduct is owed only to those who are foreseeably endangered by the conduct and only with respect to those risks or hazards whose likelihood made the conduct unreasonably dangerous. Duty, in other words, is measured by the scope of the risk which negligent conduct foreseeably entails.

CA(11)[] (11)

Premises Liability § 3—Duty and Standard of Care of Owners or Occupants of Real Property—Foreseeability.

--Foreseeability is but one factor to be weighed in determining whether a landowner owes a duty in a particular case and is an elastic factor within a somewhat flexible concept. For example, the degree of foreseeability required will vary directly with the difficulty of preventing future harm. In pursuing this inquiry, it is necessary to review the totality of the circumstances, including the nature, condition and location of defendant's premises, in light of the firmly established rule that what is required to be foreseeable is the general character of the event or harm, not its precise nature or manner of occurrence.

CA(12a)[] (12a) CA(12b)[] (12b) CA(12c)[] (12c) CA(12d)[] (12d) CA(12e)[] (12e)

Premises Liability § 5—Duty and Standard of Care of Owners or Occupants of Real Property—Causal Connection Between Landowner's Failure to Provide Security and Injuries Resulting From Mass Murder on Premises.

--In wrongful death and personal injury actions by the survivors and surviving family members of victims of a massacre at a fast-food restaurant, the trial court properly entered summary judgment for the restaurant. There was no potential causal connection between the restaurant's failure to provide security and the injuries

suffered. The restaurant had, as a matter of law, a duty to provide protective services, based on the occurrence of predominantly theft-related crimes on the restaurant's premises in the period preceding the massacre. However, the record failed to support the conclusion that had the restaurant provided the required security, the massacre would have been prevented or its extent diminished.

CA(13)[] (13)

Negligence § 3—Elements of Actionable Negligence.

--Actionable negligence comprises three distinct elements; legal duty to use due care, a breach of that duty, and a proximate or legal causal connection between the breach and the injuries suffered by plaintiffs.

CA(14)[] (14)

Negligence § 95—Actions—Questions of Law and Fact—Proximate Cause.

--The determination whether a fast-food restaurant's breach of its duty to protect its patrons by failing to provide security caused the injuries suffered by the survivors and surviving family members of victims of a mass murder massacre at the restaurant is usually within the jury's domain. However, where reasonable men would not challenge the absence of causality, the trial court may properly treat the question as one of law and take the decision from the jury. The standard is high for finding as a matter of law that the material facts show a lack of causality, but it is not unmeetable.

CA(15)[] (15)

Negligence § 10—Elements of Actionable Negligence—Standard of Care—Custom or Practice in Relevant Community.

--The standard of care required in a particular circumstance may be based on a statute or the custom and practice in the relevant community. While the custom in the community does not necessarily establish how a reasonable person must act, it is evidence to be considered in determining the proper standard of care.

CA(16)[] (16)

Negligence § 15—Elements of Actionable Negligence—Proximate Cause—Cause in Fact.

--Cause in fact is but a necessary condition precedent to the determination of whether the negligent act or omission constitutes the proximate or legal cause of the plaintiffs' injuries. Cause in fact is not necessarily the sine qua non of proximate cause, but the former reflects the necessity of a sufficient factual nexus between the negligent conduct and the injury while the latter represents the legal determination encompassing all the ill-defined considerations of policy which go to limit liability once cause in fact has been established.

CA(17)[] (17)

Negligence § 15—Elements of Actionable Negligence—Proximate Cause—Failure to Take Precautions—Harm Sustained Whether or Not Precautions Taken.

--Where an actor's tortious conduct consists of a failure to take some precautions which are required for the protection of another's person, land or chattels, if the same harm, both in character and extent, would have been sustained even had the actor taken the required precautions, his failure to do so is not even a perceptible factor in bringing it about and cannot be a substantial factor in producing it.

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Hollywood & Neil, Gina Lacagnina, Horvitz, Levy & Amerian, Barry R. Levy and Peter Abrahams for Defendants and Respondents.

Judges: Opinion by Work, J. Separate concurring opinions by Wiener, Acting P. J., and by Butler, J.

Opinion by: WORK

Opinion

[*500] [438]** Survivors and surviving family members of victims of the tragic 1984 massacre at McDonald's restaurant in San Ysidro, California, appeal a summary judgment in favor of McDonald's Corporation, and its franchisee, Bosherro 522 Partnership and Robert T. Colvin (McDonald's). They challenge a trial court determination that as a matter of

law McDonald's had no duty to provide protection against mass murderous assaults. For the reasons which follow, we conclude such an event constitutes a hazard outside the boundaries of a restaurant's general duty to protect its patrons from reasonably foreseeable criminal acts of third parties. Further, **[***2]** assuming this event were a hazard within the scope of McDonald's protective duty, we conclude there exists no causal nexus between the proprietor's breach of duty to protect its patrons from reasonably foreseeable criminal acts of third parties and the injuries suffered by plaintiffs here. Accordingly, we affirm the judgment.

I

Factual and Procedural Background

On a clear and sunny day, James Oliver Huberty entered McDonald's restaurant in San Ysidro dressed in camouflage pants and armed with a 9 mm. semiautomatic rifle, a semiautomatic 9 mm. pistol and a .12 gauge shotgun. He immediately began indiscriminately slaughtering patrons and employees within the glass-enclosed structure. During the hour of terror before he was killed by a police sharpshooter, Huberty showed no intent to **[*501]** rob the restaurant; made no demands for money; made no effort to take hostages; loaded his weapons several times; and killed 21 people in the restaurant and wounded 11 others. His single apparent purpose was to kill as many people as possible before he himself was slain.

Plaintiffs sued for damages for wrongful death and personal injuries [1] on theories of negligence and premises liability, **[***3]** alleging McDonald's failed to provide adequate safety devices or security personnel to protect customers from dangerous and known risks. In support of their theory of liability, plaintiffs allege McDonald's knew its San Ysidro facility was in a high-crime area and its employees were so concerned over the criminal activity within the immediate vicinity they had solicited a private security company to offer its services to McDonald's. The security service's proposal to McDonald's management and ownership cited the area's high-crime rate, increasing gang activity and nearby incidents of violent crimes which would have endangered McDonald's patrons had they occurred on its premises. Claiming economic reasons, McDonald's declined the security service offer to provide a uniformed security officer at $ 5.75 an hour.

[*4]** McDonald's motion for summary judgment contends this sudden and unprecedented **[**439]** mass slaying of customers within its restaurant was not foreseeable; imposing a duty to prevent such incidents is totally impracticable and contrary to public policy; and there is no causal connection between the alleged security inadequacies and the plaintiffs' injuries.

McDonald's filed a declaration of the assistant manager of its franchise and the San Diego Police Department lieutenant in charge of homicide to support its summary judgment motion. They established the undisputed facts of the incident. Further, the employee's declaration described Huberty's entry into the restaurant, his random shooting at everything and everyone in sight, the reloading of his automatic weapons and his walking up and down the aisles slaughtering all those he found still alive and that his only apparent motive was to randomly kill. [2] The lieutenant's declaration echoed the employee's declaration, adding an investigation revealed Huberty kissed his wife goodbye and stated he was going "hunting for humans"; his act appeared to be that of a "demented, mentally unbalanced man, bent on murder and self-destruction"; **[***5]** upon entry into the restaurant, he systematically and without warning shot and killed patrons and employees until he apparently believed all were dead; and by the time of his death, he still had **[*502]** ample ammunition. To the officer's knowledge, there had never been an incident in San Diego involving such a deliberate, unprovoked random slaughter.

Plaintiffs presented evidence tending to show that between January 19, 1981 and July 18, 1984, the crimes committed on the restaurant premises included two robberies, two petty thefts, one unlawful use of vehicle, vandalism, grand theft and theft by fraud. During the same approximate time period, crime statistics revealed that within a one-tenth of a mile radius of the restaurant, six burglaries, five batteries, one assault with a deadly weapon, two drawings of a deadly weapon, **[***6]** numerous grand thefts and various other crimes were committed. During the same approximate time period within a two-tenths of a mile

[1] This case involves two consolidated actions for wrongful death and personal injuries, including Lopez et al. v. McDonald's Corp. et al., San Diego Superior Court Case No. 541624 and de Toscano et al. v. McDonald's Corp. et al., San Diego County Superior Court Case No. 545266.

[2] The assistant manager further testified the interior of the restaurant was clearly visible to passersby and accessible by several entrances at the time Huberty entered the restaurant.

radius of the restaurant, five robberies, five batteries, three assaults with a deadly weapon, thirty-eight felony thefts, two drawing of deadly weapons and numerous other crimes against property, thefts and vandalism were committed. The FBI crime index for the fiscal year 1983-1984 shows the San Ysidro crime rate was higher than the city-wide crime rate in the following ratios: crimes generally were 125 percent; violent crimes were 228 percent; murder was 262.5 percent and rapes, etc. were 173.2 percent.

Plaintiffs also presented the deposition of Wilbert W. Holley, employed by Allegiance Security Incorporated for marketing, sales and surveys. Holley, who had been in the security field for approximately 10 years, attempted to sell security to the McDonald's restaurant just two months before the massacre. He obtained crime statistics for the San Ysidro area and told Mr. Sissung in the McDonald's corporate offices he had spoken to employees at the San Ysidro facility. He stated the restaurant was in a high-crime area and that in his professional **[***7]** opinion, as well as that of the employees he questioned, security was needed and uniformed, licensed security officers could be provided at $ 5.75 per hour. Sissung rejected the offer, declaring: "That's too much money. We don't want to spend any money. There is no problem, we don't need it anyways." Without citing any supporting *fact*, Holley opined, "The use of security at that site would have acted as a deterrent and could possibly have prevented the [massacre]." Additionally, he stated there was no visible security at McDonald's, but that the nearby Jack-in-the-Box employed uniformed, licensed security people. Finally, he declared on the basis of personal experience, the use of security devices or personnel reduce the incidents of crime and theft. [3]

[440]** Other evidence showed that at the time of the incident, one could not see into the restaurant because **[***8]** of the bright sunlight glaring on the tinted **[*503]** windows; the site of the restaurant was elevated above other buildings in the surrounding area; and there was substantial graffiti throughout the immediate area. A summary of security systems of approximately 24 neighboring businesses showed they ranged from armed guards (at foreign currency exchanges), closed circuit T.V.'s, alarm systems with and without mobile security response, to periodic roving security patrols.

[3] Holley further testified Huberty's wife stated her husband watched the McDonald's with his binoculars from the window of their apartment.

II

Standard of Review

The underlying purpose for summary judgment is to resolve litigation by avoiding needless trials. (*Ferrell v. Southern Nevada Off-Road Enthusiasts, Ltd. (1983) 147 Cal.App.3d 309, 313 [195 Cal.Rptr. 90]*; see *Code Civ. Proc., § 437c*.) ***CA(1)***[↑] **(1)** ***HN1***[↑] A summary judgment may be granted only if no material triable issue of fact exists. The moving parties' affidavits must set forth facts entitling them to a judgment as a matter of law. (*Lipson v. Superior Court (1982) 31 Cal.3d 362, 374 [182 Cal.Rptr. 629, 644 P.2d 822]*; *Cohen v. Southland Corp. (1984) 157 Cal.App.3d 130, 137 [203 Cal.Rptr. 572]*; *Ferrell v. Southern Nevada Off-Road Enthusiasts, Ltd., supra, 147 Cal.App.3d **[***9]** at p. 313*.) Similarly, where there are no triable issues of fact and the parties' contentions involve an issue of law, summary judgment is proper. (*Ferrell v. Southern Nevada Off-Road Enthusiasts, Ltd., supra, 147 Cal.App.3d at p. 313*.)

CA(2)[↑] **(2)** "***HN2***[↑] 'In examining the sufficiency of affidavits filed in connection with the motion, the affidavits of the moving party are strictly construed and those of his opponent liberally construed, and doubts as to the propriety of granting the motion should be resolved in favor of the party opposing the motion. Such summary procedure is drastic and should be used with caution so that it does not become a substitute for the open trial method of determining facts.'" (*Corwin v. Los Angeles Newspaper Service Bureau, Inc. (1971) 4 Cal.3d 842, 851-852* [*94 Cal.Rptr.785, 484 P.2d 953*], quoting *Stationers Corp. v. Dun & Bradstreet, Inc., (1965) 62 Cal.2d 412, 417 [42 Cal.Rptr. 449, 398 P.2d 785]*; *Twohig v. Briner (1985) 168 Cal.App.3d 1102, 1105 [214 Cal.Rptr. 729]*.) The moving party has the burden to furnish supporting documents establishing the claims of the adverse party are entirely without merit on any legal theory. (*Lipson **[***10]** v. Superior Court, supra, 31 Cal.3d at p. 374*; *Cowen v. Southland Corp., supra, 157 Cal.App.3d at p. 137*.) ***CA(3)***[↑] **(3)** Finally, where the evidence in support of the summary judgment motion is lacking, the moving party cannot rely on unsupported pleading allegations to prove its case. (*Lipson v. Superior Court, supra, 31 Cal.3d at p. 374*.)

[*504] III

Whether Liability Should be Precluded as a Matter of Law

CA(4a)[↑] **(4a)** Acknowledging its duty to protect

against reasonably foreseeable harm, McDonald's argues Huberty's armed, deranged attack was not the type of harm that was reasonably foreseeable. Moreover, it asserts it would be unreasonable to impose a burden of protecting against the type of harm involved here.

Judicial treatment of the concept of "duty" within the negligence context has left a legacy of analytical confusion. (*Marois v. Royal Investigation & Patrol, Inc. (1984) 162 Cal.App.3d 193, 197-199 [208 Cal.Rptr. 384]*; *Hucko v. City of San Diego (1986) 179 Cal.App.3d 520, 523 [224 Cal.Rptr. 552]*.) ***CA(5a)***[⬆] **(5a)** ***HN3***[⬆] The special relationship between a business establishment and its customers as a matter of law places an affirmative "duty" on the proprietor to take reasonable **[***11]** precautions to protect patrons from *reasonably anticipative* criminal conduct of unknown third parties. (*Isaacs v. Huntington Memorial Hospital (1985) 38 Cal.3d 112, 123* **[**441]** [*211 Cal.Rptr.356, 695 P.2d 653*]; *Taylor v. Centennial Bowl, Inc. (1966) 65 Cal.2d 114, 121 [52 Cal.Rptr. 561, 416 P.2d 793]*; *Gregorian v. National Convenience Stores, Inc. (1985) 174 Cal.App.3d 944, 948-949 [220 Cal.Rptr. 302]*; *Marois v. Royal Investigation & Patrol, Inc., supra, 162 Cal.App.3d at p. 199*; *Cohen v. Southland Corp., supra, 157 Cal.App.3d at pp. 137-138*.) ***CA(4b)***[⬆] **(4b)** Thus, the primary issue here is not whether a fast-food proprietor has a duty to protect plaintiffs from the potential criminal attacks perpetrated by unknown third parties, but rather to determine whether the boundaries of McDonald's general "duty" encompasses the burden to protect against once-in-a-lifetime massacres. We do this by evaluating this specific event's reasonable foreseeability, or likelihood of occurrence under the circumstances, with applicable policy considerations in resolving whether liability should be restricted. (See *Ballard v. Uribe (1986) 41 Cal.3d 564, 572, **[***12]** fn. 6 [224 Cal.Rptr. 664, 715 P.2d 624]*.)

CA(6)[⬆] **(6)** Analysis of liability for negligence within the context of "duty" has been criticized as a "question-begging process"; for, "duty" is not sacrosanct or an immutable fact of nature, but only a shorthand expression of the sum total of public policy considerations which lead the law to protect a particular plaintiff from harm. (*Ballard v. Uribe, supra, 41 Cal.3d at p. 572, fn. 6*; *Dillon v. Legg (1968) 68 Cal.2d 728, 734 [69 Cal.Rptr. 72, 441 P.2d 912, 29 A.L.R.3d 1316]*; *J'Aire Corp. v. Gregory (1979) 24 Cal.3d 799, 803 [157 Cal.Rptr. 407, 598 P.2d 60]*; *Marois v. Royal Investigation & Patrol, Inc., supra, 162 Cal.App.3d at p. 197*; *Myers v. Quesenberry (1983) 144 Cal.App.3d 888, 891 **[*505]** [193 Cal.Rptr. 733]*; *Elam v. College Park Hospital (1982) 132 Cal.App.3d 332, 338-339, fn. 7 [183 Cal.Rptr. 156]*.) In fact, ***HN4***[⬆] the general rule in California is that all persons have a duty to employ ordinary care to prevent others from being injured as a result of their conduct. (*Ballard v. Uribe, supra, 41 Cal.3d at p. 572, fn. 6*; *Lipson v. Superior Court, supra 31 Cal.3d at p. 372*; **[***13]** *Rowland v. Christian (1968) 69 Cal.2d 108, 112 [70 Cal.Rptr. 97, 443 P.2d 561]*.) Thus, any "duty" analysis begins "with the fundamental policy embodied in *Civil Code section 1714*, providing liability for injuries to another caused by one's failure to exercise ordinary care under the circumstances." (*Elam v. College Park Hospital, supra, 132 Cal.App.3d at p. 339*.) Liability for negligent conduct is, therefore, the rule. No exception is made unless clearly supported by public policy considerations. (*Lipson v. Superior Court, supra, 31 Cal.3d at p. 372*; *Rowland v. Christian, supra, 69 Cal.2d at p. 112*; *Elam v. College Park Hospital, supra, 132 Cal.App.3d at p. 339*.)

HN5[⬆] Where the court endeavors to determine the boundaries of "duty", the pertinent inquiry is whether public policy justifies departing from the general rule that persons will be held *liable* for failing to act reasonably. "The issue is one of legal remedy, not 'duty.' In cases where liability is restricted, society is not intending to foster unreasonable conduct; rather, other policy interests are seen as being adversely affected if defendants' conduct and decisions are subject **[***14]** to judicial scrutiny and sanctions. [Citation.]" (*Hucko v. City of San Diego, supra, 179 Cal.App.3d at p. 523*.) "Any departure from the fundamental principle involves the 'balancing of a number of considerations; the major ones are the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved. [Citations.]'" (*Becker v. IRM Corp. (1985) 38 Cal.3d 454, 467 [213 Cal.Rptr. 213, **[**442]** 698 P.2d 116, 48 A.L.R.4th 601]*, quoting *Rowland v. Christian, supra, 69 Cal.2d at pp. 112-113*; *Ballard v. Uribe, supra, 41 Cal.3d at p. 572, fn. 6*.) Moreover, ***HN6***[⬆] in determining whether "liability" can be imposed if negligence is proved, the courts are guided by "history, our continually refined concepts of morals and justice, **[***15]** the convenience of the rule, and social judgment as to where the loss should fall." (

Weirum v. RKO General, Inc. (1975) 15 Cal.3d 40, 46 [123 Cal.Rptr. 468, 539 P.2d 36]; see *Elam v. College Park Hospital, supra, 132 Cal.App.3d at p. 340, fn. 9*.)

