

2019 WL 5960376 (Cal.Super.) (Trial Pleading)

Superior Court of California.

Unlimited Jurisdiction

Santa Clara County

**Wendy TOWNER**; Francisco Aguilera; Nick McFarland; Justin Bates; and Brynn Ota-Matthews, Plaintiffs,

v.

**GILROY GARLIC FESTIVAL** ASSOCIATION, INC., a California Nonprofit Corporation; First Alarm Security & Patrol, Inc., a California Corporation; and Does 1 to 100, inclusive, Defendants.

No. 19CV358256.  
November 12, 2019.

**Complaint; (1st) Negligence; (2nd) Premises Liability**

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Amount Demanded Exceeds \$25,000

COMES NOW, Plaintiffs WENDY TOWNER, FRANCISCO AGUILERA, NICK MCFARLAND, JUSTIN BATES, and BRYNN OTA-MATTHEWS (“Plaintiffs”) who allege as follows:

**I.**

**INTRODUCTION**

1. The 2019 **Gilroy Garlic Festival** was grossly deficient in the needed and required security measures and this has tragically resulted in three (3) deaths and at least twelve (12) persons being injured. Those responsible for the 2019 **Gilroy Garlic Festival** advertised, represented and promised to the public at large, including Plaintiffs, that the 2019 **Gilroy Garlic Festival** would be “*a safe, family-friendly atmosphere* for all Festival patrons and volunteers” and that “*weapons of any kind*” would be prohibited. Those responsible for the 2019 **Gilroy Garlic Festival** failed to live up to their promises to provide a “safe, family-friendly atmosphere” that would be without “weapons of any kind” and they failed to adhere to the most basic security requirements of having a secure perimeter that was properly monitored.

2. The Shooter Santino William Legan (hereinafter “the Shooter”) was able to easily enter the **Gilroy Garlic Festival** with his AK-47 assault rifle, equipped with a large, seventy-five (75) round drum style magazine, and at least four (4) high capacity forty (40) round magazines, *completely undetected* by Defendants until after the Shooter began shooting and he had already begun to inflict harm on Plaintiffs. Defendants’ security failures allowed this to occur because the perimeter only had an inadequate, flimsy, low-height, unsupported chain link fence that was simple to breach, located inappropriately where the Shooter’s presence and entrance would be concealed by a wooded area, and this obvious highly vulnerable, likely unauthorized entrance point, was not properly monitored. Further, Defendants made this extremely vulnerable security area of their creation even worse by allowing cars, box trucks, and/or other obstructions to be placed near the border of the flimsy, low-height, unsupported chain

link perimeter fence, including where the Shooter entered that further obstructed necessary clear lines of sight to the perimeter fence and provided additional cover for individuals such as the Shooter to enter the **Gilroy Garlic Festival** and commit violent criminal acts. Among other things, a proper secure perimeter fence, with clear sight lines that was appropriately monitored would have prevented the Shooter from entering and this tragedy would not have occurred. Plaintiffs are informed and believe and based thereon allege that such proper perimeter security could have been done for minimal additional cost.

3. Plaintiff WENDY TOWNER was one of the first victims shot by the gunman. She selflessly and heroically attempted to divert the Shooter's attention when she realized his rifle was trained on the many children congregated by the inflatable slide at the corner of the festival grounds. Plaintiff FRANCISCO AGUILERA was standing near WENDY TOWNER when the gunman fired in their direction. He suffered severe gunshot wounds and his femoral artery was perforated by the Shooter's bullets. Plaintiff BRYNN OTA-MATTHEWS was by the inflatable slide, just yards away when she first heard the shots ring out. As she ran away from the Shooter, BRYNN OTA-MATTHEWS felt the burning sensation of a bullet as it tore into her back. To this day, the bullet is lodged behind BRYNN OTA-MATTHEWS' ribcage, in close proximity to her liver. Plaintiffs NICK MCFARLAND and JUSTIN BATES were by the vendor booths at the time the shooting began. They both began running upon realizing the horror of what was transpiring. As he ran, JUSTIN BATES felt a bullet strike the back of his leg. Despite knowing he had been shot, JUSTIN BATES turned back in order to carry his terrified friend to safety. NICK MCFARLAND also sustained bullet wounds as he ran from the shooter.

4. Those responsible for the 2019 **Gilroy Garlic Festival** failed its patrons and participants by not exercising their required duty of care to protect them from the foreseeable risks of mass shootings at large public events. This failure to have a reasonably safe and secure perimeter that was properly monitored caused, created, and allowed to exist, a dangerous, hazardous and unsafe condition which created an unreasonable and substantial risk of injury to the patrons and participants at the 2019 **Gilroy Garlic Festival** –i.e. that due to Defendants' security failures a mass Shooter gained easy entrance to the event with military style weaponry and carried out a mass shooting, that appropriate reasonable security would have prevented.

5. This lawsuit is about the tragic results that did and will needlessly continue to occur if event organizers (and those responsible for the event) do not take appropriate and reasonable security measures to make the event reasonably safe when putting on large public events. For example, the security we now see at professional sporting events, music concerts, and nearly every other organized large scale public event that occurs daily has been stepped up to reflect our current threats, including from a mass shooting, by utilizing secure perimeters that are properly monitored, using metal detectors, and other appropriate security. We are not seeing criminals bringing in military-style weapons with large stockpiles of ammunition to these events as their security measures have not allowed this. A reasonably safe event requires vigilant efforts to protect attendees *before* something happens. Unfortunately, those responsible for the 2019 **Gilroy Garlic Festival** had grossly inadequate security and they failed Plaintiffs in their duty and promises to provide a reasonably safe event free of weapons resulting in the tragic loss of life and injuries. This horrific incident was foreseeable, facilitated by, and made possible by the negligent acts of the Defendants. It should not, could not, and would not have occurred but for the Defendants' repeated acts and omissions as set forth herein.