CA(7)[↑] **(7)** On the other hand, **HN7**[↑] one will not be held liable for failing to control third-party conduct or to warn those who may be endangered by that **[*506]** conduct, unless "'(a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or (b) a special relation exists between the actor and the other which gives the other a right to protection.'" (*Peterson v. San Francisco Community College Dist. (1984) 36 Cal.3d 799, 806 [205 Cal.Rptr. 842, 685 P.2d 1193]*, quoting *Rest.2d Torts, § 315*; *Davidson v. City of Westminster (1982) 32 Cal.3d 197, 203 [185 Cal.Rptr. 252, 649 P.2d 894]*; *Tarasoff v. Regents of University of California (1976) 17 Cal.3d 425, 435 [131 Cal.Rptr. 14, 551 P.2d 334, 83 A.L.R.3d 1166]*; *Marois v. Royal Investigation and Patrol, Inc., supra, 162 Cal.App.3d at p. 199*.) **CA(5b)**[↑] **(5b)** The relationship between a business **[***16]** establishment and its customers requires the proprietor protect its patrons from third person misconduct on the business premises when there is reasonable cause to anticipate such acts and resulting harm. (*Isaacs v. Huntington Memorial Hospital, supra, 38 Cal.3d at pp. 123-124*; *Taylor v. Centennial Bowl, Inc., supra, 65 Cal.2d at p. 121*; *Gregorian v. National Convenience Stores, Inc., supra, 174 Cal.App.3d at pp. 948-949*; *Cohen v. Southland Corp., supra, 157 Cal.App.3d at pp. 137-138*.) [4]

[*17]** **CA(8a)**[↑] **(8a)** **HN10**[↑]

"The question of 'duty' is decided by the court, not the jury. [Citations.]" (*Ballard v. Uribe, supra, 41 Cal.3d at p. 572, fn. 6*.)[5] **[***19]** The *Rowland* analysis of landowner liability directs the court to weigh the foreseeability of harm with a nonexhaustive list of other factors and policy considerations in determining whether liability should be restricted within the factual context of a specific case. (*Isaacs v. Huntington Memorial Hospital, supra, 38 Cal.3d at pp. 123-129*; see e.g., *Thompson v. County of Alameda (1980) 27 Cal.3d 741, 750-758 [167 Cal.Rptr.70, 614 P.2d 728, 12 A.L.R.4th 701]*; **[*507]** *Coulter v. Superior Court (1978) 21 Cal.3d 144, 152-154 [145 Cal.Rptr. 534, 577 P.2d 669]*.) Within this **[**443]** analysis, the "court's task -- in determining 'duty' -- is not to decide whether a *particular* plaintiff's injury was reasonably foreseeable in light of a *particular* defendant's conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed on the negligent party." (*Ballard v. **[***18]** Uribe, supra, 41 Cal.3d at p. 572* **CA(8b)**[↑] **(8b)** **CA(9)**[↑] **(9)** (See fn. 6.) Viewed in this light, the question of foreseeability in a "duty" context is a limited one for the court, and readily contrasted with the fact-specific

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[4] "**HN8**[↑] It has long been recognized that 'a possessor of land who holds it open to the public for entry for business purposes is subject to liability to members of the public while they are upon the land for such a purpose, for physical harm caused by the accidental, negligent or intentionally harmful acts of third persons . . . and by the failure of the possessor to exercise reasonable care to (a) discover that such acts are being done or are likely to be done, or (b) give a warning adequate to enable the visitors to avoid the harm, or otherwise to protect them against it.'" (*Peterson v. San Francisco Community College Dist., supra, 36 Cal.3d at p. 807*, quoting *Rest.2d Torts, § 344*.) [para.] "The *Restatement Second of Torts, section 344, comment (f)* further details the circumstances under which such a duty arises: **HN9**[↑] 'Since the [owner of land] is not an insurer of the visitor's safety, he is ordinarily under no duty to exercise any care until he knows or has reason to know that the acts of the third person are occurring, or are about to occur. He may, however, know or have reason to know, from past experience, that there is a likelihood of conduct on the part of third persons in general which is likely to endanger the safety of the visitor, even though he has no reason to expect it on the part of any particular individual. *If the place or character of his business, or his past experience, is such that he should reasonably anticipate careless or criminal conduct on the part of third persons, either generally or at some particular time, he may be under a duty to take precautions against it, and to provide a reasonably sufficient number of servants to afford a reasonable protection.'*" (*Isaacs v. Huntington Memorial Hospital, supra, 38 Cal.3d at p. 124*; *Cohen v. Southland Corp., supra, 157 Cal.App.3d at p. 138*, italics in original.)

[5] Inevitably, judicial explanation of a complex legal concept simply begets a new inquiry into the meaning of the explanation. The Supreme Court has provided no guide as to the meaning of "category of negligent conduct". Granted, its meaning within this standard cannot be overly general and abstract, for then any harm suffered by a plaintiff could be linked to the category of a defendant's misconduct. Foreseeability would become a meaningless consideration, because no harm could ever be unforeseeable. Conversely, if the category is construed too closely to the particular facts of the case, the court's foreseeability analysis would impermissibly infringe upon the trier-of-fact's more factually focused consideration of foreseeability within the context of whether defendant's conduct was negligent and further whether it was a proximate or legal cause of plaintiff's injury. (See *Ballard v. Uribe, supra, 41 Cal.3d at p. 572, fn. 6*.)

foreseeability questions bearing on negligence (breach of duty) and proximate causation posed to the jury or trier of fact. (*Ibid.*) [6]

[*20]** To fully comprehend the concept of "duty" as defined by the risks which are reasonably perceived or foreseeable, the language of *Dillon v. Legg, supra, 68 Cal.2d at page 739*, serves as a useful guide. ***CA(10)***[↑] **(10)** ***HN12***[↑] "Defendant **[*508]** owes a duty, in the sense of a potential liability for damages, only with respect to those risks or hazards whose likelihood made the conduct unreasonably dangerous, and hence negligent, in the first instance. [Citations.]

". . . . The obligation turns on whether the offending conduct foreseeably involved unreasonably great risk of harm to the interests of someone other than the actor . . . . [The] obligation to refrain from . . . particular conduct is owed only to those who are foreseeably endangered by the conduct and only with respect to those risks or hazards whose likelihood made the conduct unreasonably dangerous. Duty, in other words, is measured by the scope of the risk which negligent conduct foreseeably entails." (*Ibid*, quoting 2 Harper & James, The Law of Torts (1956), p. 1018, fns. omitted; *Rodriguez v. Bethlehem Steel **[**444]** Corp. (1974) 12 Cal.3d 382, 399 [115 Cal.Rptr. 765, 525 P.2d 669]*.)

CA(8c)[↑] **(8c)** Thus, the court **[***21]** determines whether the risk of harm was reasonably foreseeable, charting out the areas of liability and excluding the remote and unexpected. (*Dillon v. Legg, supra, 68 Cal.2d at p. 741*; *Rodriguez v. Bethlehem Steel Corp., supra, 12 Cal.3d at p. 399*; *George A. Hormel & Co. v. Maez (1979) 92 Cal.App.3d 963, 968 [155 Cal.Rptr. 337, 15 A.L.R.4th 1141]*; *Musgrove v. Ambrose Properties, supra, 87 Cal.App.3d at p. 52*.) [7]

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[6] Although the breadth of "duty" is decided by the court as a question of law dependent upon a variety of relevant factors including foreseeability of the risk of harm as the principal consideration (*Ballard v. Uribe, supra, 41 Cal.3d at p. 572, fn. 6*; *Hedlund v. Superior Court (1983) 34 Cal.3d 695, 705 [194 Cal.Rptr. 805, 669 P.2d 41, 41 A.L.R.4th 1063]*; *Coulter v. Superior Court, supra, 21 Cal.3d at p. 152*; *Gomez v. Ticor (1983) 145 Cal.App.3d 622, 627 [193 Cal.Rptr. 600]*; *Musgrove v. Ambrose Properties (1978) 87 Cal.App.3d 44, 52 [150 Cal.Rptr. 722]*), it is often misleadingly stated that although duty is a question of law, foreseeability is a question of fact which must be decided by the trier of fact in any case about which reasonable minds can differ (*Bigbee v. Pacific Tel. & Tel. Co. (1983) 34 Cal.3d 49, 56 [192 Cal.Rptr. 857, 665 P.2d 947]*; *Weirum v. RKO General, Inc., supra, 15 Cal.3d at p. 46*; *Gregorian v. National Convenience Stores, Inc., supra, 174 Cal.App.3d at p. 948*; *Cohen v. Southland Corp., supra, 157 Cal.App.3d at p. 138*; *Gomez v. Ticor, supra, 145 Cal.App.3d at p. 627*; *Musgrove v. Ambrose Properties, supra, 87 Cal.App.3d at p. 52*; *Wright v. Arcade School Dist. (1964) 230 Cal.App.2d 272, 277 [40 Cal.Rptr. 812]*). To the contrary, ***HN11***[↑] where it is one factor to which a court looks in defining the boundaries of "duty", foreseeability of the particular kind of harm is strictly a question of law when evaluated within the general context of "whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed on the negligent party." (*Ballard v. Uribe, supra, 41 Cal.3d at p. 572, fn. 6*; *Clarke v. Hoek (1985) 174 Cal.App.3d 208, 214 [219 Cal.Rptr. 845]*.) However, foreseeability is a question of fact, which must be decided by a trier of fact, in any case about which reasonable minds can differ within the more focused, fact-specific settings of breach of duty and causation. (*Ibid*; see also *Constance B. v. State of California (1986) 178 Cal.App.3d 200, 206-207 [223 Cal.Rptr. 645]*.)

[7] An analysis of the decisional trend of theoretical negligence liability in California shows clearly that " *Dillon* (*68 Cal.2d at p. 741*) postulated reasonable foreseeability as the primary, court-determined test of liability and relegated to a secondary, negative role the policy factors involved in the duty-of-care issue." (*Adams v. Southern Pac. Transportation Co. (1975) 50 Cal.App.3d 37, 41-42 [123 Cal.Rptr. 216]*, disapproved on other grounds in *J'Aire Corp. v. Gregory, supra, 24 Cal.3d at p. 807*.) *Rowland v. Christian, supra, 69 Cal.2d at p. 108* set forth *Civil Code section 1714* as the fundamental rule of negligence liability in California, casting aside the common law rules which had traditionally limited liability of landowners. "*Dillon* and *Rowland* . . . [moved] the duty-of-care inquiry from its conventional position as the starting point of liability analysis and [relegated] it to a secondary, rejective role. Inferably, *Rowland* v. *Christian* relies -- no less than *Dillon* v. *Legg* -- upon foreseeability of harm as the prime test of negligence liability." (*Id. at p. 42*.) In other words, "[both] emphasize (*Dillon* expressly and *Rowland* implicitly) the primacy of case-by-case determinations of reasonable foreseeability; both relegate the duty test to a secondary role as a safeguard against remote and unexpected liabilities. 'The defendant owes a duty of care to all persons who are foreseeably endangered by his conduct, with respect to all risks which make the conduct unreasonably dangerous.'" (*Id. at pp. 44-45*, quoting *Rodriguez v. Bethlehem Steel Corp., supra, 12 Cal.3d at p. 399*, citing *Dillon v. Legg, supra, 68 Cal.2d at p. 741*.) The theory that *Weirum v. RKO General, Inc., supra, 15 Cal.3d at page 40*, transferred to the jury the determination of duty whenever the remaining *Rowland* factors did not outweigh the importance of foreseeability (see Comment, *The Death of Palsgraf, A Comment on the Current Status of the Duty Concept in California* (1979) 16 San Diego L.Rev. 793, 801-810) must be rejected in light of the language in *Ballard v.*

[*22]** CA(11)[↑] **(11)** HN13[↑]

[*509] Foreseeability is but one factor to be weighed in determining whether a landowner owes a duty in a particular case and is an elastic factor within a somewhat flexible concept. (*Isaacs v. Huntington Memorial Hospital, supra, 38 Cal.3d at p. 125*.) In other words, "[the] degree of foreseeability necessary to warrant the finding of a duty will thus vary from case to case. For example, in cases where the burden of preventing future harm is great, a high degree of foreseeability may be required. [Citation.] On the other hand, in cases where there are strong policy reasons for preventing the harm, or the harm can be prevented by simple means, a lesser degree of foreseeability may be required. [Citation.]" (*Gomez v. Ticor, supra, 145 Cal.App.3d at pp. 629-630*.)

In pursuing this inquiry, it is necessary to review the "totality of the circumstances" including the nature, condition and location of the defendant's premises (*Isaacs v. Huntington Memorial Hospital, supra, 38 Cal.3d at p. 129*), in light of the firmly established rule that "what is required to be foreseeable is the general character of the event or harm . . . not its precise nature or **[***23]** manner of occurrence. [Citations.]" (*Id. at p. 129*, quoting **[**445]** *Bigbee v. Pacific Tel. & Tel.Co., supra, 34 Cal.3d at pp. 57-58*.)

CA(4c)[↑] **(4c)** Guided by the foregoing, we conclude as a matter of law the *Rowland* factors and specifically the unforeseeability of the unique, horrific San Ysidro event require negligence liability to be restricted here. [8] First, as to the foreseeability of harm to plaintiffs, the theft-related and property crimes of the type shown by the history of its operations, or the general assaultive-type activity which had occurred in the vicinity bear no relationship to purposeful homicide or assassination. In other words, under all the circumstances presented, the risk of a maniacal, mass murderous assault is not a hazard the likelihood of which makes McDonald's conduct unreasonably dangerous. Rather, the likelihood of this unprecedented murderous assault was so remote and unexpected that, as a matter of law, the general character of McDonald's nonfeasance did not facilitate its happening. Huberty's deranged and motiveless attack, apparently the worst mass killing by a **[*510]** single assailant in recent American history, [9] is so unlikely **[***24]** to occur within the setting of modern life that a reasonably prudent business enterprise would not consider its occurrence in attempting to satisfy its general obligation to protect business invitees from reasonably foreseeable criminal conduct.

[*25]** Plaintiffs' reliance on the evidence of mostly theft-related crimes on and nearby the San Ysidro premises and the crime rate in the surrounding area, to show the event here was reasonably foreseeable, is misplaced. We recognize HN14[↑] foreseeability of third-party criminal conduct does not require prior

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Uribe, supra, 41 Cal.3d at page 572, footnote 6, recognizing the question of duty is decided by the court after considering the foreseeability of the particular kind of harm. The court characterized the judicial inquiry as the general evaluation of whether the category of negligent conduct involved is sufficiently likely to result in the kind of harm experienced warranting imposition of liability on the negligent party. The court contrasted the role of the jury by emphasizing the latter's consideration of foreseeability within the more focused, fact-specific settings of breach of duty and causation. (See contra *Wright v. Arcade School Dist., supra, 230 Cal.App.2d at p. 279*, declaring: "Where the ultimate determination of duty rests upon the foreseeability of harm, it becomes a fact question for the jury rather than a law question for the court.")

[8] The notion it is inappropriate to apply the *Rowland* analysis to this case because it is already firmly settled a business establishment generally owes an affirmative duty to its customers to take reasonable precautions to protect them from reasonably anticipated criminal conduct of unknown third parties is fallacious. Not only does this recognized general duty rest upon a determination the third party's wrongful conduct was reasonably foreseeable under the circumstances, but also such a notion is inconsistent with the Supreme Court's analysis in *Isaacs v. Huntington Memorial Hospital, supra, 38 Cal.3d at pages 123-129*, acknowledging this general duty is simply the springboard from which a court determines whether one owes another a duty of care under the circumstances by applying the *Rowland* analysis.

[9] Before this massacre, the following major mass murders had been committed in the United States during recent history: (1) August 1, 1966, 16 people were killed and 31 wounded by a rifle-sniper firing from the University of Texas tower in Austin; (2) August 20, 1986, 14 postal workers were killed and six others wounded in Edmond, Oklahoma; (3) February 19, 1983, 13 Chinese-American businessmen and gambling dealers were shot dead in a Seattle Chinatown gambling club; (4) September 25, 1982, 13 people were killed in a shooting rampage in Wilkes-Barre, Pennsylvania by a state prison guard; (5) September 6, 1949, 13 people were killed by a World War II veteran who went berserk in Camden, New Jersey; (6) January 1958, 11 people were killed by two individuals during a spree in Lincoln, Nebraska; (7) April 15, 1984, 10 people died in New York City's "Palm Sunday Massacre"; and (8) July 14, 1966, eight nurses were slain in their Chicago apartment by Richard Speck. (The San Diego Union, Saturday, April 25, 1987, sec. A-8, col. 1, 2.)

identical or even similar incidents. (*Isaacs v. Huntington Memorial Hospital, supra, 38 Cal.3d at p. 112*.) However, here the proffered evidence does not portend disasters of this type. As McDonald's argues: "To the extent it can be foreseen at all, such an attack, like a meteor falling from the sky, can occur in any neighborhood regardless of the crime rate." Rather, the predominantly theft-related character of the crimes is simply probative of the foreseeability of such crimes, more precisely defining its duty to provide protective measures designed to deter theft-related and ordinary criminal conduct (i.e., vandalism). In comparison, not only was Huberty's crime not theft-related, but the narrow focus on slaughter and Huberty's obvious suicidal motive are unrelated to the area's general crime rate as a matter of law.

The plaintiffs challenge any characterization of the type **[***26]** of harm based on its tragic dimensions. [10] In other words, plaintiffs **[**446]** assert that if any violent crime on the premises was foreseeable, it should not matter what type of crime in fact occurred. They argue victims of less heinous crimes should not have a better chance to recover from their injuries than those who suffer **[*511]** from more heinous crimes. However, although we may not consider the particular nature of a plaintiff's injuries and the particular nature of a defendant's conduct, we do evaluate the kind of third-party conduct involved in light of the total surrounding circumstances because they are probative in determining generally whether the category of McDonald's negligent conduct is sufficiently likely to result in the kind of harm experienced. (*Ballard v. Uribe, supra, 41 Cal.3d at p. 572, fn. 6*.) The characterization of the type of harm experienced here as a mass murderous assault is a sufficiently descriptive general, but factually accurate, hazard from which we can determine the foreseeability of the particular risk without violating the settled rule that what is required to be foreseeable is simply the general character of the event or **[***27]** harm and not its precise nature or manner of occurrence. (*Isaacs v. Huntington Memorial Hospital, supra, 38 Cal.3d at p. 129*.) [11]

[*28]** A review of the surrounding circumstances emphasized by plaintiffs does not render the occurrence of a mass murderous assault any more foreseeable. First, Holley's deposition relating his bid to sell security to McDonald's simply proves it knew of the high crime area and the availability of uniformed, licensed security officers at $ 5.75 per hour. Unlike the parking structures in *Isaacs v. Huntington Memorial Hospital, supra, 38 Cal.3d at page 112* and *Gomez v. Ticor, supra, 145 Cal.App.3d 622*, and the all-night convenience stores in *Gregorian v. National Convenience Stores, Inc., supra, 174 Cal.App.3d at page 944*, and *Cohen v. Southland Corp., supra, 157 Cal.App.3d at page 130*, a fast-food restaurant does not create "an especial temptation and opportunity for criminal misconduct" (*Gomez v. Ticor, supra, 145 Cal.App.3d at pp. 628-629*) of this nature. In other words, McDonald's facilities, even considering the alleged construction defects of the tinted windows and the restaurant's elevation above the other buildings in the surrounding area, did not present a particular risk for this type of criminal attack. [12]

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[10] In fact, plaintiffs contend the trial court violated their due process and equal protection rights by focusing on the nature of the crime and not the facts establishing the duty to protect against such a crime. In other words, they challenge any distinction which would promote multiple crime victim situations being treated any differently than single victim crime situations. However, no such distinction exists. We simply apply a uniform approach of evaluating a series of policy considerations, the principal of which is foreseeability of the risk of harm, to determine whether liability should be restricted.

[11] Our characterization appears to be more general than that employed by the Supreme Court in *Bigbee v. Pacific Tel. & Tel. Co., supra, 34 Cal.3d at pages 57-58*. There, focusing on foreseeability within the context of breach of duty and causation, the general character of the event or harm was described as "being struck by a car while standing in a phone booth". Moreover, in *Gregorian v. National Convenience Stores, Inc., supra, 174 Cal.App.3d at pages 949-950*, the court characterized the type of harm within a third-party context as a "sudden attack of a ruthless young gang" and "gang violence". Additionally, in *Gomez v. Ticor, supra, 145 Cal.App.3d at page 628*, footnote 1, the foreseeable harm was generally characterized as an "attack on a patron who interrupts a criminal act." However, in *Cohen v. Southland Corp., supra, 157 Cal.App.3d at page 140*, this court described the general character of the foreseeable harm as an "injury of a store customer present during a criminal act."

[12] Compare *Gregorian v. National Convenience Stores, Inc., supra, 174 Cal.App.3d at page 950*, where the court found unforeseeable as a matter of law an assault and stabbing at an all-night convenience store by 8 to 10 gang members who forced their way into the store, acknowledging "the proprietor of an allnight convenience store may, in this day and age, reasonably anticipate that his place of business will be the target of armed robbers . . . ." The *Gregorian* court aptly stated: "[Plaintiff's] injuries were the result of an extraordinarily malicious criminal act that, based on defendants' past experience and knowledge, could not have been anticipated." (*Id. at pp. 950-951*.)

[*29] [*512]** Applying several *Rowland* factors and policy considerations establishes that **[**447]** negligence liability should be restricted here. Preliminarily, under these circumstances, it would be difficult for a trier of fact to discern a causal nexus between McDonald's nonfeasance and the resulting injuries where reasonable precautions would not likely deter a suicide-bent murderer or protect his random victims from harm. Moreover, within the context of the third-party criminal conduct involved here, no moral blame attaches to defendant's nonfeasance. Further, although the policy of preventing future harm is great, the extent of the burden to the defendant and the consequences to the community of imposing a duty to protect against heavily-armed, suicidal murderers is onerous. As already explained, ***HN15***[↑] where the burden of preventing future harm is great, a high degree of foreseeability is required. (*Isaacs v. Huntington Memorial Hospital, supra, 38 Cal.3d at p. 125*; *Gomez v. Ticor, supra, 145 Cal.App.3d at p. 629*.) Absent such a high degree of foreseeability, the courts have declined to declare a duty where its imposition "would place an extremely onerous **[***30]** burden on both the defendant and the community, and where the defendant is not morally culpable, and where the proposed duty and the measures to be applied in discharge of the duty defy exact delineation and suffer from inherent vagueness . . . ." (*Cohen v. Southland Corp., supra, 157 Cal.App.3d at p. 142*.) Finally, without infringing upon the issue of causation, what protective measures should be pursued to protect against a mass murderous assault truly defy exact delineation, because how can one know which measures will be effective against a degenerate, a psychopath or a psychotic. (See *Noble v. Los Angeles Dodgers, Inc. (1985) 168 Cal.App.3d 912, 918 [214 Cal.Rptr. 395]*.) Unlike *Cohen v. Southland Corp., supra, 157 Cal.App.3d at page 130* and *Gomez v. Ticor, supra, 145 Cal.App.3d at pages 632-633*, where minimal precautionary measures providing a "vital first line of defense" could have had an appreciable effect in preventing the lesser crimes they addressed, none apparently exist here as neither party has suggested such a measure. [13]

[*31] [*513]** IV

There was no Causal Connection Between McDonald's Nonfeasance and Plaintiffs' Injuries as a Matter of Law [14]

CA(12a)[↑] **(12a)** Apart from any "duty" analysis, the extraordinary facts of this case show as a matter of law there is no potential causal connection between McDonald's failure to provide security and plaintiffs' injuries.

CA(13)[↑] **(13)** ***HN16***[↑] Actionable negligence comprises three distinct elements: Legal duty to use due care, a breach of that duty, and a proximate or legal causal connection between the breach and the injuries suffered **[***32]** by plaintiffs. (*United States Liab. Ins. Co. v. Haidinger-Hayes, Inc. (1970) 1 Cal.3d 586, 594 [83 Cal.Rptr. 418, 463 P.2d 770]*; *Harris v. City of Compton (1985) 172 Cal.App.3d 1, 8 [217 Cal.Rptr. 884]*; *E. F. Hutton & Co. v. City National Bank (1983) 149 Cal.App.3d 60, 66 [196 Cal.Rptr. **[**448]** 614]*.) ***CA(12b)***[↑] **(12b)** Assuming the special relationship between a business establishment and its customers as a matter of law places an affirmative "duty" on McDonald's to take reasonable precautions to protect its patrons from Huberty's criminal conduct (*Isaacs v. Huntington Memorial Hospital, supra, 38 Cal.3d at p. 123*; *Taylor v. Centennial Bowl, Inc., supra, 65 Cal.2d at p. 121*; *Gregorian v. National Convenience Stores, Inc., supra, 174 Cal.App.3d at pp. 948-949*; *Marois v. Royal Investigations and Patrol, Inc., supra, 162 Cal.App.3d at p. 199*; *Cohen v. Southland Corp., supra, 157 Cal.App.3d at pp. 137-138*), the primary issue here is causation, as it is undisputed McDonald's failed to take any protective or precautionary measures to safeguard its patrons from the reasonably foreseeable conduct of unknown third parties. ***CA(14)***[↑] **(14)** The determination **[***33]** whether McDonald's breach of its duty to protect its patrons caused plaintiffs' injuries is usually within the jury's domain; but, ***HN17***[↑] where

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[13] We do not imply a business establishment can be sheltered from liability by nonfeasance and ignoring its obligation to make its establishment reasonably safe against foreseeable criminal conduct to third parties. Rather, we simply acknowledge that the type of unforeseeable criminal conduct involved here would require expensive protective measures of questionable deterrent value when confronted by an assailant bent on committing a mass murder. In other words, the kind of harm involved here cannot be deterred by such measures as security cameras and alarms which help deter ordinary criminal conduct because of the potential of identification and capture.

[14] The trial court granted summary judgment on the ground McDonald's owed no duty to plaintiffs as a matter of law under the circumstances without addressing the issue of causation. However, we review the correctness of the trial court's decision and judgment, not the correctness of the grounds persuading the trial court to reach its conclusion. (*Constance B. v. State of California, supra, 178 Cal.App.3d at p. 211*; 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 259, p. 266.)

reasonable men will not challenge the absence of causality, the court may treat the question as one of law and take the decision from the jury. (Constance B. v. State of California, supra, 178 Cal.App.3d at p. 207.) "The standard is high for finding as a matter of law that the material facts show a lack of causality . . ., but is not unmeetable." (*Ibid.*)

CA(12c)[] **(12c)** Given the nonfeasance nature of McDonald's conduct, we must first determine what reasonable protective measures McDonald's should **[*514]** have taken under the circumstances before we can address the issue of causation. (Noble v. Los Angeles Dodgers, Inc., supra, 168 Cal.App.3d at p. 917.) The predominately theft-related character of those crimes summarized in the statistics proffered by plaintiffs regarding crimes committed on the restaurant premises during the approximate 3-1/2 year period before this incident clearly establishes McDonald's at a minimum should have provided protective measures such as security cameras and alarms designed to deter theft-related and ordinary **[***34]** criminal conduct because of the potential of identification and capture. The further crime summaries and statistics regarding areas within one-and two-tenths of a mile radius of the restaurant and the FBI index for the 1983-1984 fiscal year comparing the San Ysidro crime rate with that of the city-wide crime rate, combined with those portions of the deposition testimony of plaintiffs' security expert, Holley, at most establish McDonald's should have provided under the circumstances a uniformed, licensed security guard. The Jack-in-the-Box restaurant employed uniformed, licensed security people not characterized as "armed". The offer to provide security at $ 5.75 per hour to McDonald's was for uniformed, licensed security officers, without any indication they would be armed. Finally, a review of the security systems of the 24 neighboring businesses, ranging from armed guards, closed circuit T.V., alarm systems with and without mobile security response to periodic roving, mobile security patrols, discloses that only foreign currency exchanges employed armed security guards on the premises, as no like family restaurant employed any security guards except for the Jack-in-the-Box noted **[***35]** above. CA(15)[] **(15)** (See fn. 15.) (See Bullis v. Security Pac. Nat. Bank (1978) 21 Cal.3d 801, 809 [148 Cal.Rptr. 22, 582 P.2d 109, 7 A.L.R.4th 642]; [15] 4 Witkin, Summary of Cal. Law (8th ed. 1974) Torts, § 498, pp. 2764-2765.)

In Cohen v. Southland Corp., supra, 157 Cal.App.3d at page 142, where defendants argued the duty involved there was tantamount to the requirement of hiring full-time armed security guards in the hope of deterring night-time crime at 7-11 franchises, we responded they had misapprehended the **[**449]** scope of the duty involved, explaining that **[***36]** obtaining reasonable safety for patrons against criminal activity was not coincident with requiring the hiring of armed guards but rather that duty could be adequately fulfilled by other less onerous, relatively inexpensive robbery and/or violence deterrence measures. CA(12d)[] **(12d)** We are satisfied that, as a matter of law, McDonald's duty to provide protective services would not extend beyond providing **[*515]** an *unarmed*, uniformed, licensed security guard as offered by Holley of Allegiance Security Incorporated. [16]

We must now determine whether as a matter of law McDonald's failure to provide an unarmed security guard constitutes a proximate or legal cause of the resulting injuries suffered by plaintiffs **[***37]** here. All plaintiffs need to show to establish proximate, or legal, causation is that McDonald's nonfeasance in some way contributed to their resulting injuries. (Valdez v. J. D. Diffenbaugh Co. (1975) 51 Cal.App.3d 494, 508 [124 Cal.Rptr. 467].) CA(16)[] **(16)** (See fn. 17.) In other words, could any jury find McDonald's failure to provide unarmed, uniformed, licensed security personnel constituted a substantial factor in causing the resulting injuries (Willis v. Gordon (1978) 20 Cal.3d 629, 635 [143 Cal.Rptr. 723, 574 P.2d 794]), [17] by either

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[15] "The standard of care required in a particular circumstance may be based on a statute [citation] or the custom and practice in the relevant community. [Citations.] While the custom in the community does not necessarily establish how a reasonable person must act, it is evidence to be considered in determining the proper standard of care. [Citations.]" (Bullis v. Security Pac. Nat. Bank, supra, 21 Cal.3d at p. 809.)

[16] Granted, a trier of fact could perhaps determine a reasonable protective measure McDonald's could have pursued was that of a periodic roving, mobile security patrol with armed guards. However, it is doubtful the reaction time of such a patrol would have been better than that of law enforcement here (seven minutes).

[17] We note that HN19[] cause in fact is but a necessary condition precedent to the determination of whether the negligent act or omission constitutes the proximate or legal cause of the plaintiffs' injuries. (See 4 Witkin, Summary of Cal. Law (8th ed. 1974) Torts, § 620, pp. 2901-2905; Prosser & Keeton on Torts (5th ed. 1984) §§ 41-42, pp. 263-280.) In other words, cause in fact is not necessarily the sine qua non of proximate cause, but the former reflects the necessity of a

effectively deterring such criminal conduct or limiting the scope of the resulting injuries? Otherwise stated, McDonald's negligent conduct is not a substantial factor in bringing about plaintiffs' injuries if their injuries would have been sustained even if it had provided the unarmed, uniformed, licensed security guard. (*Rest.2d Torts, § 432*, *subd. (1)*.) ***CA(17)***[↑] **(17)** More precisely, ". . . ***HN18***[↑] where the actor's tortious conduct consists in a failure to take some precautions which are required for the protection of another's person or land or chattels[,] . . . if the same harm, both in character and extent, would have been sustained even had **[***38]** the actor taken the required precautions, his failure to do so is not even a perceptible factor in bringing it about and cannot be a substantial factor in producing it." (Com. b on subd. (1) of *Rest.2d Torts, § 432*.) [18]

[*39]** This case constitutes a classic example of plaintiffs establishing "abstract negligence" in that McDonald's security failed to conform with their expert's notion of adequacy as requiring the hiring of a uniformed, licensed **[*516]** security guard, without establishing any causal nexus between this failure and the resulting injuries. (See *Noble v. Los Angeles Dodgers, Inc., supra, 168 Cal.App.3d at pp. 916-918*.) Here, the plaintiffs' reliance on Holley's deposition testimony, where he opined, without support, the use of security at the restaurant would have acted as a deterrent and could have prevented the massacre, is misplaced. He further noted that no visible security existed at McDonald's, while the nearby Jack-in-the-Box employed uniformed security people. He also declared on the basis of his personal **[**450]** experience, the use of security devices or personnel reduced the incidents of crime and theft. However, noticeably absent from his testimony is the opinion that the specific use of an unarmed, uniformed, licensed security guard would have acted as a deterrent and prevented the event or even minimized the extent of the harm suffered by plaintiffs. This **[***40]** omission is understandable; for, "it is one thing for an expert to testify concerning the mechanical devices such as locks, safes, fences, etc. which are designed to protect property by 'hardening the target,' it is quite another for such expert to discuss deterring conduct such as rape, robbery or physical assaults. [para.] As one court has stated: '"It is an easy matter to know whether a stairway is defective and what repairs will put it in order . . . . but how can one know what measures will protect against the thug, the narcotic addict, the degenerate, the psychopath and the psychotic?" [Citation.]' [Citation.]" (*Noble v. Los Angeles Dodgers, Inc., supra, 168 Cal.App.3d at p. 918*.) In fact, "'[no] one really knows why people commit crime, hence no one really knows what is "adequate" deterrence in any given situation. While bright lights may deter some, they will not deter all. Some persons cannot be deterred by anything short of impenetrable walls and armed guards.'" (*Gregorian v. National Convenience Stores, Inc., supra, 174 Cal.App.3d at pp. 949-950*, quoting *7735 Hollywood Blvd. Venture v. Superior Court (1981) 116 Cal.App.3d 901, 905 [172 **[***41]** Cal.Rptr. 528]*.)

CA(12e)[↑] **(12e)** Under the circumstances here, it cannot be reasonably urged that had McDonald's provided an unarmed, uniformed licensed security guard, the massacre would have been prevented or its extent diminished. The record defies such a conclusion. Rather, it paints a portrait of a demented, mentally unbalanced man, bent on murder and self-destruction, who viewed the nearby McDonald's restaurant with his binoculars from his apartment, kissed his wife goodbye and stated he was going "hunting for humans." Huberty set out to kill the most people possible and went to the restaurant, unconcerned with detection, dressed in camouflage fatigue pants and heavily armed. Upon entry into the restaurant, he immediately began firing his weapons indiscriminately at everything and everyone in sight, reloading his weapons periodically and walking up and down the aisles slaughtering those he found still alive. His only apparent motive was killing. He made no effort to rob the restaurant, made no demands for money, and made no effort to **[*517]** take hostages. His indiscriminate slaughter of human beings -- the worst mass killing by a single assailant in recent American history -- only **[***42]** ended when he believed all were dead and he was felled by a police sharpshooter.

On this record, we conclude plaintiffs have failed to establish any triable issue that there was a causal nexus between McDonald's nonfeasance, if any, and the

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sufficient factual nexus between the negligent conduct and the injury while the latter represents the legal determination encompassing all the ill-defined considerations of policy which go to limit liability once cause in fact has been established.

[18] Illustration "1" to Comment on subdivision (1) of *Restatement Second of Torts, section 432*, provides: "A statute requires all vessels plying on the Great Lakes to provide lifeboats. One of the A Steamship Company's boats is sent out of port without any such lifeboat. B, a sailor, falls overboard in a storm so heavy that had there been a lifeboat it could not have been launched in the sea then running. B is drowned. The A Company's failure to provide lifeboats is not a cause of B's death."

resulting injuries. Any reasonable protective measure such as security cameras, alarms and unarmed security guards, might have deterred ordinary criminal conduct because of the potential of identification and capture, but could not reasonably be expected to deter or hinder a maniacal, suicidal assailant unconcerned with his own safety, bent on committing mass murder.

Judgment affirmed.

Concur by: WEINER; BUTLER

Concur

WEINER, Acting P. J.

I concur for the reasons set forth in section IV.

BUTLER, J.

I concur. The conclusion McDonald's did not have a duty to protect these unfortunate victims from Huberty's brief reign of terror is correct. As foreseeability is a consideration in the determination of that duty, and McDonald's owed no duty to protect the victims from Huberty, the lack of causal connection is necessarily subsumed **[**451]** in the duty analysis. Thus, I do not reach the issue of causation set out in section IV.