## II.

### **GENERAL ALLEGATIONS**

#### **A. Parties:**

6. Plaintiffs WENDY TOWNER, FRANCISCO AGUILERA, NICK MCFARLAND, I JUSTIN BATES, and BRYNN OTA-MATTHEWS (hereinafter "Plaintiffs") are individuals over the age of majority.

7. Plaintiffs are informed and believe and based thereon allege that defendant **GILROY GARLIC FESTIVAL** ASSOCIATION, INC. is a California nonprofit corporation doing business in Santa Clara County, California. Defendant **GILROY GARLIC FESTIVAL** ASSOCIATION, INC. had responsibility for hosting, co-hosting, organizing, managing, sponsoring, and/or running the **Gilroy Garlic Festival** on July 28, 2019 when the subject tragic mass shooting herein occurred.

8. Plaintiffs are informed and believe and based thereon allege that defendant FIRST ALARM SECURITY & PATROL, INC. (hereinafter “FIRST ALARM”) is, and was at all times relevant herein, a California corporation doing business in Santa Clara County, California.

9. Plaintiffs are informed and believe and based thereon allege the following: That defendant FIRST ALARM also does business under the name of First Security, a business organization of form unknown; That defendant FIRST ALARM also does business under the name of First Security Services, a business entity of form unknown; That Defendant FIRST ALARM is a company that offers private security guards, and security related services throughout the Bay Area and surrounding counties; That defendant FIRST ALARM was contracted to provide private security related services for the **Gilroy Garlic Festival** including on July 28, 2019 when the subject tragic mass shooting herein occurred

10. The true names and capacities of defendants sued as defendant DOES 1-100, inclusive, are unknown to Plaintiffs who therefore sue these defendants by such fictitious names. Plaintiffs will amend this Complaint to allege their true names and capacities when ascertained. Plaintiffs are informed and believe, and upon such information and belief allege that each of the fictitiously named defendants is negligently, recklessly, and/or intentionally responsible in some manner for plaintiffs' injuries and damages as alleged herein.

11. Plaintiffs are informed and believe and based thereon allege that defendants, in performing the actions alleged herein, acted through their agents and employees who undertook the actions alleged herein, and at the time of undertaking such actions were acting within the course and scope of their employment, agency, and/or authority from defendants.

12. Plaintiffs are informed and believe and based thereon allege that each of the defendants herein, whether named or named fictitiously, was the agent, servant, employee, co-venturer, partner, or in some manner the agent and/or principal of each of the other defendants, and was acting within the course and scope of said agency, representation or employment in doing or failing to do the acts alleged herein. The acts and conduct alleged herein of each such defendant were known to, and authorized and ratified by, each and every remaining defendant. At all times relevant hereto, defendants, and each of them, held a special relationship with plaintiffs, and with each other, non-delegable in nature, and subjected plaintiffs to a peculiar and high risk of harm for a breach thereof.

13. Plaintiffs are informed and believe and based thereon allege that the corporate defendants are the alter egos of its members, shareholders, managers, officers, partners, directors, agents, and/or employees who are named herein either by name or fictitiously, and any separateness between any defendant named herein has ceased to exist. Plaintiffs are informed and believe that the corporate defendants had such a unity or interest with its members, shareholders, managers, officers, partners, directors, agents, and/or employees who are named herein either by name or fictitiously, that said corporations were the alter egos of the individual defendants and that the failure to recognize such alter ego relationship would lead to an inequitable result.

14. This action is filed in this County because the subject incident and Plaintiffs' injuries occurred in this County and Defendants were doing business in this County.

### III.

## FIRST CAUSE OF ACTION

### NEGLIGENCE

As a First, Separate Distinct Cause of Action, for plaintiffs as against all Defendants, including defendants Does 1 to 100, inclusive, Plaintiffs allege as follows:

15. Plaintiffs reallege and incorporate herein by this reference, each and every allegation contained in Paragraphs 1 through 14, inclusive, of the foregoing Introduction and General Allegations and make them a part of the instant Cause of Action as though fully set forth.

#### *A. Background:*

16. Between July 26 and July 28, 2019, the **Gilroy Garlic Festival** was held in Gilroy, California. The **Gilroy Garlic Festival** is a three-day food festival held annually since 1979 at Christmas Hill Park in Gilroy, California. The **Gilroy Garlic Festival** draws roughly one-hundred thousand (100,000) visitors and attendees to the City of Gilroy each year.

17. The **Gilroy Garlic Festival** was open to the public, upon payment of an admission charge, from July 26 through July 28, 2019.

18. Plaintiffs were patrons, attendees, and/or vendors at the 2019 **Gilroy Garlic Festival** on July 28, 2019.

19. Plaintiffs are informed and believe and based thereon allege the following background information: The Uvas Creek is a twenty-nine-mile-long southward flowing stream; That the creek runs adjacent to the corner of Uvas Creek Drive and Laurel Drive and continues along the Christmas Hill Park in Gilroy, where the **Gilroy Garlic Festival** was held every year since 1979; That the Uvas Creek Park Reserve abuts Christmas Hill Park; That the Uvas Creek Park Reserve has a number of public pathways and trails allowing individuals access to Christmas Hill Park; That there is considerable tree cover and thick foliage in the Uvas Creek Park Reserve directly abutting the border of the **Gilroy Garlic Festival**; That Uvas Creek did not contain substantial flowing water on Sunday July 28, 2019; and, as such, the creek bed and adjacent levy path provided a covered method of ingress by which the Shooter could approach the **Gilroy Garlic Festival** with considerable fire power.