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DISTRICT COURT

CLARK COUNTY, NEVADA

KARLA SONTOSKI, an individual; MARK SONTOSKI, an individual, Plaintiffs, vs. ASSOCIATED HOTELS LLC, a foreign limited liability company d/b/a HOOTERS CASINO HOTEL; HILV HOLDINGS LLC, a Delaware limited liability company d/b/a HOOTERS CASINO HOTEL; TRINITY HOTEL ASSET MANAGEMENT, L.L.C., a foreign limited liability company d/b/a HOOTERS CASINO HOTEL; DOE EMPLOYEE, an individual; DOES 1 through 10, inclusive; ROE CORPORATIONS 11 through 20, inclusive; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendants.	CASE NO.: A-19-802357-C DEPT NO.: 32 **OPPOSITION TO DEFENDANTS ASSOCIATED HOTELS, LLC, HILV HOLDINGS LLC AND TRINITY HOTEL ASSET MANAGEMENT'S MOTION FOR SUMMARY JUDGMENT**

Plaintiffs, KARLA SONTOSKI and MARK SONTOSKI, by and through their counsels of record, Christian M. Morris, Esq., Alexandra McLeod, Esq. and Kimberly A. Nelson, Esq., of Nettles | Morris, hereby submit the following *Opposition to Defendants Associated Hotels, LLC, and Trinity Hotel Asset Management's Motion for Summary Judgment.*

Case Number: A-19-802357-C

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This Opposition is based upon NRCP 56, on the pleadings and papers on file, the Memorandum of Points and Authorities, and oral argument as may be allowed by counsel at the time of hearing.

Dated this 6th day of July, 2022.

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MEMORANDUM OF POINTS & AUTHORITIES

I.

INTRODUCTION

Karla Sontoski ("Ms. Sontoski") and Mark Sontoski ("Mr. Sontoski") (collectively "Plaintiffs") filed suit against Associated Hotels, LLC, and Trinity Hotel Asset Management (collectively "Defendants") due to the negligent security provided at Hooters Casino and Hotel. Specifically, Plaintiffs filed suit because Defendants were unprepared for reports of an active shooter on the premises and failed to implement adequate crowd control or emergency incident responses. Unfortunately, Ms. Sontoski was injured when panicked crowds in the casino caused confusion and mayhem based on reports of an active shooter on the casino premises, and a casino employee ran into her and injured her shoulder. Regrettably, Defendants failed to implement effective policies or procedures to deal with a reported active shooter on the premises, and Defendants failed to ensure that employees were properly trained and ready to respond to an emergency that might result in large crowds of individuals attempting to flee the premises in a panic.

Additionally, Defendants' emphasis that a mass shooting event at another property was unforeseeable, which is a disputed claim not supported by evidence, does not absolve Defendants of responsibility for their own failure to be ready to respond to reports of an active shooter on their own premises or implement effective crowd control measures. At a minimum, Defendants should have planned for and implemented policies and procedures to address an active shooter scenario and panicked crowds that inevitably will occur when and if casino guests flee due to reports of an active shooter on the premises. Accordingly, summary judgment is entirely inappropriate at this stage of litigation as there is a material question of fact regarding if Defendants breached the duty of care owed to Plaintiffs to provide reasonable security services to protect against foreseeable events including reports of an active shooter on the premises or panicked crowds of people.

Defendants have not and cannot establish as a matter of fact and law that their policies or procedures to handle and respond to emergency situations were adequate or reasonable, because

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Defendants failed to reasonably respond to reports of an active shooter on the premises and did not implement effective crowd control measure to deal with panicked masses of people. Regardless of what caused the panicked crowds and reports of an active shooter on the premises, both active shooters and panicked crowds are reasonably foreseeable, and Defendants should have responded to such emergency events in a competent and reasonable manner.

Here, the facts and evidence are sufficient that a reasonable jury can find that Defendants failed to establish or implement emergency planning or procedures to effectively limit the risk caused by reports of an active shooter or panicked crowds on the casino premises. Even more, a reasonable jury can find that terrorist events including mass shootings are reasonably foreseeable and Defendants failed to plan for or implement policies or procedures to deal with such emergency events. Accordingly, summary judgment is not justified based on the available evidence and a jury can and should evaluate if the events that caused Plaintiffs' injuries were reasonably foreseeable and if Defendants took reasonable actions to prevent the type of injury that Ms. Sontoski suffered.

II.

UNDISPUTED FACTS

On the day following the deadly mass shooting event that occurred at the Route 91 Harvest Music Festival, that took place at Mandalay Bay Resort and Casino and not Defendants' premises, Mr. Sontoski filed a voluntary statement to report that Ms. Sontoski was injured the previous night when a casino employee ran into her and caused an injury to her shoulder.[1] Mr. Sontoski reported that the incident occurred when masses of people entered the casino yelling about an active shooter.[2] During his deposition, Mr. Sontoski clarified that when the masses of people were coming into the casino he and Ms. Sontoski tried to get to the elevator to go to their room, at which point Ms. Sontoski reported that "she couldn't move her arm" and that "she had gotten ran into by one of the employees there, one of the Hooter girls."[3] Similarly, Ms. Sontoski testified that people were running through the casino yelling about an active shooter, and she got up and

[1] *See Voluntary Statement of Mark Sontoski*, attached hereto as **Exhibit 1**.
[2] *Id*.
[3] *See Dep. of Mark Sontoski* at 39:24-40:24, attached hereto as **Exhibit 2**.

began to move with the crowd towards the elevator.[4] Additionally, Ms. Sontoski testified that a Hooters employee, wearing the hooters uniform, was running and hit her right shoulder in a collision, and that she felt significant pain after she was hit by the employee.[5] Ms. Sontoski was unable to verify if the woman that crashed into her shoulder while running was Defendants' employee but believes so based on the uniform the individual was wearing at the time.[6]

Ryan O'Sullivan ("Mr. O'Sullivan") was a security guard working for Defendants during the incident and he testified that the only training he received regarding active shooters on the premises was to read provided materials and take a quiz about what to do if there was an active shooter.[7] Mr. O'Sullivan testified that there was no mock incident training or simulated active shooter training.[8] Mr. O'Sullivan was told that there was an active shooter in the parking garage and saw people hiding beneath vehicles and saw people running towards the premises, but stated that "I had no idea what to do."[9]

Jessica Irlas ("Ms. Irlas") was another security guard working during the incident, and she also testified that she received written training based on books she read and quizzes that she had to pass about different topics and shadowed supervisors during shifts.[10] Ms. Irlas testified that there was an active shooter training and quiz but no live trainings for active shooters, no training about how to conduct a lockdown, and no training on crowd control.[11] Ms. Irlas testified that her security supervisor told her there was an active shooter on the property on the night of the incident.[12] Ms. Irlas testified that there was no discussion about locking down the premises and that the fronts door could not even be locked if they needed to be, adding that "I believe we were the only casino that didn't lock our doors."[13] When asked if the training Defendants provided prepared her for the incident that occurred, Ms. Irlas said no.[14] When asked if there was any

[4] *See Dep of Karla Sontoski* at 77:15-79:7, attached hereto as **Exhibit 3**.
[5] *Id*. at 86:13-89:22.
[6] *Id*. at 87:13-19.
[7] *See Dep of Ryan O'Sullivan* at 24:2-18, attached hereto as **Exhibit 4**.
[8] *Id*. at 25:11-13.
[9] *Id*. at 35:11-36:10.
[10] *See Dep of Jessica Irlas* at 13:7-14:21, attached hereto as **Exhibit 5**.
[11] *Id*. at 17:11-25.
[12] *Id*. at 21:16-22:4.
[13] *Id*. at 25:17-26:19.
[14] *Id*. at 26:20-27:3.

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communication to guests about the situation and what guests needed to do to stay safe, Ms. Irlas said no such communication took place.[15]

Steven Perez ("Mr. Perez") was another security guard working during the incident, and he also testified that he received written training based on books he read and quizzes that he had to pass and that he shadowed supervisors.[16] Mr. Perez testified that there was no training about how to conduct a lockdown, no training on evacuations except for fires, and no training on crowd control.[17] Mr. Perez testified regarding the incident as follows: "It was pretty much out of everybody's idea of what their job was on that night."[18] Mr. Perez testified of his memory of the events that night as follows: "I heard upon the radio that there was a mass of people that were exiting the casino. Under those circumstances, we're taught to make our way to the main floor to protect the main gambling and the cage."[19] Mr. Perez also noted "When I got to the main casino floor, there were already people running in—a stampede."[20] Mr. Perez clarified that he was taught to protect the money first and foremost and he explained that "Protect the money is the key thing."[21] When asked if any of his training prepared him for the incident Mr. Perez stated, "Not from Hooters."[22] Mr. Perez also testified that there was no discussion about a lock down type situation, and that the doors did not have locks and he was never trained on how to lock the doors if necessary, specifically saying "I was not aware of any way to secure those front doors."[23]

Plaintiffs' expert, William J. Schoen ("Mr. Schoen") testified that being able to lock doors is a key part of effective plans for implementing a lockdown which is a fundamental principle of an active shooter response.[24] Similarly, Mr. Schoen testified that active shooter events and mass shootings have become so common that training programs and prevention planning is common, including a June 23, 2016 training to help casinos and other security professionals in Las Vegas

[15] *Id*. at 28:24-29:5.
[16] *See Dep of Steven Perez* at 11:12-13:1, attached hereto as **Exhibit 6**.
[17] *Id*. at 14:25-16:22.
[18] *Id*. at 17:20-21.
[19] *Id*. at 20:19-23.
[20] *Id*. at 21:13-14.
[21] *Id*. at 33:17-34:13.
[22] *Id*. at 26:1-6.
[23] *Id*. at 26:18-27:11.
[24] *See Expert Report of William J. Schoen* at 3, attached hereto as **Exhibit 7**.

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to develop and implement active shooter planning protocol.[25] Specifically, Mr. Schoen noted that in 2007 an active shooter incident occurred at the New York New York hotel and casino, reasonably giving other casino and resort properties notice of the risk that active shooter incidents may occur at casino and resort properties.[26] Mr. Schoen also noted that the doors to the premises still lack locking mechanisms that might be necessary for a lockdown scenario.[27] Finally, Mr. Schoen notes that failure to plan and train for an active shooter on the property, as well as failure to initiate a lockdown when necessary led to unnecessary panic and chaos which resulted in Ms. Sontoski's injuries.[28]

III.

LEGAL STANDARD FOR SUMMARY JUDGMENT

Under Nevada law, summary judgment cannot be granted unless the moving party shows that "no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law."[29] A genuine issue of material fact exists when, based upon the evidence, "a rational trier of fact could return a verdict for the nonmoving party."[30]

The party moving for summary judgment has the burden of establishing that no genuine issue of material fact exists.[31] However, when reviewing the facts and evidence in a motion for summary judgment, "the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." [32]By extension, neither the credibility of the witnesses nor the weight of the evidence will be considered.[33] "The relevant inquiry is whether the evidence, when taken in a light most favorable to… the nonmoving party, demonstrates that no genuine issue of material fact remains."[34]

In *Wood*, the Nevada Supreme Court clarified the standard for summary judgment, holding that summary judgment is appropriate only when:

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[25] *Id*. at 3-4.
[26] *Id*. at 3-4.
[27] *Id*. at 5-22.
[28] *Id*. at 24-25.
[29] *See* NRCP 56(a); *Wood v. Safeway, Inc*., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).
[30] *Wood*, 121 Nev. at 731, 121 P.3d at 1031; *Posadas v. City of Reno*, 109 Nev. 448, 452 (1993).
[31] *Dennison v. Allen Group Leasing Corp*. 110 Nev. 181, 186-87, 871 P.2d 288, 291 (1994).
[32] *Wood*, 121 Nev. at 729, 121 P.3d at 1029 (emphasis added).
[33] *Drummond v. Mid-West Growers*, 91 Nev. 698, 704, 542 P.2d 198, 202-03 (1975) (citation omitted).
[34] *Dennison*, 110 Nev. at 732, 121 P.2d at 1031.

> the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant.[35]

Even more, the Nevada Supreme Court has specifically held that issues regarding "negligence and proximate cause are generally questions of fact" and that trial courts should be hesitant in granting summary judgments in negligence cases.[36] Indeed, questions of negligence are generally reserved for the trier of fact and courts generally do not grant summary judgment in negligence cases due to the nature of establishing what constitutes a reasonable standard of care, which is a fact intensive inquiry based on numerous factors specific to the circumstances. To breach the standard of care (an essential element of a negligence claim), a person must fail to exercise "that degree of care in a given situation which a reasonable man under similar circumstances would exercise."[37]

Because reasonable minds may differ as to whether an amount of care was appropriate under the specific circumstances of a particular case, the issue should generally be submitted to the trier of fact.[38] Such cases generally involve factual issues that fall solely within the purview of the trier of fact and therefore, should not be summarily decided by the Court.[39] The Nevada Supreme Court has determined that the reasonable foreseeability of injury caused by the actions of third parties stems from premises liability and the duty to prevent injury, and its determination presents an issue of fact, which is reserved for the jury to decide.[40]

To overcome a moving party's claim that no material question of fact exists, the non-moving party may present evidence from the record and identify specific facts to establish that a

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[35] *Wood*, 121 Nev. at 729, 121 P.3d at 1031 (emphasis added).
[36] *Joynt v. California Hotel & Casino*, 108 Nev. 539, 542, 835 P.2d 799, 801 (1992); *Riley v. OPP IX L.P.*, 112 Nev. 826, 830 (1996).
[37] *Driscoll v. Erreguible*, 87 Nev. 97, 101 (1971).
[38] *Sims v. Gen. Tel. & Elecs.*, 107 Nev. 516, 522, citing *Merluzzi v. Larson*, 96 Nev. 409, 413, (1980), *overruled on other grounds by Smith v. Clough*, 106 Nev. 568 (1990).
[39] *Riley*, 112 Nev. at 830 ("We have, in the past, indicated our hesitance to affirm the granting of summary judgment in negligence cases, because such claims generally present jury issues.").
[40] *Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217, 1228-29, 925 P.2d 1175, 1182 (1996). *See also Anderson v. Mandalay Corp.*, 131 Nev. 825, 829-30, 358 P.3d 242, 245-46 (2015) (citations omitted).

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genuine issue exists that should be determined by jury at trial, and therefore, summary judgment is inappropriate.[41]

IV.

ARGUMENT

Defendants' Motion for Summary Judgment is entirely inappropriate and should be denied as there are numerous and significant material questions of fact that a jury must decide at trial. In short, Defendants fail to appreciate that the jury must decide if the incidents and circumstances that caused Ms. Sontoski's injuries were reasonably foreseeable and if Defendants took reasonable actions to minimize such risks. Specifically, Defendants have not and cannot establish that the incident that led to Ms. Sontoski's injuries was unforeseeable as a matter of fact or law, especially when and if they rely on California law based on a mass shooting that occurred in 1984, long before mass shootings and active shooters became a serious issue across the United States. Even more, Defendants fail to appreciate that Ms. Sontoski was injured because Defendants failed to plan and implement policies and procedures for an active shooter on the premises and lacked proper protocol or training to implement a lockdown or crowd control. Finally, Defendants completely ignore that Ms. Sontoski's injuries were not caused by a third party, but rather by Defendants' employee. Based on such issues and facts, summary judgment is improper because there are significant material questions of fact that a jury must evaluate to determine if Defendants acted reasonably and are liable for Ms. Sontoski's injuries.

To prevail in a negligence, claim a plaintiff must show (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached the duty of care, (3) the breach was the legal cause of plaintiff's injuries, and (4) the plaintiff suffered damages as a result of the injuries.[42] Furthermore, in *Foster*, the Nevada Supreme Court explained that landowners or occupiers have a general duty to exercise reasonable care for all patrons to ensure their safety, and such a duty should be analyzed based on foreseeability of injury and the available alternatives to prevent injury.[43] Even more, an open or obvious risk or hazard does not absolve a landlord from liability, as the "open

[41] *Wood*, 121 Nev. at 732, 121 P.3d at 1031.
[42] *Foster v. Costco Wholesale Corp*., 128 Nev. 773, 777, 291 P.3d 150, 153 (2012).
[43] *Id*. at 781.

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and obvious nature of the conditions does not automatically preclude liability, it instead is part of assessing whether reasonable care was employed."[44] By extension, in *Foster*, the Nevada Supreme Court explained when evaluating the standard of reasonable care, a fact finder must consider all surrounding circumstances.[45]

A. Defendants' Employee Caused Ms. Sontoski's Injuries, not a Third Party

As a preliminary matter, Defendants fail to acknowledge that Ms. Sontoski's injuries were caused by Defendants' employee and not a third party that was present on Defendants' premises. Here, Defendants claim that "it is clear that Plaintiffs are claiming that their damages were a result of the hordes of people running for their lives" even if Plaintiff was injured by an employee and not a random person in the crowd of panicked people.[46] In fact, Ms. Sontoski clearly stated that her injuries were caused by an employee in the crowd who caused the collision which injured her shoulder.[47] While Defendants seek to discredit and call into question the credibility of Ms. Sontoski and her testimony, it is not their position to determine her credibility or the weight of the evidence. For summary judgment the weight of the evidence and all inferences from it must be drawn in favor of the non-moving party.[48] Accordingly, Defendants' arguments that the crowd caused Ms. Sontoski's injuries is irrelevant and should be ignored because it is contradicted by the evidence and deposition testimony that Defendants' employee caused Ms. Sontoski's injuries.

While Defendants have a duty to limit harm caused by third parties only if the risk of harm is reasonably foreseeable, Defendants have an obligation to ensure their employees respond reasonably regardless of the circumstances. Here, Ms. Sontoski testified that her injuries were caused by Defendants' employee. Defendants are not free to claim that the unidentified "horde" of people caused Plaintiffs' damages simply because it is convenient or preferential for their defense to make such inferences. Clearly, Ms. Sontoski testified an employee crashed into her and caused her injuries, and the jury must determine the weight of her testimony and if the actions of the employee were reasonable based on the circumstances. During summary judgment

[44] *Id*.
[45] *Id*.
[46] *See Defendants' Motion* at 11:6-9.
[47] **Exhibit 3** at 86:13-89:22.
[48] *Wood*, 121 Nev. at 729, 121 P.3d at 1029.

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Defendants are not entitled to make factual determinations about the weight of the evidence or draw inferences from the evidence in a light most favorable to their theory of liability.