20. Plaintiffs are informed and believe and based thereon allege: That the City of Gilroy owns, controls, and operates Christmas Hill Park; That defendant **GILROY GARLIC FESTIVAL** ASSOCIATION, INC. obtained a permit from the City of Gilroy for the use of Christmas Hill Park for a period encompassing July 26, 2019 through July 28, 2019; On July 28, 2019 the **Gilroy Garlic Festival** was scheduled to be open to the public from 10:00 am to 6:00 p.m.; That defendant **GILROY GARLIC FESTIVAL** ASSOCIATION, INC. is the entity responsible for hosting, organizing, managing, sponsoring, and running the **Gilroy Garlic Festival** in cooperation and conjunction with the City of Gilroy that also provides logistical support, together with Defendants FIRST ALARM and other defendants; That defendant **GILROY GARLIC FESTIVAL** ASSOCIATION, INC. entered into a facility reservation contract with the City of Gilroy for the purpose of holding the July 2019 **Gilroy Garlic Festival**; That the **GILROY GARLIC FESTIVAL** ASSOCIATION, INC. is required to have security at the **Gilroy Garlic Festival** and has a chair of security and an assistant chair of security, which are non-paid volunteer positions; That defendant **GILROY GARLIC FESTIVAL** ASSOCIATION, INC. entered into a contract with FIRST ALARM, a private security company, to provide security for the **Gilroy Garlic Festival**; That defendant **GILROY GARLIC FESTIVAL** ASSOCIATION,

INC. and other Defendants entered into contracts with other DOE Defendants to provide other security support, logistical support and/or to otherwise assist with organizing, hosting, running, and/or securing the 2019 **Gilroy Garlic Festival**; That the original contract between the City of Gilroy and the defendant **GILROY GARLIC FESTIVAL ASSOCIATION, INC.** was over thirty (30) years old and had never been updated to reflect the modern-day security concerns, logistical realities, or organizational needs that accompany hosting an event of the **Gilroy Garlic Festival's** current magnitude; and, That security at the 2019 **Gilroy Garlic Festival** was also provided in part by the City of Gilroy Police Department.

**B. Duty to Provide Reasonably Safe Event:**

21. Plaintiffs are informed and believe and based thereon allege there have been approximately three-hundred and fifty-two (352) mass shootings in the United States so far this year (2019) and that in 2018 there were approximately three-hundred and thirty-seven (337). These frightening numbers serve as a stark reminder that horrific criminal attacks are not only common but are a real and foreseeable risk anytime individuals host large public events, such as the 2019 **Gilroy Garlic Festival**.

22. Operators of outdoor venues that attract large crowds, such as the 2019 **Gilroy Garlic Festival**, are responsible for assessing their specific vulnerabilities and taking reasonable precautions to mitigate risks and prevent such tragedies, like this, from occurring.

23. This assessment includes development, implementation, and coordination of plans and programs to ensure security and emergency preparedness.

24. At all times relevant herein, Defendants had a duty to the patrons, attendees, and vendors, including Plaintiffs, to provide a reasonably safe event at the **Gilroy Garlic Festival**. At all times relevant herein, Defendants had a duty of reasonable care in the protection and safeguarding of the patrons, attendees, and vendors, including plaintiffs, at the **Gilroy Garlic Festival**. At all times relevant herein, Defendants had a duty to take such precautions as were reasonably necessary to protect the patrons, attendees, and vendors, including plaintiffs, at this large scale public event at the **Gilroy Garlic Festival**, including Plaintiffs, from the foreseeable and dangerous risk of persons entering the premises with assault style weapons with intent to shoot the patrons, attendees and vendors.

25. Defendants assumed the duty to provide a reasonably safe environment for the patrons, attendees and vendors of the **Gilroy Garlic Festival** merely in choosing to host a public Festival event that draws large numbers of people.

26. Defendant **GILROY GARLIC FESTIVAL ASSOCIATION, INC.**, advertised and represented to the public at large and Plaintiffs before and during the 2019 **Gilroy Garlic Festival** that: "It is the Garlic Festival's policy to provide a *safe*, family-friendly atmosphere for all Festival patrons and volunteers.. Christmas Hill Park rules prohibit bringing the following items on Festival grounds ...Pocketknives and *weapons of any kind*."

27. Defendants further recognized and assumed a duty to protect its patrons, attendees and vendors by having policies and security measures, although they were grossly deficient, to attempt to prohibit unauthorized persons from entering and to prevent firearms and other dangerous weapons on the 2019 **Gilroy Garlic Festival** premises. By way of example, defendants utilized some sort of perimeter fencing in an effort, although grossly deficient, to keep unauthorized persons and criminals (including mass shooters) from entering the **Gilroy Garlic Festival**. By way of further example, plaintiffs are informed and believe and based thereon allege that Defendants arranged and/or oversaw persons who performed security checks of individuals prior to admitting them into the 2019 **Gilroy Garlic Festival**, including "wandings" of potential attendees with handheld metal detecting devices to prevent persons from bringing in guns, including assault style weapons. In so doing, Defendants recognized and

assumed their duty that keeping out firearms and dangerous weapons was essential to the safety of everyone at the 2019 **Gilroy Garlic Festival**.

28. Plaintiffs are informed and believe and based thereon allege that the tragic events of July 28, 2019 were foreseeable as Defendants knew or reasonably should have known: a) That persons had previously entered the **Gilroy Garlic Festival** premises through the chain link fence near the perimeter edge bordering the Uvas Creek at or near where the Shooter entered; that unauthorized entry to **Gilroy Garlic Festival** grounds could easily be achieved by going over the flimsy perimeter fencing bordering the Uvas Creek; that this was commonly known; b) That persons had previously attempted to bring and/or had brought weapons into the **Gilroy Garlic Festival**; c) That there had been previous incidents of criminal behavior and violence at the **Gilroy Garlic Festival** in previous years; d) That due to the epidemic of mass shootings at public events throughout this Country, that mass shootings are reasonably foreseeable and part of the dangers that patrons, attendees and vendors must be protected from at large scale public events to have a reasonably safe event; e) That the chain link fence near the perimeter edge bordering the Uvas Creek where the Shooter entered was inadequate to be reasonably safe as a secure perimeter fence for a large scale public event, including the inadequate nature of such fence, that it was flimsy, and too short; f) That the inadequate, flimsy, low-height, unsupported chain link fence near the perimeter edge bordering the Uvas Creek where the Shooter entered was not reasonably safe as it was easily breached by persons who would thus be able to bypass security; g) That the Uvas Creek Park Reserve's location, cover, and proximity to the border of the 2019 **Gilroy Garlic Festival** could provide a means of unauthorized access to the 2019 **Gilroy Garlic Festival** perimeter and thus when left unaddressed, the condition presented a foreseeable and unreasonable security threat making the 2019 **Gilroy Garlic Festival** not reasonably safe for its patrons, attendees, and vendors, including Plaintiffs; h) That the inadequate, flimsy, low-height, unsupported chain link perimeter fence where the Shooter entered was located inappropriately in an unsafe manner as the Shooter's presence and entrance would be concealed including by cover of the Uvas Creek including the topography, cover and wooded area; i) That it was necessary to maintain clear lines of sight to the perimeter fence; that allowing cars, box trucks, and/or other obstructions to be placed near the border of the flimsy, low-height unsupported chain link perimeter fence, including where the Shooter entered, would further obstruct the lines of sight to the perimeter and provide additional cover for individuals such as the Shooter to enter the 2019 **Gilroy Garlic Festival** and commit violent criminal acts; j) That the inadequate, flimsy, low-height unsupported chain link perimeter fence where the Shooter entered was obviously a highly vulnerable and likely unauthorized entrance point; k) That the inadequate, flimsy, low-height unsupported chain link perimeter fence where the Shooter entered required proper monitoring; l) That the inadequate, flimsy, low-height unsupported chain link perimeter fence where the Shooter entered was not being properly monitored; m) That if Defendants breached their duties to keep the 2019 **Gilroy Garlic Festival** reasonably safe, that catastrophic injury and harm, including through a mass shooting, could occur to the patrons, attendees, and vendors, including Plaintiffs, at the 2019 **Gilroy Garlic Festival**; and/or n) That the 2019 **Gilroy Garlic Festival** was inadequately secured and this created an event that was not reasonably safe and had an unreasonable and foreseeable risk of unauthorized access to 2019 **Gilroy Garlic Festival** by an individual with the intention of committing criminal acts, including a mass shooting.

29. Defendants had a duty to the patrons, attendees, and vendors, including plaintiffs, to take reasonable steps to secure the 2019 **Gilroy Garlic Festival** against foreseeable criminal acts of third parties, including mass shootings, that are likely to occur in the absence of such precautionary measures.

30. Defendants owed a duty to the patrons, attendees, and vendors, including plaintiffs, to avoid acts or omissions by their employees, agents, servants, partners, or joint ventures, which created an unreasonable and foreseeable risk of criminal acts by third persons at the 2019 **Gilroy Garlic Festival**.

**C. Breach of Duty to Provide Reasonably Safe Event:**

31. Plaintiffs bring this action as a result of the July 28, 2019, shooting in Gilroy, California that took place during the final day of the **Gilroy Garlic Festival**.

32. On July 28, 2019, a Shooter opened fire onto unsuspecting **Gilroy Garlic Festival** patrons, attendees, and vendors, including Plaintiffs. While the shooting itself was perpetrated by a civilian who engaged in a military-style assault, this horrific incident was foreseeable, facilitated by, and made possible by the negligent acts of the Defendants. It should not, could not, and would not have occurred but for the Defendants' repeated acts and omissions as set forth herein.

33. Plaintiffs are informed and believe and based thereon allege: That on July 28, 2019 the Shooter drove to and parked a vehicle near the intersection of Uvas Park Drive and Laurel Drive in Gilroy, California; The Shooter left his vehicle carrying an AK-47 style assault rifle along with a high capacity, seventy-five (75) round, drum style magazine, and multiple high capacity forty (40) round magazines; and That the Shooter used various unsecured public pathways and trails along the Uvas Creek Park Reserve to approach Christmas Hill Park, the location of the **Gilroy Garlic Festival**.

34. The Shooter entered the 2019 **Gilroy Garlic Festival** grounds through a de facto back entrance, carrying an AK-47 style assault rifle equipped with a large, seventy-five (75) round drum style magazine and at least four (4) high capacity forty (40) round magazines. Three people were killed and a dozen were seriously injured. More specifically, Plaintiffs all suffered serious physical injuries and emotional distress due to multiple gunshot injuries from the barrage of bullets, along with other debilitating injuries.

35. Plaintiff WENDY TOWNER saw the Shooter inside the 2019 **Gilroy Garlic Festival** grounds near the perimeter edge bordering the Uvas Creek. WENDY TOWNER was near the vendor booths at the time. The Shooter's focus was on the many children and individuals near the inflatable slide at the corner of the 2019 **Gilroy Garlic Festival** grounds. WENDY TOWNER, realizing that many children were near the slide, including her own child, heroically attempted to divert the Shooter's attention by yelling at him. Thankfully, this prevented the Shooter from firing in the direction of the many children in that area. Tragically, however, the Shooter instead began unloading his high capacity magazine at WENDY TOWNER and FRANCISCO AGUILERA.

36. WENDY TOWNER sustained serious gunshot wounds to her leg. WENDY TOWNER's calf muscle was torn apart by the bullets from the Shooter's rifle, and she was thrown to the ground from the force of their impact. In a state of shock, WENDY TOWNER remained motionless on the ground as large volumes of blood poured from her wounds.

37. Standing next to WENDY TOWNER was FRANCISCO AGUILERA. He too was struck by the Shooter's barrage. FRANCISCO AGUILERA's femoral artery was perforated, and FRANCISCO AGUILERA crashed to the ground. He immediately lost consciousness due to the magnitude of his rapid blood loss.

38. As WENDY TOWNER lay on the ground next to FRANCISCO AGUILERA, the Shooter approached their bodies. The Shooter's gun jammed, giving them critical seconds. As the Shooter hovered over them and changed magazines he asked if they were "ok". His voice sounded cold and unsympathetic. Had WENDY TOWNER uttered a word, it is certain the Shooter would have shot them both dead.