Accordingly, any arguments that Plaintiffs must prove that any injury caused by third parties was reasonably foreseeable are inappropriate and inapplicable as Plaintiffs claim their damages are the result of the actions of Defendants' employee and not a third party. However, even if Defendants' arguments that Plaintiffs' damages were caused by the "hordes" of people have any merit, summary judgment is still inappropriate as there is a material question of fact regarding if the circumstances and events that caused Ms. Sontoski's injuries were reasonably foreseeable.

B. There is a Material Question of Fact Regarding if the Incident and Circumstances Causing Ms. Sontoski's Injuries were Reasonably Foreseeable

Most importantly, Defendants have not and cannot establish as a matter of fact or law that the incident and circumstances that caused Ms. Sontoski's injuries were not reasonably foreseeable. Substantial evidence establishes that active shooter incidents are so common that many businesses can and do implement active shooter policies and procedures to effectively minimize the risk of injury in the event of an active shooter. By extension, the fact that a specific active shooter event is not reasonably foreseeable does not mean that active shooter events in general and associated panicked crowds are not reasonably foreseeable. Similarly, there is a material question of fact regarding if Defendants knew or should have known that lock down or crowd control plans and protocol were reasonable and necessary in case a crisis incident occurred resulting in large masses of people fleeing in a panic. Accordingly, Defendants are not relieved of any duty of care in this case, and a jury must decide if Defendants should have reasonably foreseen the type of incident and circumstances that caused Ms. Sontoski's injuries.

There is a material question of fact regarding if mass shooting events and associated panicked crowds fleeing for safety are reasonably foreseeable in modern society. Here, Defendants claim that as a matter of law such incidents are not reasonably foreseeable based on California law and a mass shooting event that occurred in 1984 at a California McDonald's.[49]

[49] *See Defendants' Motion* at 11:23-25.

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However, Defendants should reasonably be aware that a lot of things have changed since 1984, including the prevalence of incidents that involve active shooters in crowded public places resulting in large numbers of deaths and panicked crowds.

Indeed, subsequent courts in 2012 found that there is a material question of fact regarding if mass shooting events are reasonably foreseeable, and discussing the McDonald's shootings in 1984 noted that "what was 'so unlikely to occur within the setting of modern life' as to be unforeseeable in 1984 was not necessarily so unlikely by 2012."[50] The *Axelrod* Court went on to note that "[i]f one Googles 'mass shooting incidents' one finds dozens of lists of the major incidents."[51] Surely and sadly the list has only grown longer and the risk of such events is more clear prior to this event in 2017. As a result, Defendants have not and cannot establish that mass shooting events are not reasonably foreseeable as a matter of law.

The *Axelrod* Court, discussing a mass shooting in a Colorado movie theatre which was one of the deadliest in America at the time, found that if mass shooting events are reasonably foreseeable is a material question of fact for the jury to determine based on the circumstances and evidence.[52] Specifically, the *Axelrod* Court noted that active shooter events "occurred in schools, businesses, military bases, shopping malls, a supermarket, on a train, in an immigration center and, as we now know, in a theater."[53] Such facts directly contradicted the statement by the *Lopez* Court that the active shooter event at McDonald's in 1984 was a "once-in-a-lifetime" massacre.[54] Regrettably, what the *Lopez* Court believed was a once in a life time tragic shooting at a McDonald's restaurant became an increasingly common incident in American culture, and unfortunately, the destruction and devastation caused by such incidents continued to increase.

The *Axelrod* Court noted that "Simply because something has not yet happened does not mean that its happening is not foreseeable. Instead, foreseeability is based on common sense perceptions of the risks created by various conditions and circumstances."[55] Additionally, the

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[50] *Axelrod v. Cinemark Holdings, Inc.*, 65 F. Supp. 3d 1093, 1099 (D. Colo. 2014) (quoting *Lopez v. McDonald's Corp.*, 193 Cal. App. 3d 495, 510, 238 Cal. Rptr. 436, 445 (1987)).
[51] *Id*.
[52] *Id*. at 1102-03.
[53] *Id*. at 1099.
[54] *Id*. at 1098.
[55] *Id*. at 1098. (quoting *Taco Bell, Inc. v. Lannon*, 744 P.2d 43, 48 (Colo. 1987)).

Axelrod Court noted that the scale of destruction and death involved in a shooting does not mean that such an event was unforeseeable, when and if similar violent incidents occurred.[56] Finally, the *Axelrod* Court noted that numerous consulting firms and organizations had recommended that organizations, including movie theatres, plan for active shooter incidents and terrorist attack situations, due to the increasing prevalence of such incidents.[57] Based on such facts and information, the *Axelrod* Court found that there was a material question of fact for the jury to determine if active shooter events, including the deadliest mass shooting event in America at the time, was reasonably foreseeable.

Here, the determinations and reasoning of the *Axelrod* Court are persuasive and applicable and support finding that there is a material question of fact regarding if Defendants should have reasonably foreseen the events that led to Ms. Sontoski's injuries. Sadly, both this case and *Axelrod* involve mass shooting events that were the most deadly and horrific active shooter events in the history of America when they occurred. By extension, both cases involve an atmosphere in which active shooter events were increasingly common and by no means of the imagination were viewed as a "once in a lifetime" event. However, the persuasive reasoning of *Axelrod* is even more applicable here because the movie theatre shooting in Colorado in 2012 was an even bigger wakeup call regarding the risk of mass shooting events in America and was followed by even more gruesome and deadly active shooter incidents, as Plaintiffs' expert correctly pointed out.[58] Accordingly, Defendants have not and cannot establish as a matter of fact or law that active shooter events are not reasonably foreseeable.

While Defendants claim that active shooter incidents and terrorist attacks were not reasonably foreseeable prior to the mass shooting incident that is related to Ms. Sontoski's injuries, there is substantial evidence which establishes the opposite. Specifically, as Mr. Schoen highlights, a mass shooting event occurred at the New York, New York hotel and casino in 2007 in which four people were shot, less than one mile away from Defendants' property.[59] Additionally, as Mr. Schoen point out, mass shooting and active shooter events had become much

[56] *Id*. at 1102.
[57] *Id*. at 1101-02.
[58] **Exhibit 7** at 4.
[59] **Exhibit 7** at 3-4.

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more common and problematic in a variety of crowded public places including casinos, military bases, shopping malls, night clubs, movie theatres, and conference centers.[60] Based on such facts it was reasonably foreseeable that active shooter events involving mass casualties might occur anywhere.

Such evidence suggests that by 2017 active shooter and mass shooter events were reasonably foreseeable at almost any location with large numbers of people, including casino resort properties. Consequently, Defendants' claim that "Plaintiffs also fail to show that such act was foreseeable by way of presenting similar previous instances" is not true and contradicted by evidence in the record. To the contrary, Plaintiffs provided numerous examples of mass shooting events in numerous types of venues including a casino resort less than one mile away from Defendants' casino and resort property. Such evidence creates a material question of fact regarding if a mass shooting event and panicked crowds are reasonably foreseeable.

Additionally, due to the increased number of incidents, active shooter training was implemented at the Las Vegas Metropolitan Police Department ("LVMPD") and many other organizations around the country began to plan for and implement policies and protocols for effectively responding to a mass shooting event.[61] In fact, Mr. Schoen attended a training in June 2016, where numerous casino security professional were present and obtained training and information about how to plan for and implement policies and procedures to effectively respond to an active shooter or mass shooter event.[62] Reasonably, when and if there are trainings and conferences for security professionals to assist in planning for active shooter or mass shooter events specific to Las Vegas, those types of events and their aftermath are reasonably foreseeable.

By extension, the fact that other casino resort properties prepared for and implemented plans for active shooter events or crowd control measures for panicked crowds is supported by deposition testimony by Defendants' security officer that "I believe we were the only casino that didn't lock our doors."[63] Such evidence supports not only the foreseeability of such an event, but that Defendants were possibly the only casino resort property that failed to take the reasonable

[60] *Id*.
[61] *Id*.
[62] *Id*. at 4.
[63] **Exhibit 5** at 26:10-16.

action of initiating a lockdown. Even more, Mr. Schoen testified that "[s]heltering-in-place and locking doors (a lockdown) are fundamental principles of an active shooter response."[64] Apparently, knowing that active shooter incidents are reasonably foreseeable, many other casino and resort properties acted and implemented lock down protocol what were used to protect their guests, while Defendants did not.

Defendants will likely argue that the specific mass shooting event at Mandalay Bay was unforeseeable, even if such a determination is irrelevant to if Defendants should have properly planned for an active shooter on its premises and been ready to respond in a reasonable manner. Admittedly, the specific mass shooting event that occurred at Mandalay Bay was not foreseeable and Plaintiffs' expert even concedes this fact, as Defendants enthusiastically highlight.[65] However, Defendants enthusiasm is misplaced because had Defendants included Mr. Schoen's full testimony, they would appreciate that he testified that in general active shooter events are reasonably foreseeable and planning and preparation should occur. Specifically, Mr. Schoen's full testimony was as follows:

> So the active shooter events on October 1st, 2017, as far as Hooters was concerned, that specific event of Stephen Paddock opening fire on a crowd on Las Vegas Boulevard, that was not foreseeable. However, the potential of an active shooter situation based on the fact that active shooter event have—they've been a thing for several years now, and the government has, you know, tried to promote preparedness, that's something that somebody in the security industry ought to take note of and ought to have prepared a plan to react to.[66]

Based on such testimony, Plaintiffs' expert did not concede that the events that occurred were unforeseeable, and that Defendants could not have reasonably foreseen the conditions that caused Ms. Sontoski's injuries or prepared for them.

Similarly, the fact that the specific incident that occurred at the Route 91 Harvest Music Festival was unforeseeable does not mean that mass shooting or active shooter events and their aftermath are not generally reasonably foreseeable. Here, Defendants continually emphasize that the active shooter at the Mandalay Bay was not foreseeable to claim that they cannot be held

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[64] **Exhibit 7** at 3.
[65] *See Defendants' Motion* at 11:16-22.
[66] *See Dep. of William Schoen* at 26:3-13, attached hereto as **Exhibit 8,** (emphasis added).

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liable for events set in action by a shooting that occurred miles away.[67] However, Defendants conveniently ignore that they are not being sued because Ms. Sontoski was injured by a mass shooter, but rather, they are being sued because they failed to control crowds that they voluntarily permitted on their premises and because they failed to properly respond to reports of an active shooter on their own premises.

Arguably, there is a material question of fact regarding if Defendants should have reasonably foreseen a crisis event which might lead to panicked crowds on their premises and reports of an active shooter. Additionally, Defendants surely knew that an active shooter reported on its premises was reasonably foreseeable because they provided active shooter training for security employees.[68] Accordingly, there is a material question of fact regarding if the incidents and circumstances that caused Ms. Sontoski's injuries were reasonably foreseeable.

In short, Defendants have failed to meet the high bar required for summary judgment because they have not and cannot establish as a matter of fact or law that the circumstances that led to Ms. Sontoski's injuries were not reasonably foreseeable. All evidence viewed in a light most favorable to Plaintiffs, who are the non-moving party, establishes that active shooter events had occurred at other casino resort properties only one mile away, and that active shooter events had become a significant concern prompting landowners to take action to prepare for and implement active shooter policies and protocol to be ready to reasonably respond when and if such an incident occurred. Simply put, Defendants have not and cannot establish as a matter of fact or law that it was not reasonably foreseeable that an active shooter might be reported on their premises which would require adequate crowd control or lock down measures to be implemented. Thus, there is a material question of fact regarding if Defendants had a duty of care to prepare for and respond to reports of an active shooter on their premises.

C. Plaintiffs Reserve the Right to Argue if Defendants Breached the Duty of Care

Defendants argue only that the circumstances and conditions that caused Ms. Sontoski's injuries were not reasonably foreseeable, and therefore, Defendants owed Plaintiffs no duty of care. As a result, Defendants neglect to discuss how or why their actions are reasonable. Here,

[67] *See Defendants' Motion* at 12:1-9.
[68] **Exhibit 4** at 24:2-18.

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Defendants claim that "Plaintiffs cannot prove the elements of duty and breach" even if their Motion only addresses the element of duty and is bereft of any meaningful analysis on if a duty of care was breached.[69] For the sake of judicial efficiency, Plaintiff will abstain from arguing why Defendants breached the duty of care owed to Plaintiffs, but reserve the right to address any arguments Defendants might advance regarding any breach of duty, if those arguments are raised later. In short, Defendants have failed to raise any meaningful arguments regarding if the duty of care was breached except to say no duty existed, and they should be precluded from advancing arguments as to if the duty of care was breached. Consequently, how and why Defendants breached the duty of care will not be analyzed at this time and Plaintiffs reserve the right to address Defendants arguments about breach if they are raised or permitted.

While a proper analysis of why there is a material question of fact regarding if Defendants breached the duty of care owed to Plaintiffs would take numerous pages and extensive analysis, a broad view of the evidence easily establishes that a material question of fact exists regarding if Defendants breached the duty of care owed to Plaintiffs. For example, Defendants' security guard responding to a report of an active shooter on the premises, who had completed active shooter training, said he had no idea what to do under the circumstances.[70] By extension, security employees testified they could not even perform a lock down if one was initiated because they did not know how the doors could be locked or if it was even possible.[71] Based on these facts alone, not to mention the substantial other available evidence including expert reports, there is a material question of fact regarding if Defendants took reasonable actions to reasonably respond to the circumstances and conditions that caused Ms. Sontoski's injuries. Accordingly, summary judgment is not appropriate to find that Defendants did not breach the duty of care they owed to Plaintiffs.

Here, Defendants have failed to provide any meaningful analysis of if they breached the duty of care owed to Plaintiffs, yet a brief evaluation of the evidence supports finding that summary judgment is not justified for the element of breach. Additionally, Defendants have failed

[69] *See Defendants' Motion* at 9:9-10.
[70] **Exhibit 4** at 25:11-13; 35:11-36:10.
[71] **Exhibit 5** at 25:17-26:19. *See also* **Exhibit 6** at 26:18-27:11.

to advance any meaningful arguments or analysis regarding breach and should be precluded from attempting to advance such arguments in an untimely manner, but if such arguments are advanced and considered, Plaintiff respectfully reserves the right to fully oppose such arguments.

V.

CONCLUSION

WHEREFORE, pursuant to NRCP 56, Defendants, Associated Hotels, LLC, and Trinity Hotel Asset Management, have failed to establish as a matter of fact or law that they did not owe Plaintiffs a duty of care or that they did not breach the duty of care. Based on the law and evidence, there is a material question of fact regarding if active shooter and mass shooting events are reasonably foreseeable and if Defendants took reasonable precautions to protect patrons from such events. Further, there is a material question of fact regarding if Defendants' employees responded reasonably to the circumstances and conditions that caused Ms. Sontoski's injuries. Accordingly, Plaintiffs respectfully request that Defendants' Motion for Summary Judgment be DENIED at this time.

RESPECTFULLY SUBMITTED this 5th day of July, 2022.

NETTLES | MORRIS



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CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 8.02, I hereby certify that on this 6th day of July, 2022 a true and correct copy of the foregoing **OPPOSITION TO DEFENDANTS ASSOCIATED HOTELS, LLC, HILV HOLDINGS LLC AND TRINITY HOTEL ASSET MANAGEMENT'S MOTION FOR SUMMARY JUDGMENT** was served to the following parties via electronic transmission through email and the Odyssey E-file NV System:

Sharon A. Parker, Esq.
Lewis Brisbois Bisgaard & Smith, LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendants

/s/ Norma Miron-Chavarria
An employee of NETTLES | MORRIS

EXHIBIT

1

HOOTERS
Casino Hotel ◆ Las Vegas

Room #1147

VOLUNTARY STATEMENT

Karla/Mark Sovtask
Name (Print)

[redacted]
Home address

[redacted]
City / State / Zip

K- 1/19/72
M- 12/10/59
Date of Birth

Department / Shift

Home Phone

[redacted]
Cell Phone

10/2/17
Date of Statement

10:45 Am
Time of Statement

NARRATIVE

Describe in your own words what occurred

At appoximately 10:05pm on 10/1/17 my wife, Karla, was injured at her right shoulder when an employee of Hooters ran into her after the shooting occured at Mandalay Bay.

We were both gambling on two machines across from Sports bar (# 101693 & 101560) when the mass of people entering the casino came in with many shouting "There is a shooter outside" We got up to run and left our cards and money in these two machines. We estimate about $120 was total in both machines. I came back about 10-15 minutes to get cards and money but money was gone.

At this same time is when my wife was ran into by a casino employee on her right side resulting in an injury to her right shoulder. She currently can't raise her arm or shoulder due to pain.

She will see her own physician when we return to Southern California tomorrow due to the current state of hospitals in this area.

Mark Sovtask
Signature of person filling out statement

Oct 2, 2017
Date

Witness 1613

10-2-17
Date

EXHIBIT

2

DISTRICT COURT
CLARK COUNTY, NEVADA

-o0o-

KARLA SONTOSKI, an individual; MARK SONTOSKI, an individual, Plaintiff, vs. ASSOCIATED HOTELS LLC, a foreign limited liability company d/b/a HOOTERS CASINO HOTEL; HILV HOLDINGS LLC, a Delaware limited liability company d/b/a HOOTERS CASINO HOTEL; TRINITY HOTEL ASSET MANAGEMENT, L.L.C., a foreign limited liability company d/b/a HOOTERS CASINO HOTEL; DOE EMPLOYEE, an individual; DOES 1 through 10, inclusive; ROE CORPORATIONS 11 through 20, inclusive; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendants.	Case No. A-19-802357-C Dept. No. 2

CONDENSED TRANSCRIPT

REMOTE VIDEOCONFERENCE DEPOSITION OF MARK SONTOSKI

Taken on Monday, August 23, 2021

At 1:34 p.m.

WITNESS APPEARING REMOTELY FROM

Beaumont, California

Reported by: DIANNE M. BRUMLEY, NV CCR #205
California CSR #6796

Page 2

APPEARANCES:

FOR THE PLAINTIFFS:

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FOR THE DEFENDANTS:
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Las Vegas, Nevada 89118

ALSO PRESENT VIA VIDEOCONFERENCE:
CYNTHIA GALVAN, ZOOM HOST
All-American Court Reporters

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BEAUMONT, CALIFORNIA, MONDAY, AUGUST 23, 2021, 1:34 P.M.

***

ZOOM HOST: The attorneys participating in this proceeding acknowledge that the court reporter is not physically present in the proceeding room with the deponent or counsel and that she'll be reporting this proceeding remotely.

Counsel, if you're in agreement to the remote deposition, please state your name and consent for the report, then the court reporter will swear in the deponent remotely.

MS. PARKER: Sharon Parker for defendants, in agreement.

MR. WYNDER: Edward Wynder for plaintiffs, in agreement.

MARK SONTOSKI

having been duly sworn,

was examined and testified as follows:

EXAMINATION

BY MS. PARKER:

Q Good morning, Mr. Sontoski. My name is Sharon Parker and I represent Associated Hotels, also known as Hooters out here in Las Vegas in a lawsuit being brought by you and your wife.

Page 5

Can you please state your full name for the record?

A Mark Hubert Sontoski.

Q Is Hubert H-u-b-e-r-t?

A Correct.

Q Have you ever gone by any other names, sir?

A No.

Q Have you ever had your deposition taken before?

A Yes.

Q On how many occasions?

A Once.

Q When was that?

A Approximately five years ago, five to six years ago.

Q And what was the nature of that deposition or litigation?

A A car accident.

Q Were you pursuing a personal injury claim or were you sued?

A We were pursuing a personal injury claim.

Q When you say "we", who are you referring to?

A Karla and I.

Q Is Karla in the room with you for your deposition?

A No.

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Q Here?
A It's not moving.
ZOOM HOST: You need to click your mouse, Sharon.
BY MS. PARKER:
Q Do you see now?
A That's moving. Go up. Right there.
Q Okay. So you went behind that pillar. Were you with Karla at this time?
A No, I was not with her at the time.
Q What?
A I was not with her at the time.
Q Do you know where she was?
A All I knew is she was heading towards the elevator.
Q Okay. And why did you decide to go behind the pillar?
A I don't know if I was curious, or I didn't -- I don't know if I thought I could help people or what was -- you know, I don't know what was going on in my head at that point in time, so that's about all -- I don't know, but I went that way. Maybe I didn't want to run, I don't know.
Q Did Karla come by and get you at some point or try to locate you?
A Yes. I turned around within a short period of

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time, a very short period of time, I turned around and I saw her walking back towards me from the elevator and that's when I left the pillar and went and got her and then we went to the elevator together. By that time --
Q I'm sorry, go ahead.
A By that time, there were even more people coming into the casino. Obviously then I knew there was something very serious going on outside the casino, but I didn't know what or where it was happening.
Q Did you guys have to wait to get on the elevators at all?
A We had to wait one turn because all the people that were running in there were running into the elevators to get off the casino floor.
Q And did you -- were there crowds of people at that point that were trying to get either out of the casino or onto the elevators that you guys were getting caught up in?
A Okay, I didn't get all of that.
Q I said at that point in time, there was a lot of people around, wasn't there, trying to get off the casino floor?
A Yes.
Q Okay. So was it like a crowd of people kind of moving to the elevator?

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A Yes.
Q Okay. At any point in time, did you see any Hooters employees in that crowd at all?
A I wasn't paying attention to the crowd. I was just making sure Karla and I got on the elevator.
Q Did you see any I guess, for lack of a better word, the traditional dressed Hooter girls, the short shorts, short shirt, all that stuff?
A No, I didn't see anybody. Not that I was aware of. I wasn't paying attention to the other people.
Q When you met back up with Karla, did she say anything to you?
A No, not until we got up on the elevator and got to the room or heading towards the room, she told me she couldn't move her arm.
Q Okay. Did you say anything to her back on the casino floor at all?
A No. I think we just walked back to the elevator. I don't remember if I said anything to her or not.
Q Okay. And what did she say about she couldn't move her arm, did she say anything had happened?
A Yes, she said she had gotten ran into by one of the employees there, one of the Hooter girls.
Q Okay. Did she tell you any more information

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about that at all?
A Not at that moment. Our focus was mostly to get up to the room.
Q Okay. What did you guys do when you got up in the room?
A We took in three ladies and a fourth lady that had been at a concert into our room at that point because they had nowhere to go, so we picked them up and brought them into our room with us.
Q Were those women injured at all?
A They had some torn clothing, and I think one had a bloody knee from falling down on the ground, but nothing serious that I could tell.
Q Did you ever get their names?
A No, unfortunately we did not.
Q Did you get their phone numbers?
A No.
Q How long did those women stay in your room with you for?
A They stayed all night until like around 6:00, 6:30 in the morning when we received a call that they could get back into their hotel.
Q Okay. So what else -- I guess then what else did you guys do when you got up in your room that night?
A I did get a bag of ice for Karla's shoulder. I

EXHIBIT

3

DISTRICT COURT
CLARK COUNTY, NEVADA

-o0o-

KARLA SONTOSKI, an individual; MARK SONTOSKI, an individual, Plaintiff, vs. ASSOCIATED HOTELS LLC, a foreign limited liability company d/b/a HOOTERS CASINO HOTEL; HILV HOLDINGS LLC, a Delaware limited liability company d/b/a HOOTERS CASINO HOTEL; TRINITY HOTEL ASSET MANAGEMENT, L.L.C., a foreign limited liability company d/b/a HOOTERS CASINO HOTEL; DOE EMPLOYEE, an individual; DOES 1 through 10, inclusive; ROE CORPORATIONS 11 through 20, inclusive; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive, Defendants.	Case No. A-19-802357-C Dept. No. 2

CONDENSED TRANSCRIPT

REMOTE VIDEOCONFERENCE DEPOSITION OF KARLA SONTOSKI

Taken on Monday, August 23, 2021

At 9:13 a.m.

WITNESS APPEARING REMOTELY FROM

Beaumont, California

Reported by: DIANNE M. BRUMLEY, NV CCR #205
California CSR #6796

Page 2

APPEARANCES:

FOR THE PLAINTIFFS:

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FOR THE DEFENDANTS:
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ALSO PRESENT VIA VIDEOCONFERENCE:
CYNTHIA GALVAN, ZOOM HOST
All-American Court Reporters

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***

BEAUMONT, CALIFORNIA, MONDAY, AUGUST 23, 2021, 9:13 A.M.

***

ZOOM HOST: The attorneys participating in this proceeding acknowledge that the court reporter is not physically present in the proceeding room with the deponent or counsel and that she'll be reporting this proceeding remotely.

Counsel, if you're in agreement to the remote deposition, please state your name and consent for the record and then the court reporter will swear in the deponent remotely.

MR. WYNDER: Edward Wynder for the plaintiff. I agree.

MS. PARKER: Sharon Parker for the defendants. Agreed.

KARLA SONTOSKI

having been duly sworn,

was examined and testified as follows:

EXAMINATION

BY MS. PARKER:

Q Good morning, ma'am. My name is Sharon Parker. I represent the defendants in a lawsuit you filed, Karla Sontoski vs. Associated Hotels and various entities appearing in Clark County, case number A-19-802357.

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Can you please state your full name for the record?

A Karla Silvana Sontoski.

Q Could you please spell that, ma'am?

A K-a-r-l-a, S-i-l-v-a-n-a, last name S-o-n-t-o-s-k-i.

Q Have you ever gone by any other names?

A Yes.

Q What other names?

A Maiden last name Acevedo, first marriage last name Madrous, and second marriage last name Perez.

Q Okay. So what was your maiden name again?

A Acevedo, A-c-e-v-e-d-o.

Q Okay. And before we get into all that, have you ever had your deposition taken before?

A Yes.

Q And when have you had your deposition taken?

A A few years ago.

Q For what purpose? What was the nature of the deposition?

A It was a case with Federal Express.

Q What was the case about? Was it a personal injury case?

A Yes, car accident.

Q Okay. Since it's been a few years since your

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Q Do you recall whether or not you were wearing a watch that night?
A No, I don't recall that.
Q What did you and your husband do when you got to your room that night?
A When we got to our room, we -- we just got in the room. I told him that I was in a lot of pain, that I couldn't raise my arm up, and he asked me what happened, and I told him what happened and he just fill an ice pack and we were in our room for a long while.
Q I don't understand. What happened other than what you've already told me?
A Oh, while I was waiting to locate my husband downstairs, some lady run into me and hit me on my right shoulder.
Q You mean some lady in the throng of people that were running for their lives from an active shooting in the worse massacre of American shooting over a mile-and-a-half down the road, one of those ladies?
MR. WYNDER: Object to the form, it's argumentative and it's harassing the witness.
BY MS. PARKER:
Q You can go ahead and answer.
A Yes.
Q Where did this lady run into you?

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A Where?
Q Was it while you were standing here, or was it --
A Yes, while I was standing.
Q How long were you standing there while the crowds of people were running through there for their lives?
MR. WYNDER: Same objections.
THE WITNESS: It must have been, I don't know, seconds, a minute. I'm not sure how long I was standing there.
BY MS. PARKER:
Q Was the lady that hit you a Hooters employee?
A I believe so.
Q Upon what do you base that belief?
A Based on what she was wearing.
Q What was she wearing?
A The white top that says Hooters and the little small orange shorts.
Q How tall was she?
A I want to say about my height, which is --
Q How tall is that?
A Five feet or so.
Q What color hair did she have?
A I don't recall exactly what color hair she had.

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Q If you're in a crowd of people, how do you know it was her that bumped into you as opposed to one of the other people that was running in the crowd?
MR. WYNDER: Object to form, assumes facts.
THE WITNESS: Because while I was standing there, I saw her coming towards me.
BY MS. PARKER:
Q Was she running in the crowd?
A What was that again?
Q I said you saw her coming towards you. From what direction was she coming from?
A She was coming also from -- facing towards me from the -- she was running from the main entrance towards the back.
Q Okay. When she bumped into you, I guess where on her person did she actually physically bump into you?
A Yes.
Q Did she knock you to the ground?
A No.
Q Did you fall at all?
A No.
Q Where on your person did she bump into you?
A Where?
Q Yes.
A On my shoulder, right shoulder.

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Q Where on your right shoulder? You can go ahead and point to it.
A On my right shoulder, I guess her left shoulder hit my right shoulder.
Q Was she the only person that bumped into you that night?
A Yes.
Q How can you say that with any certainty when there are throngs of people running through the casino, you're absolutely certain you were only bumped into once?
MR. WYNDER: Object to form. It's compound, assumes facts and it's argumentative. Karla, you can answer.
THE WITNESS: Okay. What was the question again?
BY MS. PARKER:
Q I said how are you certain that you were only bumped into once if there was all these crowds of people?
A Because the minute -- the moment that she bumped into me, I felt a lot of pain in my arm.
Q How many people were on the elevator you were in?
A Elevator was crowded.

EXHIBIT

4

Page 1

DISTRICT COURT
CLARK COUNTY, NEVADA

KARLA SONTOSKI, AN INDIVIDUAL; MARK SONTOSKI, AN INDIVIDUAL,
Plaintiffs,

vs. CASE NO. A-19-802357-C

ASSOCIATED HOTELS, LLC, A FOREIGN LIMITED LIABILITY COMPANY D/B/A HOOTERS CASINO HOTEL; HILV HOLDINGS LLC, A DELAWARE LIMITED LIABILITY COMPANY D/B/A HOOTERS CASINO HOTEL; TRINITY HOTEL ASSET MANAGEMENT, LLC., A FOREIGN LIMITED LIABILITY COMPANY D/B/A HOOTERS CASINO HOTEL; DOE EMPLOYEE; AN INDIVIDUAL; DOES 1 THROUGH 10, INCLUSIVE; ROE CORPORATIONS 11 THROUGH 20, INCLUSIVE; AND ABC LIMITED LIABILITY COMPANIES 21 THROUGH 30, INCLUSIVE,
Defendants.

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

DEPOSITION OF
RYAN O'SULLIVAN

Date
August 24, 2021
Time
4:30 p.m.

Location
Kentuckiana Court Reporters
730 West Main Street
Suite 110
Louisville, Kentucky 40202

Chloe Howard, KYNP19844

Page 2

APPEARANCES Of COUNSEL

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(None marked)

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DEPOSITION OF RYAN O'SULLIVAN
August 24, 2021

COURT REPORTER: We are now on record. Will all parties state your appearance, how you are attending, and the location you're attending from, except the witness?

MR. WYNDER: This is Edward Wynder, appearing for the plaintiff, and I'm in Las Vegas, Nevada.

MS. PARKER: Sharon Parker for defendants, also in Las Vegas, Nevada.

COURT REPORTER: Mr. --

THE WITNESS: Ryan O'Sullivan. Somewhere in Kentucky.

COURT REPORTER: Mr. O'Sullivan, could you please state your full name for the record?

THE WITNESS: My full --

COURT REPORTER: Yes. Yes.

THE WITNESS: -- legal name? It would be Ryan James Lawrence O'Sullivan.

COURT REPORTER: Since I'm not able to properly ID the witness, do all parties agree that the witness is Ryan O'Sullivan?

MR. WYNDER: Yes.

MS. PARKER: I do, yes.
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

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COURT REPORTER: Thank you.
BY MR. WYNDER:
Q. The -- when you said that they would look back at CPR, was that for recertification?
A. That is correct.
Q. Other than the CPR training, were you provided with any other first aid training?
A. No, sir.
Q. In the time that you worked there, were there security officers who were also paramedics or first aid providers, beyond CPR?
A. Yes.
Q. Were they employees or were they people that they brought in from ambulance service or fire department?
A. Employees.
Q. I'm sorry. What was --
A. The managers, supervisors, from what -- my knowledge, were trained more extensively in the medical field than regular officers starting.
Q. And at any point in your time there up until April 9th, 2021, did you ever receive any of that advanced first aid training that you heard about?
A. That I've heard about? No.
Q. And it's your understanding that it was just

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the security manager and supervisors that received that advanced first aid training; is that correct?
A. Yes.
Q. On your shifts, how many managers and supervisors would there be, typically?
A. Typically, on my shift, there would be a manager and a supervisor and four to five officers, depending on call-offs and the occupancy of the hotel at the time period.
Q. On October 1st, 2017, do you know who the manager was that was working that night?
A. For security?
Q. Yes.
A. Yes. It -- he technically wasn't the manager, but he was a supervisor at the time. His name was Robert Vogt, V-O-G-T.
Q. V, as in Victor, --
A. Yes.
Q. -- O-G-T?
A. Yes, sir.
Q. Thank you. Do you remember any other security personnel that were working that night besides yourself and Robert?
A. Yes, sir.
Q. Who else do you remember?

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A. There's Jessica Laguna, Nicholas Gentile, Farouk Musah. Give me one second. Steve -- I'm not sure what -- I knew him -- first name's Steve. I forget what his last name was. And I believe -- oh, and Brian, with a B, Brian Luna. I believe that was the whole security staff that we had that night, from my knowledge.
Q. On that night, how was it that you would communicate with other members of security?
A. We all were issued radios every night when we'd come into the shift with ear pieces that we would clip on to our duty belt.
Q. Were you able to communicate with anyone outside of security with those radios?
A. No.
Q. Did you have any way to communicate with surveillance?
A. Yes. Surveillance will have -- has access to the radios. They are listening on to the radio feed.
Q. And so if you needed to contact -- or if you wanted to contact surveillance, you could have done that with the radio?
A. That's correct.
Q. Was there anyone else that you had access to over those radios besides security and surveillance?

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A. No one would be listening on a constant -- no.
Q. Did you ever receive any training on active shooter situations when you were at Hooters?
A. Yes.
Q. When was that training?
A. In the beginning of working at Hooters, we had modules that -- pretty much test paperbacks that you would go through and test, and you would have a quiz on it about active shooting -- active shootings, and how to perform...
Q. You still there, sir?
A. Yes. Did you hear that, or did it break up?
Q. I -- the last word I heard was "perform."
A. Yeah, so the -- yeah, we would have paperback and quizzes that we would have to do yearly on -- and active shooting was one of the topics on there, and that was pretty much the training of the active shooting incident before the 10/1/2017.
Q. So it sounded from your answer like there were other learning modules that were done with paperbacks and quizzes; is that right?
A. Yes. That consisted of a lot of the training that would go on with all of the different topics you have to learn with working in private, you know, security.

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Q. Aside from active shooter, what were the other paperbacks or quizzes that you had to take?
A. I cannot recall them on the top of my head, but we had one about communication, ethics, Chapter -- oh, I apologize -- Chapter 31 forms for money laundering and whatnot. There was a lot of -- it was roughly about 30 chapters of different things that we had to look for, that we had to train on.
Q. And this was done annually?
A. Yes.
Q. Did you ever have any kind of mock incident training?
A. Not to my knowledge, no.
Q. And when I say "mock incident," what do you understand that to mean?
A. From what I understand, mock is a certain technique of takedown trainings -- takedown techniques to -- I apologize.
Q. That's okay.
A. To withhold someone or put mechanical restraints on them, pull them to the ground, if necessary, and that's what comes to mind when it comes to -- when you just said the mock trainings.
Q. Okay. What about any training or potential emergencies where -- ones kind of like a walkthrough

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where you would pretend that something was going on, --
A. Yes.
Q. -- and -- okay. And what sort of --
A. I apologize for breaking in -- cutting in.
MS. PARKER: Objection. Calls for speculation, lacks foundation, and incomplete hypothetical.
BY MR. WYNDER:
Q. What sort of training like that did you go through?
A. Can you repeat the question, from the break-up?
Q. Sure. So I was wondering if you had gone through any training that was along the lines of a pretend situation, where it was a pretend emergency and staff would go through -- essentially they would go through it to make it seem real.
A. Yes.
Q. What sorts -- go ahead.
A. Yes. We would have certain tests or what you -- you know, walkthroughs, if someone would decide to rob the cage, rob any of the sportsbook or whatnot, there would be procedures of where officers would go to, where officers would be at, if they're in a certain area. If -- let's just say something happened at the

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sportsbook, you would have an officer that's outside come to a certain door, any officer that's inside go to a certain door, and pretty much observe and never make contact, and pretty much, if they're leaving and not causing harm to anyone, open the door for them and let them go.
Q. And were these -- did you training where you pretend something like this was going on or was this just training that you were told to do that you put into action sometimes?
A. It would be more of hypothetical trainings. It wasn't something that we would put -- I don't understand the question to the factor of how we would put it into motion, as in, like, maybe stage something, like what would you do when this incident, but my manager at the time that's now the director, he was really good on, you know, quizzing us and just, like, you know, walking up, okay -- you know, just popping up with, "Hey, if someone comes in and takes over the sportsbook right now, what are you going to do? What's the procedure?"
Q. And is this something they would do in formal trainings or, you know, he'd catch you on the floor and he'd ask you?
A. It would be --
MS. PARKER: Objection. Speculation.