39. Plaintiffs NICK MCFARLAND and JUSTIN BATES were approximately twenty feet from the Shooter when he began firing his assault rifle into the crowd. They too were located at one of the vendor booths on the 2019 **Gilroy Garlic Festival** grounds. Suddenly, the Shooter directed his fire in their direction. As the shots rang out, they could hear and feel the bullets whizz past them. JUSTIN BATES began running from the area as the Shooter fired on him. As he ran, JUSTIN BATES suddenly felt heat in the back of his leg. JUSTIN BATES knew he had been shot. Despite this, JUSTIN BATES heroically and selflessly turned back towards the Shooter in order to help carry his friend to safety. She had frozen in terror at the sight of the Shooter.

40. NICK MCFARLAND was with JUSTIN BATES at the time the Shooter began firing. NICK MCFARLAND began running and sustained wounds to his right calf from bullet fragments.

41. Plaintiff BRYNN OTA-MATTHEWS was on the inflatable slide at the time the shooter began firing his weapon. Upon hearing the first shots fired, BRYNN OTA-MATTHEWS quickly realized the horrific reality of what was taking place just yards away. BRYNN OTA-MATTHEWS began running away from the shooter, towards the parking lot adjacent to the 2019 **Gilroy Garlic Festival** grounds. As she ran, BRYNN OTA-MATTHEWS felt the heat of a bullet tear into her back. To this day, BRYNN OTA-MATTHEWS still has the bullet lodged near her ribcage, in close proximity to her liver.

42. Plaintiffs survived their initial harrowing encounters with the Shooter, only to be thrown into the midst of a chaotic and dangerous environment facilitated by the Defendants' utter lack of appropriate response for emergency situations. For example, other patrons of the 2019 **Gilroy Garlic Festival** rushed to WENDY TOWNER and FRANCISCO AGUILERA's aid. Unable to find medical personnel or emergency personnel, the patrons were forced to use water mixed with bleach from the utensil wash station to wash WENDY TOWNER's wounds. WENDY TOWNER, FRANCISCO AGUILERA, and BRYNN OTA-MATTHEWS were all loaded into civilian vehicles for transport, but were not able to reach a hospital for over an hour following the shooting despite being in desperate need of such emergency medical treatment.

43. Plaintiffs are informed and believe and based thereon allege that Defendants were negligent and acted in breach of Defendants' duties of care, through their negligent, careless, reckless, and/or wanton, conduct in their ownership, use, possession, renting, leasing, operating, supplying, furnishing, designing, constructing, maintaining, repairing, servicing, conducting, inspecting, managing, supervising, entrusting, hiring, training, controlling, policies and procedures for, and/or safety plans for the 2019 **Gilroy Garlic Festival** so as to cause, create, and/or allow to exist the event to be unsafe for its patrons, attendees, and vendors, including Plaintiffs, including by, but not limited to, the following:

- a) That Defendants directly or indirectly, approved, were responsible for, aware of, directed, controlled, oversaw, and/or supervised, the use of the chain link fence near the perimeter edge bordering the Uvas Creek where the Shooter entered that was inadequate to be reasonably safe as a secure perimeter fence for a large scale public event, including the inadequate nature of such fence, that it was flimsy, too short and was easily breached by persons who would thus be able to bypass security;
- b) That Defendants directly or indirectly, approved, were responsible for, aware of, directed, controlled, oversaw, and/or supervised, the unreasonably unsafe location of the inadequate, flimsy, low-height unsupported chain link perimeter fence where the Shooter entered, which was an unreasonably unsafe location, as there were not clear lines of sight maintained, and the Shooter's presence and entrance would be concealed including by cover of the Uvas Creek including the topography, cover and wooded area;
- c) That Defendants compounded this already unsafe perimeter fence of their making, by further allowing a number of cars, box trucks, and/or other obstructions to be placed near the border of the flimsy, low-height, unsupported chain link perimeter fence where the Shooter entered, further obstructing lines of sight to the perimeter and providing additional cover for individuals such as the Shooter in the subject incident to enter the 2019 **Gilroy Garlic Festival** and commit violent criminal acts;
- d) That Defendants directly or indirectly, approved, were responsible for, aware of, directed, controlled, oversaw, supervised, and/or failed to act to reasonably secure against the safety threats created by Uvas Creek Park Reserve's location, and proximity to the border of the 2019 **Gilroy Garlic Festival** that would provide a means of unauthorized access to the 2019 **Gilroy Garlic Festival** perimeter when not adequately secured, and thus presented a foreseeable and unreasonable security threat making the 2019 **Gilroy Garlic Festival** not reasonably safe for its patrons, attendees, and vendors, including Plaintiffs;

- e) That Defendants directly or indirectly, approved, were responsible for, aware of, directed, controlled, oversaw, supervised, and/or failed to act to reasonably secure against the safety threats created by the inadequate, flimsy, low-height, unsupported chain link perimeter fence where the Shooter entered that was obviously a highly vulnerable and likely unauthorized entrance point;
- f) That Defendants directly or indirectly, approved, were responsible for, aware of, directed, controlled, oversaw, supervised, and/or failed to act to reasonably monitor the inadequate, flimsy, low-height, unsupported chain link perimeter fence where the Shooter entered that required proper monitoring; Defendants had no security personnel stationed so that they would continuously monitor this highly vulnerable perimeter fence in the area where the Shooter entered;
- g) That the Shooter was able to easily enter the 2019 **Gilroy Garlic Festival** with his AK-47 assault rifle equipped with a large, seventy-five (75) round drum style magazine and at least four (4) high capacity forty (40) round magazines completely undetected by Defendants until after the Shooter began shooting and he had already inflicted harm to Plaintiffs;
- h) That Defendants directly or indirectly, approved, were responsible for, aware of, directed, controlled, oversaw, supervised, and/or failed to keep the 2019 **Gilroy Garlic Festival** reasonably safe from catastrophic injury and harm, including through a mass shooting;
- i) That Defendants directly or indirectly, approved, were responsible for, aware of, directed, controlled, oversaw, supervised, and/or failed to act such that the 2019 **Gilroy Garlic Festival** employed inadequate and outdated security policies, procedures and safeguards to prevent and detect improper, illegal, and/or prohibited entry into the 2019 **Gilroy Garlic Festival** despite numerous prior instances of such improper entry into the 2019 **Gilroy Garlic Festival**; and/or
- j) That Defendants directly or indirectly, approved, were responsible for, aware of, directed, controlled, oversaw, supervised, and/or failed to act such that the 2019 **Gilroy Garlic Festival** was inadequately and unreasonably secured and this created an event that was not reasonably safe and had an unreasonable and foreseeable risk of unauthorized access to 2019 **Gilroy Garlic Festival** by an individual with the intention of committing criminal acts, including a mass shooting; Such failures occurred not only with Defendants being aware of the risks of harm, but more egregiously this horrific incident was facilitated by, and made possible by the negligent acts of the Defendants. It should not, could not, and would not have occurred but for the Defendants' repeated acts and omissions as set forth herein.

44. Further, Plaintiffs are informed and believe and based thereon allege that Defendants were negligent and acted in breach of Defendants' duties of care, through their negligent, careless, reckless, and/or wanton, conduct in their ownership, use, possession, renting, leasing, operating, supplying, furnishing, designing, constructing, maintaining, repairing, servicing, conducting, inspecting, managing, supervising, entrusting, hiring, training, controlling, policies and procedures for, and/or safety plans for the 2019 **Gilroy Garlic Festival** so as to cause, create, and/or allow to exist the event to be unsafe for its patrons, attendees, and vendors, including Plaintiffs, including by, but not limited to, the following additional conduct:

- 1) The Defendants unacceptably ignored the grievous lessons of the countless, widely publicized shootings at public and outdoor events through-out California and the United States in recent years. They chose to operate their outdoor, public 2019 **Gilroy Garlic Festival**, which now draws approximately 100,000 people annually, using a thirty-four-year-old contract, which did not and could not contemplate the modern-day realities of an event of its magnitude;
- 2) Defendants failed to follow proper procedures and guidelines promulgated for the purpose of ensuring security and the implementation of protective measures at outdoor venues such as the 2019 **Gilroy Garlic Festival**;

- 3) Defendants failed to maintain a secure perimeter, properly monitor the perimeter, and address specific vulnerabilities in perimeter security. These failures, and others, allowed for a de facto back entrance to the 2019 **Gilroy Garlic Festival** utilized by the Shooter and thus directly facilitated this tragedy;
- 4) Defendants knew or should have known of the vulnerabilities in their security and of the many security guidelines, procedures, and protective measures recommended for events such as the **Gilroy Garlic Festival**;
- 5) Defendants failed to implement protective measures that would have prevented these tragic and foreseeable events from transpiring altogether, including that Defendants' security measures were woefully deficient in managing the large number of patrons visiting the 2019 **Gilroy Garlic Festival**. As a result, this enabled individuals to gain unauthorized access to the 2019 **Gilroy Garlic Festival** grounds and to bring prohibited items onto the property including a military-style rifle and multiple rounds of ammunition. Additionally, this enabled, individuals to engage in a violent shooting spree while on 2019 **Gilroy Garlic Festival** grounds;
- 6) Defendants failed to conduct a proper threat analysis, vulnerability assessment, consequence analysis, risk assessment, and/or security audit of the venue;
- 7) Defendants had reason to know of the history of the threat of an active shooter situation at outdoor venues which increased the likelihood of this incident occurring;
- 8) Defendants failed to determine the physical features or operational attributes which left the venue open to exploitation and attack;
- 9) Defendants failed to implement an appropriate vulnerability assessment strategy;
- 10) Defendants failed to assess residual gaps in security or planning to determine unresolved vulnerabilities;
- 11) Defendants failed to implement an appropriate Emergency Response and/or develop standard operating procedures and checklists to cover potential emergencies, including an active shooter situation such as what occurred here;
- 12) Defendants failed to establish a proper threat response protocol for when the venue is open to the public;
- 13) Defendants failed to identify the chain-of-command relative to responding to active shooter situations and roles, responsibilities, and methods of contact for the decision makers;
- 14) Defendants failed to ensure that emergency equipment and supplies were available to support emergency response requirements;
- 15) Defendants failed to conduct training exercises with employees and volunteers to practice the security and emergency response plans to ensure there were adequate resources available to implement the plan and that all venue operation units could implement their responsibilities under the plan;
- 16) Defendants failed to conduct training and exercises with law enforcement and emergency responders to familiarize them with the venue and its security and emergency procedures;

- 17) Defendants failed to review, test, and update all plans, including security plans and the emergency response plan, including to be commensurate with the increased volume of visitors coming to the 2019 **Gilroy Garlic Festival**, notwithstanding the **GILROY GARLIC FESTIVAL** ASSOCIATION, INC.'s active efforts in soliciting such business;
- 18) Defendants failed to maintain a record of security-related incidents and/or regularly review the record to identify patterns or trends that would reveal specific vulnerabilities in perimeter security such as the one exploited by the Shooter herein;
- 19) Defendants failed to incorporate security awareness and appropriate response procedures for security situations into employee and volunteer training programs, including but not limited to:
  - a. Instructions for maintaining alertness to and being able to recognize situations that may pose a security threat;
  - b. Instructions for maintaining alertness to surveillance activities that could be an indicator of potential attacks;
  - c. Contact and notification protocols for suspicious situations and emergencies;
  - d. Caution in providing venue information to outsiders;
  - e. Failing to train all employees and volunteers on suspicious activity reporting;
  - f. Failing to maintain up-to-date security training with refresher courses.
- 20) Defendants failed to provide security information and training to contractors, vendors, volunteers, and temporary employees at the venue and/or advise them to be alert to suspicious activity or items, and instruct them on how to report such incidents;
- 21) Defendants failed to maintain an adequately sized, equipped, and trained security staff based on the threat that was specific to the 2019 **Gilroy Garlic Festival**;
- 22) Defendants failed to coordinate security staff operations with local law enforcement and State and Federal agencies such as the FBI, Department of Homeland Security, and the Joint Terrorism Task Force;
- 23) Defendants failed to develop a security staff schedule that included proper patrols of the venue, including in specifically vulnerable areas;
- 24) Defendants failed to adequately define the perimeter and areas within the venue that required access control for pedestrians and vehicles;
- 25) Defendants failed to identify especially sensitive or critical areas, such as the area along the 2019 **Gilroy Garlic Festival** perimeter where the Shooter entered the grounds;
- 26) Defendants failed to identify an area extending out from the venue perimeter that could be used to further restrict access to the venue when necessary;
- 27) Defendants failed to establish emergency access lanes for fire, police, and EMS personnel and/or allow emergency services vehicles to be parked near entrance points and near critical areas to ensure timely response to this incident;