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Incomplete hypothetical. Go ahead.
THE WITNESS: From the best of my knowledge, it would be both. We would have trainings, paperback novel trainings with the active shooting, or someone decided to take the money, and on the floor of walking around to -- for people to -- for officers to really get the feel of, you know, what you're really looking at, what areas you should really be in and not be in, and things you should possibly hide behind if necessary, and things that you definitely shouldn't, like slot machines.
BY MR. WYNDER:
Q. And when you say "hide behind," you mean hide behind to observe someone?
A. Yes. To observe, hide behind it, if there's gunfire going off or whatnot.
Q. Who was your supervisor that did that?
A. My supervisor that -- when I started, my supervisor was Robert Vogt.
Q. The paperbacks that you have to do, was that something that you had to do on your own time or was that on company time?
A. It was on company time.
Q. And did they give you a set amount of time to do those 30 or so chapters?

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publicly available?
A. Yes. I attempted to, to be honest.
Q. What do you mean?
A. Like on YouTube. I've looked up on YouTube to see if there was, you know, certain videos. You know, I mean, that was a really crazy time.
Q. And did you find any footage from Hooters that night that was on YouTube?
A. Yes.
Q. Was it surveillance footage from the facility or was it private recordings of video?
A. I apologize. It was not surveillance footage. It was just people with cell phones.
Q. Okay. Were you injured, yourself, that night?
A. No.
Q. Are you aware of any security personnel that were injured that night?
A. No.
Q. Were you or was anyone from security given any sort of commendations or awards or certificates or anything like that for their work that night?
A. The security shift themselves, no, but everyone that was on property that day definitely they got a -- it was like a plaque, in a way. It was like a little glass square thing that said Hooters Champion

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Workers, something to that term.
Q. Was that from Hooters -- form management, or was that from an outside source?
A. The gift itself, I'm sure, was from Hooters. It had "Hooters" sketched onto it.
Q. Are you aware of any outside organizations, entities that provided an award to any of the employees at Hooters for their performance that night?
A. From the best of my knowledge, no.
Q. Okay. Are you aware of any non-security employees that were injured that night?
A. No.
Q. So I'd like to ask you some questions about what you can remember from that night and from -- you know, from when it went from being a normal night to not being a normal night anymore. When did you start your shift that night?
A. I started shift at 8:00 o'clock.
Q. And when you started your shift, how do you start your shift? Do you go clock in somewhere? Do you have, like, a keycard you use, or how is it that you start your shift?
A. The start of the shift would be -- there was a employee entrance on the east side of the building. You would walk in. There's a timeclock a little bit after

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when you walk into this employee entrance, and from there, us security officers would walk over to the security office that's on the west side of the building to have a morning briefing of the occurrences that's happened on the property and around Vegas so we could better prepare ourselves for what our night might turn into.
Q. Okay. Did you hold a pre-shift meeting that night?
A. From my best of my knowledge, yes.
Q. At what point did it become apparent to you that it was different that night than other nights?
A. The moment a guest came in and stated to me that someone was shooting in our parking garage. They ran in through the parking garage entrance, and it's right near the sportsbook as well. It's the entrance for the sportsbook as well, and they ran in stating this to me, and that's when I realized the night was very different from the rest.
Q. When that guest said that to you, what did you do?
A. I actually ran out into the parking garage. When I got out both of the double doors of the parking garage, I witnessed many people hiding beneath the vehicles on the first floor of the parking garage. I

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headed over to the west side of the property, and I could hear the gunshots going off from the Mandalay Bay area, and I could see a couple hundred people, people carrying people, running my way, towards -- from where the entrance was of the incident. There was the back of Tropicana, and then the back of our property, so a lot of people were just running anywhere, and so a lot of people ran to the property. And from there, I had no idea what to do. I just pretty much told them all to just go into the casino.
Q. At any point from when that guest spoke to you did you radio security -- other people in security to let them know what you had been told?
A. Yes. I --
Q. Go ahead.
A. Sorry. I -- right when the guest came in through the sportsbook and told me that there was shooting going off in our parking garage, I radioed in before I even hit the parking garage doors, and I radioed in that a -- I didn't know the proper term for what was going on, so I said that there was an active 413. 413 is the term for person with a gun, so I said there's an active 413 in the parking garage.
Q. And so you radioed there's an active 413 in the garage, and you ran out into the parking garage. Did

EXHIBIT

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DISTRICT COURT
CLARK COUNTY, NEVADA

KARLA SONTOSKI, an individual;
MARK SONTOSKI, an individual,
Plaintiffs,
vs. CASE NO. A-19-802357-C
DEPT. NO. II

ASSOCIATED HOTELS, LLC, a foreign limited liability company d/b/a HOOTERS CASINO HOTEL; HILV HOLDINGS LLC, a Delaware limited liability company d/b/a HOOTERS CASINO HOTEL; TRINITY HOTEL ASSET MANAGEMENT, LLC, a foreign limited liability company d/b/a HOOTERS CASINO HOTEL; DOE EMPLOYEE, an individual; DOES 1 through 10, inclusive; ROE CORPORATIONS 11 through 20, inclusive; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive,

Defendants.

REMOTE DEPOSITION OF

JESSICA IRLAS

September 21, 2021
10:00 a.m.

Conducted via videoconference with

all participants appearing remotely

Gary F. Decoster, CCR No. 790

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Remote Deposition of
Jessica Irlas
September 21, 2021

(Prior to the commencement of the deposition, all of the parties present agreed to waive statements by the court reporter, pursuant to Rule 30(b)(4) of NRCP.)

* * *

THE COURT REPORTER: Pursuant to Rule 29 of the Nevada Rules of Civil Procedure, all parties stipulate and agree that the witness is identified as Jessica Irlas and the witness's testimony will be treated as if the witness is under oath. This deposition shall be used for all purposes like other depositions.

Counsel, can you please identify yourselves for the record, state whom you represent, name any other parties in attendance in your location, and state, on the record, that you agree to the stipulation.

MR. WYNDER: Edward Wynder for plaintiff. I agree to the stipulation. There's no one else at my location.

MR. SOMMERS: Christopher Sommers on behalf of defendant Hooters. There's no one else here at my

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know, the back of the house -- there was Detexes there as well -- but that was separate from -- we had the tower check and then you had the regular building check, which would be the outside and stuff like that. The supervisor usually walked the outside and then we would have a bike patrol as well.

Q. Prior to October 1, 2017, as part of your training as a security officer there, were you ever given any training or drills on what to do in an active shooter situation?

A. There was a module. You would read it, like I said, and take a test at the end.

Q. Aside from the module that you read and take a test on, were there ever any meetings, ever any live training or ever any drills that you did for active shooter situations?

A. No.

Q. Were there ever any drills or person-to-person training on what to do in case of an evacuation, for example?

A. No.

Q. Was there ever any training or drills or person-to-person education about crowd control or controlling large crowds?

A. No.

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Q. Going back to the night of October 1, 2017, when did you begin your shift that night?

A. Oh, goodness, I think our shift was 10:00 p.m. to 6:00 a.m. Yeah, I believe.

Q. Do you remember who was in charge of security that night?

A. Yes, our supervisor on duty would be Robert Vogt.

Q. That night were you -- or did you suffer any physical injury yourself?

A. I would have to say no. I was running the podium that night, so I was dispatching all the troops.

Q. That night, when did you first learn that it wasn't going to be a normal night?

A. When everything happened so fast. And it happened too fast; you didn't have time to react. You just had to do what you knew what was best.

Q. When -- or what is the first thing that you remember that you saw, that you heard, and you thought to yourself, something is not right?

A. Well, I was at the podium getting ready to move the officers around and I had a couple of people come up to the podium talking about they got gun wounds and that they were bleeding and they need help.

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From there, I radioed my supervisor and I told him he needed to come to the podium -- of course, we talked in codes -- and he was on his way.

Q. And those first people that talked to you, was it one, two, three, ten, how many people?

A. It was about four people. A guy was shot in his bottom and he was in agonizing pain, and he had, I believe, his daughter, a friend and a wife with him.

Q. And so they come to your podium. You radio Robert. What happens next?

A. It happened so fast. I just remember hearing a lot of shouting and screaming. The way the podium is set, if you look to the left, was the entry doors into Hooters, and it was just like a sea of people rushing into our casino looking for help.

Q. Prior to those people, the person who was shot in his bottom -- and when you say bottom, you mean his butt?

A. Correct.

Q. Right? Okay.

When that group of four people came to your podium, had you heard anything over the radio about anything else prior to that?

A. No.

Q. Did you hear over the radio -- and let me

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just ask some basic background questions. I think I know the answer, but I just need to make sure I understand the setup.

When you were working at the podium, you had access to a security radio, correct?

A. Correct.

Q. And that's a handheld radio that's used to communicate with all the security officers on staff; is that correct?

A. It's one that's in our ear and it's located on our -- right here on our shirt.

Q. Okay. So not handheld, but it's in your ear, and you press a button to talk, right?

A. Correct.

Q. And if somebody else on the radio talks, you hear it in your ear automatically?

A. Correct?

Q. And when that group of four people came up to you, prior to that you had not heard anything in your ear about -- from other security officers saying that there was large groups of people coming?

A. Correct.

Q. How did those four people get to your podium? Where did they come from, do you know?

A. I believe the outside. There's multiple

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entrance into the casino. From what I believe, it would be the garage entrance.
Q. At that point did you -- or let me ask this: So you radio Robert. What happens in between -- or does it -- let me ask it -- let me start over.
Does Robert eventually come to the podium?
A. Yes.
Q. About how long did it take him to get there, if you remember?
A. One or two minutes. He was on the floor patrolling.
Q. In those one or two minutes before Robert got there, anything else that you saw besides this group of people in front of you; anything else that you heard besides this group of people in front of you?
A. No. No, as soon as he got there, he told me to -- well, I knew that if we had somebody wounded, to call AMR. He got there. He said call AMR. I believe he was telling me that there was a shooter on property.
I called AMR. We set up triage -- well, I was on the phone with AMR setting up a triage, and that's when the group of people just swarmed right through the front entrance and coming through every possible way they can to be safe.

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Q. So when Robert first responded to the podium after your radio, he told you that he had heard that there was a shooter on property?
A. Correct.
Q. Okay. Was that something that he heard over the security radio or do you know how he heard that?
A. No, I don't know. No, we did not announce any of that over the radio. It was -- I was Control 100 -- which was 100 was the main boss -- I'm going to need you to 10-9 -- or come to the -- I don't remember all the codes anymore, but come to the podium, basically, in code; we have a wounded person, on code.
And then of course after I radioed him, I picked up the phone, called AMR, told them we had a wounded person and that they needed to come.
And that's when he came to the podium, within like a couple minutes of me calling him through the radio, and he was like, there's a couple people that are coming in that are wounded, have AMR set up triage, and that's when just the swarm of people came through.
Q. Did Robert ever tell you how he came to believe that there was a shooter on property before he ever talked to you?

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A. No. It happened so fast, no. Like I say, everything happened so fast, we didn't have time to discuss; we just had time to react.
Q. Did you ever hear any groups of people that came in -- before the big sea of people that you mentioned, were there any groups that were smaller that were running through and yelling --
A. Yes.
Q. -- that there was an active shooter?
A. Yes, there was a couple people saying there was an active shooter on the Strip.
Q. And when did that happen?
A. Right after the people approached the podium.
Q. Do you know what happened to the man that initially came to the podium?
A. No.
Q. Okay.
A. I don't know what happened to any of the people.
Q. Did he -- when Robert came over, he told you to call AMR. Did those people walk out to where AMR was going to meet them or did they stay there?
A. AMR -- sorry, go ahead. I'm sorry, go ahead.
Q. No, no, go ahead.
A. AMR got there fast. They just set up triage

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in the front, so basically any wounded people, all officers were on floor, and they were directing them to the triage spot.
Q. Did you receive -- prior to this incident, had you received any sort of medical training?
A. Yes, we did have CPR classes and that, you know. We did take CPR classes and, you know, how to properly, you know, bandage a wound and stuff like that. The medical classes prior, yes, I would have to say.
Q. And those were -- that was training that you received at Hooters?
A. Correct.
Q. Okay. Did you personally triage anyone or provide first aid to anyone that night?
A. Negative, no.
Q. That's because you were at the podium; is that right?
A. Correct. After I hung up the phone with AMR, I contacted the director of security.
Q. How did you -- who was the director of security?
A. At that time it was Gil Chavez.
Q. How did you get ahold of Gil?
A. Over the phone that was provided at the

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podium.
Q. What did you -- what was your conversation with Gil like?
A. When he answered, you know, of course, I identified. I was like, hey, Gil, it's Jessica. We have an active shooter on the Strip. We have tons of people that are injured. He was supposed to be coming to the casino, but that night he never made it.
Q. Did he give you any instructions during that phone call on what to do?
A. Yes.
Q. What did he say?
A. He basically advised me not to panic, to remain calm and to basically make sure all the officers do what we were trained to do, which was to, you know, provide security, protection.
Q. Did he say anything to you about locking down the property or anything to do to protect the guests that were already on-site?
A. No. Basically when the swarm of people came in, the pit bosses closed down the table games.
We had an officer in the back with the cage people, which they basically locked up everything at the window and backed up to the wall with an officer present.

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Of course, we had Sierra, who watched everything, which is what we call the eye in the sky, which is in a separate room on property.
Q. So you had already -- or employees had already locked up the money?
A. Correct.
Q. But was there anything that Gil said to do to protect the guests that were in the hotel already?
A. Not that I can remember, no.
Q. Did he tell you anything about, you know, make sure you allow anyone and everyone off the street to come in if they need to, anything like that?
A. No, we were -- I believe we were the only casino that didn't lock our doors. I don't think we have a lock to the front doors because they're all glass.
Q. So the front doors couldn't be locked even if you wanted to lock them; is that right?
A. Not that I remember they could have, no.
Q. So did you have an understanding of what Gil meant when he said do what -- you know, make sure the officers do what they're trained to do?
I think you said to provide security. Was there any training that they provided to you before this that prepared you for this night?

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A. Outside of the modules we did over book, I can't say, no. I mean, I know we did receive the first aid and CPR; but no, I would have to say no.
Q. And the training you did receive for medical training -- let me start over.
The medical training you did receive, did they train you or the other security officers that you're aware of to triage wounds when they come in, to check someone's wounds and, you know, send them here or send them there?
A. I can't remember if they did train us properly. I do remember working on the dummy that they provided for CPR training. To train an infection or bullet wound, I couldn't say I had the proper training at that time.
Q. So on that night, as the night went on, was there anyone who was standing out as leading the situation or was it kind of just a little bit chaotic?
A. Well, we had Robert, who was the supervisor, who was giving directions and orders, you know, over the radio as well as I was.
Basically, we were basically having all officers that wasn't with the cage people was on the floor helping the wounded people get to the triage.
Q. And the officers that were with the cage

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people, do you remember who they were?
A. I believe it was Brian Luna. He stood in the back with the cage people to watch over the money.
Q. Was it just Brian?
A. He might have switched out with Ryan Sullivan, O'Sullivan, but that's kind of a little blur, to be honest with you.
Q. Were there any other security officers that were there tasked specifically with protecting the assets of the hotel other than Brian Luna?
A. Not that I know of, no. I mean, it was basically security -- you know, we always walk people to and from when it has to do with money, so I would have to say just security.
Q. Do you remember whether there was a PA system at the hotel at that time?
A. I don't recall.
Q. Do you remember -- or let me ask it this way: Did you personally -- well, I guess what I'm trying to find out is how instructions on what to do were passed on from hotel leadership to the guests of the hotel, to the people that were there.
A. I'm sorry, can you repeat that?
Q. Sure, sure. Was there any attempt by hotel leadership, security leadership, that you saw to tell

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the guests what was going on, to tell people on property what was going on and what they needed to do to keep themselves safe?
A. I would have to say no. It happened so fast, we were just trying to keep everybody safe.
Q. The other entrance doors to the casino besides the front entrance doors, do you know if those other doors can be locked?
A. I believe maybe the entrance from the garage, not that I ever recall it ever being locked. The pool entrance did not have a lock. The entrance to go in and out of the pool, there was no lock on those doors either; just the gate surrounding the pool had locks on the outside.
Q. What about the doors that go to the garage?
A. I believe that had a lock.
Q. And while you worked there, did you ever have a key where you could go over and lock that door?
A. No, the only person that had access to the keys would have been the supervisor, manager and/or the director.
Q. So that night it could have been possibly Robert; is that correct?
A. Correct.
Q. Okay. The triage and medical care that was

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provided, was that all done outside of the building itself?
A. Correct, in the front by valet.
Q. So as the night went on, if someone came to you and said I have this injury, you would direct them out to the valet area; is that correct?
A. Right, we had multiple security officers on the casino floor helping them get to where they have to go.
Q. During that night, are you aware of anything that hotel leadership, hotel security did to tell the employees what to do to keep themselves safe?
A. No, I would have to say no.
Q. Did anyone from security ever get onto a bullhorn or a loudspeaker and -- well, let me take a step back.
Was there anything like a bullhorn or a loudspeaker that security could use to let large groups of people know information all at once?
A. I would say no, not at that time. I know that they did have the news going on the TVs above, which showed an active shooter, but nothing like that, no.
Q. Did you at any point during the night dispatch security personnel to look for an active

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shooter on property?
A. No. As soon as the people came in, rushing in, I would say within five, ten minutes we had SWAT coming in.
Q. Are you aware of any training that was ever given to the nonsecurity employees of the hotel on what to do in emergency situations?
A. Not that I can recall, no, sir, but then again, every department is different, so I'm not sure what they train in each department.
Q. Do you remember the security personnel that were working that night? I think you mentioned Robert; he was working that night, correct?
A. Correct.
Q. And you mentioned Brian Luna. Do you remember any other security employees that were working that night besides those two and yourself?
A. I do. I do.
Q. Who else -- who else worked that night?
A. Steven Perez. It was Brian, Steven. There was a guy name Furok -- he worked that night -- and Nick.
Q. How do you spell Furok's name?
A. F-U-R-O-K-E or F-U-R-O-K, something like that.

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Q. And what was Furok's last name, do you remember?
A. I think it was Musha, M-U-S-H-A. Don't quote me; it's been a while.
Q. Okay. And what about Nick; what was Nick's last name?
A. Oh, goodness, what is Nick's last name? I think, it was Cantell or Contell -- it's C-A-N-T something. I can't remember correct all the time.
Q. Was he security or surveillance?
A. No, he's security.
Q. Do you remember who was working surveillance that night?
A. No, I don't know. When we talk to anybody in surveillance, we always call them Sierra, and I really didn't know anybody back there.
I do believe there is a picture of all the officers that were on duty that night; we took it maybe a week after the shooting.
Q. What was that picture taken for?
A. It was basically to honor us for helping all the wounded people for the October 1st shooting.
Q. Did you or did anyone from security or did the department receive any sort of award or recognition?