28) Defendants failed to post security personnel at critical or vulnerable areas, including the area where the Shooter entered the 2019 **Gilroy Garlic Festival** grounds, to observe suspicious behavior and secure the perimeter;

29) Defendants failed to adequately evaluate the need for perimeter barriers around the venue;

30) Defendants failed to consider natural features, including the wooded area of the Uvas Creek bordering the 2019 **Gilroy Garlic Festival**, which inhibited security at the **Gilroy Garlic Festival**;

31) Defendants failed to implement the appropriate level of barrier security for the perimeter of the 2019 **Gilroy Garlic Festival**;

32) Defendants failed to maintain a clear area at perimeter barriers to enable continuous monitoring and to inhibit concealment of people, weapons, and/or ammunition;

33) Defendants failed to inspect perimeter barriers regularly;

34) Defendants failed to clear zones adjacent to sensitive or critical areas, including the area where the Shooter entered the 2019 **Gilroy Garlic Festival**;

35) Defendants failed to keep zones, such as the area where the Shooter entered the 2019 **Gilroy Garlic Festival**, free of obstructions to allow for continuous monitoring and to inhibit concealment of people, weapons and ammunition;

36) Defendants failed to consider the requirements for fire protection and emergency vehicle access in the design of building their flimsy perimeter enclosure at the 2019 **Gilroy Garlic Festival**;

37) Defendants failed to develop a communication and notification plan that covers voice, data, and/or video transfer of information related to safety and security;

38) Defendants failed to provide a simple and straightforward means for people to communicate the presence of a potential threat, vulnerability, or an emergency;

39) Defendants failed to ensure there were systems of communication that provided a timely means to communicate with all people at the venue including employees, security personnel, emergency response teams, and patrons in order to notify and instruct what to do in an emergency situation;

40) Defendants failed to develop a process for communicating to employees and security personnel the current security situation;

41) Defendants failed to design a monitoring, surveillance, and inspection program commensurate with the magnitude of the 2019 **Gilroy Garlic Festival** and its security requirements;

42) Defendants failed to ensure security personnel regularly inspected the site perimeter and vulnerable areas along the perimeter, including where the Shooter gained access to the 2019 **Gilroy Garlic Festival**;

43) Defendants failed to assign security personnel to vulnerable areas, including where the Shooter gained access to 2019 **Gilroy Garlic Festival**, to prevent unauthorized access;

44) Defendants failed to assess the need for surveillance cameras to provide coverage for the perimeter, sensitive and critical areas, and the buffer zone around the venue;

- 45) Defendants failed to provide surveillance coverage for the perimeter, sensitive and critical areas around the venue, including where the Shooter gained entry to the 2019 **Gilroy Garlic Festival**;
- 46) Defendants failed to include coverage of a buffer zone around the venue to prevent unauthorized access, such as occurred here, from taking place;
- 47) Defendants failed to train personnel to interpret video and identify potential security related events;
- 48) Defendants failed to monitor in live time and review recordings regularly for unusual activities or patterns;
- 49) Defendants failed to mount digital security cameras on high structures within the venue or along vulnerable areas or the perimeter, such as where the Shooter gained entry to 2019 **Gilroy Garlic Festival**;
- 50) Defendants failed to monitor people entering and leaving the 2019 **Gilroy Garlic Festival** and/or train monitors to detect suspicious behavior;
- 51) The “security checks” performed at valid entry points were inadequate, and were performed by individuals without appropriate training or expertise, such that many attendees were able to gain unauthorized entry to the 2019 **Gilroy Garlic Festival** through recognized and supposedly “secured” points of entry;
- 52) Defendants failed to take precautionary measures in the form of, *inter alia*, an evacuation plan, adequate numbers of emergency medical personnel on site for an event of its magnitude, an emergency plan, proper training of personnel for an active shooter event or its aftermath, and/or proper means for communication and coordination of staff in the event of an emergency;
- 53) Failing to employ adequate safety and security measures;
- 54) Failing to design, build, provide, and mark adequate exits in case of emergency;
- 55) Failing to warn its patrons, attendees, vendors, employees, licensees, and invitees, including Plaintiffs, of the nature and character of the threat posed by a criminal act or attack, when they knew or in the exercise of reasonable care should have known of the unreasonable and foreseeable risk of such a criminal act or attack;
- 56) Failing to adequately police, patrol, guard, deter, and otherwise provide reasonable protection for its patrons, attendees, vendors, employees, licensees, and invitees, including Plaintiffs, when Defendants knew or should have known of foreseeable criminal acts;
- 57) Failing to reasonably hire and/or retain and/or supervise adequate security personnel to patrol and/or monitor the premises of the 2019 **Gilroy Garlic Festival**, thereby protecting its patrons, attendees, vendors, employees, licensees, and invitees, including Plaintiffs;
- 58) Failing to have proper procedures in place for hiring, training, directing, and/or supervising employees, police officers, security personnel, volunteers, or other staff responsible for security and/or emergency response at the 2019 **Gilroy Garlic Festival**;
- 59) Failing to have a sufficient number of security personnel in critical areas to deter crime, thereby protecting its patrons, attendees, vendors, employees, licensees, and invitees, including Plaintiffs;