EXHIBIT

6

DISTRICT COURT
CLARK COUNTY, NEVADA

KARLA SONTOSKI, an individual; MARK SANTOSKI, an individual,
Plaintiffs,
vs.
No. A-19-802357-C
Dept No.: II
ASSOCIATED HOTELS, LLC, a foreign limited liability company d/b/a HOOTERS CASINO HOTEL; HILV HOLDINGS, LLC, a Delaware limited liability company d/b/a HOOTERS CASINO HOTEL; TRINITY HOTEL ASSET MANAGEMENT, LLC., a foreign limited liability company d/b/a HOOTERS CASINO HOTEL; DOE EMPLOYEE, an individual; DOES I through 10, inclusive; ROE CORPORATIONS 11 through 20 inclusive; and ABC LIMITED LIABILITY COMPANIES 21 through 30, inclusive,
Defendants.

DEPOSITION OF STEVEN PEREZ
Taken at the instance of the Plaintiffs.

Wednesday, October 6, 2021
10:00 a.m.
Zoom Conference

BE IT REMEMBERED that the Zoom deposition of STEVEN PEREZ was taken in behalf of the Plaintiffs pursuant to the Washington Rules of Civil Procedure before Millie Martin, Certified Shorthand Reporter for Washington, on Monday, the 6th day of October, 2021, commencing at the hour of 10:00 a.m.

APPEARANCES:

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I N D E X

SONTOSKI vs HOOTERS CASINO HOTEL; et al
Case No. A-19-802357-C; Dept No. II
Wednesday, October 6, 2021

T E S T I M O N Y

STEVEN PEREZ PAGE NO.
Direct Examination by Mr. Wynder 4

PRODUCTION REQUESTS:
(No production requests.)

E X H I B I T S
(No exhibits marked for identification.)

STEVEN PEREZ, called as a witness by the Plaintiff, being first duly sworn to tell the truth, the whole truth and nothing by the truth, was examined

DIRECT EXAMINATION

BY MR. WYNDER:

Q Hi, sir. My name is Edward Wynder, and I represent Karla Sontoski who is the plaintiff in this case, and she is suing Hooters or OYO Hotel Casino for an injury that she alleges happened on October 1, 2017.

Can you please state your full name for the record?

A Steven Eric Perez.

Q Mr. Perez, I understand you're in Alaska right now?

A No, I'm in Oregon.

Q Oregon, excuse me.

A Yes, sir.

Q Do you live in Oregon full time now?

A Yes, I do.

Q When did you leave Las Vegas and head out to Oregon?

A Last October.

Q So pandemic October 2020?

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things.
Q Was that something that would happen now and then? Was it for a day? Was it for like two weeks?
A My first few weeks until I knew how the game was played.
Q So you were shadowing a security officer for like three weeks when you first started?
A I would say that, sir.
Q Do you remember who you were shadowing?
A Farouk, another officer there. It wasn't like I was with him every day. But I can remember him teaching me in the beginning. I don't think it's like a -- how police do it where you go on rides with them. You change your schedule every single day when you go out.
Q So you were working on your own in those initial three weeks, but occasionally you would be with Farouk? Is that --
A When a call was made for an unruly guest or something like that, then more officers would come. Until then, you're just patrolling by yourself looking for people who are doing things that they shouldn't. When you encounter one, you call for back up. That person comes in. The person who knows more would be the one to engage. That's how I would be taught.

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MS. PARKER: Just an objection. The question misstates testimony, and to form.
Q Did they provide you any training? You said, you know, you're patrolling looking for people who are doing things they're not supposed to be. Was there any training they provided to you as to what to look for?
A Yes, through walks with the different bosses, my shift bosses. Yeah, they explained what I would be looking for in day-to-day walks.
Q What sorts of things are those?
A People bringing in beer from outside; what to look for from prostitutes trying to pick up on men on the floor; bags on the grounds; people sleeping outside; drug sales, things like that.
Q Aside from that initial training and the modules, was there any training that you received during your time at Hooters?
A Other than that specific job? No, that's it.
MS. PARKER: Object as to form; misstates testimony. Go ahead.
Q Aside from the training that you've discussed, was there any other training that you received in your time at Hooters?
A No.
Q Were you ever given any training in crowd control measures?
A No.
Q Were you ever given any training on evacuation procedures?
A No -- well, fire evacuation. There was a plaque on the board where you would tell people that if there was a fire, you would get them out to these specific areas.
Q Was there any training beyond looking at that placard that you just mentioned that you were provided for evacuation?
A We never read any drills or anything; no, negative.
Q I'm sorry, go ahead.
A Negative.
Q Were you given any training or drills for sheltering in place?
A No.
Q Do you understand what that means?
A Not really. But if I haven't heard it, I'm sure there's training in it.
Q Have you ever heard of -- what about lockdowns? Let's not talk about lockdowns as we use them in the pandemic sense, but the lockdown of a place: no one in and no one out. Is that something

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you're familiar with?
A No.
MS. PARKER: Object as to form; vague as to lockdown to the extent this involved a cherished event. You can go ahead and answer, sir.
A We were never taught in lockdowns and I never saw one when I was there, even on that day.
Q When I use the word "lockdown," if I mentioned no one in and no one out, do you understand what I'm talking about?
A Yes. Yeah. As far as I can see, there could not be lockdowns. People are free to go. Even when they were talking about shooting outside, we were recommending they stay inside. Lockdown of the casino: once the floor was interrupted, the lockdown to the cash room and lockdown to all the machines with chips on them or all the boards with chips on them, that is our initial procedure during something like that event.
Q Were you given any training on how to lock down the building itself so that you could prevent anyone from leaving or prevent anyone from entering?
A Negative.
Q After you left Hooters, where did you go work next?
A After I left Hooters, I -- my wife got a job

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in Oregon and I came here. And then I went to a hemp tribe facility when I first got here for the first few months.
Q So at some point thereafter you moved to Oregon. No other jobs in Vegas after Hooters?
A Negative -- actually you know what? I'm sorry. I worked at the Hilton until I moved down here. Sorry about that.
Q That's okay.
A And that was loss prevention.
Q And then you left Hilton to go to Oregon?
A Yes, sir.
Q So one of the things that you mentioned earlier is that sometimes after incidents you would talk with your supervisors what went wrong and what went right. After October 1, 2017 and the events of that night, was there ever any discussions about what went wrong and what went right?
A It was people just -- actually I never heard anything that was bad. It was pretty much out of everybody's idea of what their job was on that night. People were just happy we got through it and what we did with people. We heard that everybody was pleased with us.
Q So as far as you can remember, was there ever

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any -- let me take a step back. Are you familiar with the term "debrief"?
A Yes, sir.
Q What do you understand that to mean?
A Debrief, a breakdown of the mission that you will get completed; discussing what went wrong and what went right.
Q Are you -- did you participate in any sort of debrief with regards to the October 1, 2017?
A On an official capacity, no. There was no formal event wrong of what went on as far as I know.
Q Are you aware of any sort of informal debrief that you went through with your supervisor and management?
A Negative. Anything like that would be just talking about what happened with other men on my crew; men and women.
Q Do you remember who else was working with you that night?
A Jessica, Farouk. I don't remember everybody's name. I'm sorry. That's as far as I can go.
Q What time did you end up leaving that night?
A I left in the morning. It was hours after. The Strip was closed down with no cars getting in and

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out, so I stayed there to work. It was maybe around 10:00, 11:00 a.m. I knew I had been there for 13 hours.
Q I understand that there were -- there may have been some employees who had wanted to leave but weren't allowed to. Is that your recollection?
A I know nothing about this.
MS. PARKER: Just object as to form of the question.
Q Are you aware of -- let me restart. Are you aware if there were any security employees that had wanted to or attempted to leave but weren't allowed to?
A I heard nothing of any of my squad trying to leave. I was told not to -- we just knew we couldn't keep anybody from leaving because we're not law enforcement. We recommended people stay to be safe until we got clearance from police.
Q Are you aware of any sort of recognition or awards that were provided to security or to the staff of Hooters as a result of their actions that night?
MS. PARKER: Object as to form. Vague as to recognition of awards. Go ahead, sir.
A I believe -- well, they gave everybody a little gold plaque -- sorry, a little glass thing saying that I'm a champion of Hooters, and they had a

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dinner with the bosses and owner of the casino a few weeks later.
Q Any other awards or recognition that you're aware of aside of what you just mentioned?
MS. PARKER: Same objection as to form; vague and overbroad as to recognition.
Q Sorry, sir, I didn't hear your answer.
A Nothing other than getting back to work.
Q So I would like to ask you some questions about that night and from what you can remember. And as we go through, if you need to take a break, just let me know. I understand this can be difficult to talk about for some people; maybe not for you, but for some people it may be.
Where were you in the casino when you first realized that something was wrong?
A I believe I was patrolling outside around the western parking lot. My memory is a little shaky there. I do remember when I was -- I heard upon the radio that there was a mass of people that were exiting the casino. Under those circumstances, we're taught to make our way to the main floor to protect the main gambling and the cage.
When people started running into the casino, I was in the southern end of the casino moving my way

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north to the main floor. We had a brief call of masses of people that were running our way, and I don't really know exactly where I was, what I was doing. But I know I started from the south of the casino and made my way to the north.

Q From the time that that first call came in, the first call that you can remember, how many minutes did you have before the people started to run?

A Not long at all. I would say two minutes.

Q And at that point you had been able to go from wherever you were to the casino floor to protect the tables and the cages; is that correct?

A When I got to the main casino floor, there were already people running in -- a stampede.

Q When you saw that happening, what did you do?

A I moved to the front and looked for my boss.

Q Robert?

A Yes.

Q So you started moving up front. What happened next?

A We saw people stampeding, falling all over each other in the front door screaming "They're killing us." People were running all over the place. One gentleman broke down a door into a side room of the casino of the northeast, like a closed down restaurant.

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At that time I was standing next to Voge; was moving forward into the front of the casino outside the doors. He had signaled for me to take care of that when I saw the guy breaking down the door. I followed him over there and tried to talk with those people.

Q You said you were standing next to who?

A Robert Voge at this time.

Q We're talking over each other. I knew it was going to happen. The court reporter knows it's going to happen. It's okay. I think a couple of those were my fault. So let's try to give ourselves a little bit of a break there in time.

So you were standing next to Voge, and he said to respond to the guy that broke into the Cole's Restaurant?

A Yes, sir.

Q What did Mr. Voge do at that point?

A I saw him moving north towards the front gate. I didn't see him again for hours.

Q What happened when you -- let me start over. Mr. Voge told you to handle the guy that broke into the Cole's restaurant. What happened next?

A When I went to talk to him, he was breaking out doors. I was initially coming to him about, "Hey, man, why are you breaking our stuff?" I saw that he

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was completely terrified, throwing down cables, making a barricade. At that time I looked at him and saw that he wasn't all there. I disengaged and moved around to see all that was going on and started telling people to move to the back of the casino.

Q So you walked into that restaurant and realized he was how he was and just walked out?

A Yes. I wasn't going to get into an altercation.

Q And then you said you started telling people to move to the back of the casino?

A Yes. I was right by the main doors there. So instead of people bottling up, come and get to the back of the casino. You will be safe there.

Q How was it that you were communicating to people? Was it just one-on-one?

A Just yelling and pointing my finger, "Go to the back."

Q At this point you were up by the front -- at this point you were up by the main doors?

A Yes, sir.

Q Were there any other security officers up at the main doors with you?

A I saw security through the night, I'm sure, with how hectic it was. I can't remember any names

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specific on these things. At that point it was too many people coming in; too much chaos for me to really understand anything. I heard certain calls on the radio: "Get them to the back, pull area," things like this.

Q Other than yelling, was there any other way that security had to tell people in the casino where to go, what to do?

A There was not an intercom going on at that time. I mean that would be the other way to go. No. We were just directing them in our yellow and black shirts.

Q Do you know if there was an intercom available or a PA?

A I do. During fire watch checks, there was one on the outside of the building in the fire room that you can speak to the whole building.

Q During that night did anyone utilize that intercom?

A I don't believe so. Possibly later on, but not in the beginning. I know there was somebody sitting in that office all night long as for procedure: the outside man, the bike officer, his job is to sit in there during a crisis like that.

Q And that was the fire room? Is that what you

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call it?
A Yes.
Q Do you remember who the officer was that was in that room all night?
A I don't know his last name. It was Nicholas.
Q What about bull horns? Anything like that that was available?
A I don't believe so.
Q When you first heard the call over the radio that people were approaching, do you remember who was speaking on the radio at that time?
A I do not remember the gentleman's name.
Q When you saw people running through the casino, you used the word "stampede." Did you see people getting knocked over?
MS. PARKER: Objection; misstates testimony; argumentative. Go ahead.
A I did not see people getting knocked over. At one instance I prevented an elderly man with his wife in a wheelchair from getting stampeded in front of the doors. So I'm sure it could have happened.
Q How were you able to do that?
A I put my body in front of them and started screaming at the crowd: "Watch out, you're going kill this person."

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Q Was there anything in the training that you received for this at Hooters that prepared you for this night?
MS. PARKER: Objection as to form; vague; overbroad. You can go ahead and answer.
A Not from Hooters. I would think the Army would have trained me for what happened that night.
Q Looking back on with the benefit of hindsight, was there anything that you think you or the staff could have done to control the crowds?
MS. PARKER: Object as to form to the extent it calls for information relative to the subsequent remedial measure. Go ahead, sir, you can answer -- and to the extent it calls for an expert opinion. Go ahead and you can answer, sir.
A I think we did the best we could with what we had.
Q Was there ever any talk during or after this incident about locking down the casino to physically prevent people from coming?
A No.
Q Do you know whether the doors that go in and out of the casino have locks on them?
A They do not.
Q So the main doors go from the casino floor

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out? There's literally no door locks on them?
A No.
Q Let me ask it another way because I made it a double negative. Are there door locks on the main doors to the casino?
A I was not aware of any way to secure those front doors.
Q Were you ever given any sort of training how to secure those front doors and prevent people from going in and coming out?
A No.
Q Were you physically injured that night?
A Blisters on my feet. That's all.
Q Was that from just being on your feet for so long?
A From me doing my job the whole night for so long, yeah.
Q Are you aware of any employees that were injured that night?
A None.
Q Are you aware of any guests at the hotel that were injured at the hotel itself, not including people that were injured offsite?
A I do not recall anybody hurt on the Hooters premises. I can't think of any incidents, not that we

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were taking any reports that night, I don't think. Nothing was brought to me.
Q In this time period, the September/October time period, were you talking reports yourself?
A Yes. Yes, incident reports on anything that happened; the officer who was the primary on any encounter whether it would be an unruly person; if there was an incident report, somebody hurt themselves, things like this. First on scene could do the report.
Q In the days after this incident, did you take any reports from employees or guests who were injured that night?
A I did not.
Q Are you aware of anyone else that took reports from employees or guests that were injured that night?
A I've heard nothing.
Q Were you ever told by casino management, your supervisors, your higher-ups to not speak to the press?
A No.
Q Were you ever asked to sign a document, including when you were hired, that you would not speak to the press?
A I don't believe so.
Q Afterwards, did you hear any criticisms from

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happened that night at the casino?
A Lots: doors kicked in; people were trying to hide in the ceiling; falling down from there; chairs, all of the crowds. People were just throwing things. It was a mad house.
Q "Hiding in the ceiling," What do you mean by that?
A Crawling up into the ceiling tiles; pushing them out of the way; getting on top of stuff. We searched the casino for people. They were scared. Hiding anywhere they could.
Q People were falling through the ceiling? They got up there and then fell down?
A They just destroyed it to get to the cooler that you can get on top of behind the ceiling. I think there was a kicked-in door or two in the supply closet.
Q I believe -- and correct me if I'm wrong -- towards the beginning of your deposition today, you had said that when there was a radio call that came in about people coming to the casino, you said you had been trained in that situation to go to the casino floor to protect the tables and the cage. Am I remembering correctly?
A That is correct.
Q What is your understanding of why you were

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trained to go protect the casino floor and cage?
A Money is all important.
Q What do you mean by that?
A The cage holds all the money that the casino makes. Have to make sure that nobody takes that. And the chips on the floor would -- the money that people are making, the money that the casino is making is all there on the floor right there. Protect the money is the key thing.
Q When you say "key thing," that means the most important thing, right?
A The most important thing of my job is all about money. Even with incidents that I fill out is to make sure it's been -- stopped the casino from being sued. Is there a wet floor over here? We make sure it's dry and wiped up so people can't slip and fall and sue the casino.
Q And that emphasis on protecting the casino's money being key, is that what you were taught in your training?
A I think that's just me observing it; observing the job and understanding why we're doing things, yeah.
Q Were there people assigned to protect the money that night from --

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A Once there was a -- the man who was assigned to patrol the front of the floor at that time I believe was Farouk, and he went into the front cage once that place became locked down.
Q And is it your understanding that he stayed in that locked-down cage for several hours?
A For hours. I do know that. We ended up changing him out later on. I don't remember with who.
Q So there was Farouk. There was the bike officer who you think might have been Nicholas?
A It was definitely Nicholas and the bike officer.
Q So there were those two security officers who were locked in a room essentially. Were there any other security officers that were locked away or put into a specific place to protect?
A I think once those two locations were secure, everybody else was on foot patrolling.
Q Do you know -- let me take a step back. From what I understood from your testimony earlier, and correct me if I'm wrong, you were told to direct people back to the pool area; is that correct?
A That is correct.
Q What capacity does the pool area have to hold people? How many people could you get back there and

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safely keep back there?
A Quite a lot. It's a big party pool, cabanas. Quite a few people were back there.
Q And would you be able to estimate how many people were back there? And I won't hold you to an exact number. But would you estimate that it was 50 people? That it was more than 500 people? That it was more than a thousand people?
A I would say 50 - 60 people in the pool area. We were not restricting them to that area though. People were all over the main casino. I don't have the right to force people anywhere. We just trying to make sure people felt like they were safe.
Q Was there ever any thought to get people into the conference area?
A Conference area? I did not hear about anybody taking them up there, but I'm sure there were people up there.
Q Would the conference area have been a realistic place to take people and keep them safe?
MS. PARKER: Object as to vague; calls for an expert opinion.
A I think there were chairs and stuff stacked back there. I don't think that would have been a great place to place people, no.