- 60) Failing to have adequate mechanisms for security personnel, staff, employees, attendees and others within the community to report real threats or other security concerns related to the 2019 **Gilroy Garlic Festival**;
- 61) Failing to properly hire, train, direct, and supervise employees, volunteers, security personnel, police officers, and other individuals responsible for security at the 2019 **Gilroy Garlic Festival** to adequately supervise the 2019 **Gilroy Garlic Festival** grounds in such a way that would prevent acts of violence;
- 62) Failing to implement or follow adequate security policies, security measures, and security procedures necessary to protect Plaintiffs and other patrons, attendees, vendors, employees, licensees, and invitees at the 2019 **Gilroy Garlic Festival**;
- 63) Failing to take additional security measures after being put on notice that the security measures in force were inadequate;
- 64) Failing to adequately provide an overall security plan that would meet the known industry standards and customs for safety at events similar in scale and magnitude to the 2019 **Gilroy Garlic Festival**;
- 65) Failing to adequately screen or monitor those entering the premises for the possession of weapons;
- 66) Failing to implement reasonable crime prevention through environmental design concepts which would have hardened the 2019 **Gilroy Garlic Festival** grounds against foreseeable violent crime such as the subject incident; and/or
- 67) Acting or failing to act consistently with the relevant policies, procedures, guidelines, and training relating to the protection of human life that were in effect at the time of the shooting.

***D. Defendants' Could have Had a Safe Event for Minimal Additional Cost:***

45. Plaintiffs are informed and believe and based thereon allege that it was practicable, prudent and reasonable for Defendants to provide a reasonably safe event at the 2019 **Gilroy Garlic Festival** including by having adequate perimeter fencing that was properly monitored to prevent unauthorized and undetected access into the **Gilroy Garlic Festival** by criminals, including mass shooters with military-style weapons and extensive rounds of ammunition. A proper secure perimeter fence that was appropriately monitored would have prevented the Shooter from entering and this tragedy would not have occurred. Plaintiffs are informed and believe and based thereon allege that this could have been done for minimal additional cost.

***E. Defendants' Failures Proximately Caused the Tragic Shootings:***

46. As a result of the aforesaid breaches by Defendants, Plaintiffs tragically fell victim to the depraved Shooter who was able to foreseeably take advantage of the unsafe and unsecure conditions created by Defendants, and the Shooter was able to enter the 2019 **Gilroy Garlic Festival** undetected with his AK-47 assault rifle equipped with a large, seventy-five (75) round drum style magazine, and at least four (4) high capacity forty (40) round magazines, through the inadequate, flimsy, low-height, unsupported chain link perimeter fence, located in an unsecure area that was not adequately monitored, and began firing his automatic, AK-47 style assault rifle into the crowd striking Plaintiffs.
47. Plaintiffs are informed and believe and based thereon allege that Defendants' negligence and misconduct as set forth herein was the proximate cause and/or substantial factor in causing the injuries and damages to Plaintiffs as set forth herein.

**F. Plaintiffs' Injuries and Damages:**

48. As a direct and proximate result of the negligence, carelessness, recklessness, wantonness of Defendants, Plaintiffs sustained severe and serious injury to their persons, including gun shot injuries, all potentially life threatening, all permanent, serious and severe, to Plaintiffs' damage in sums in excess of the jurisdictional minimum of this court, to be established according to proof at trial.

49. As a direct and proximate result of the negligence, carelessness, recklessness, wantonness of Defendants, Plaintiffs realized significant delays in obtaining access to and receiving medical assistance.

50. As a further direct and proximate result of the negligence, carelessness, recklessness, wantonness of Defendants, Plaintiffs have been required to employ the services of hospitals, rehabilitation facilities, physicians, surgeons, nurses and other professional services and Plaintiffs have been compelled to incur expenses for ambulance service, machines, x-rays and other medical supplies and services. As a further direct and proximate result of the negligence and carelessness of Defendants, Plaintiffs are in need of future medical treatment, services, care, and other services and expenses in amounts to be shown according to proof at the time of trial of this matter.

51. As a further direct and proximate result of the negligence, carelessness, recklessness, wantonness of Defendants, Plaintiffs have loss of past, present, and future wages and loss of earning capacity in amounts to be shown according to proof at the time of trial of this matter.

52. As a further direct and proximate result of the negligence, carelessness, recklessness, wantonness of Defendants, Plaintiffs have suffered extreme shock, emotional distress, and pain and suffering.

53. As a further direct and proximate result of the negligence, carelessness, recklessness, wantonness of Defendants, Plaintiffs suffered serious emotional distress as a direct victim of Defendants' negligence. Plaintiffs' emotional distress includes but is not limited to, suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame rising to the level that a reasonable person would be unable to cope. Plaintiffs have sustained general damages in the sum in excess of the jurisdictional minimum of this Court, as hereinbefore and hereinafter set forth.

54. As a further direct and proximate result of the negligence, carelessness, recklessness, wantonness of Defendants, Plaintiffs have suffered serious emotional distress as bystanders. Plaintiffs' emotional distress, includes but is not limited to, suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame as well as physical injury.

WHEREFORE, Plaintiffs pray for judgment against the Defendants as hereinafter set forth.

**IV.**

**SECOND CAUSE OF ACTION**

***Premises Liability***

As a Second, Separate Distinct Cause of Action, for Plaintiffs as against all Defendants, Plaintiffs alleges as follows:

55. Plaintiffs reallege and incorporate herein by this reference, each and every allegation contained in Paragraphs 1 through 14, inclusive, of the foregoing Introduction and General Allegations, and Paragraphs 16 through 47, inclusive, of the foregoing First Cause of Action, and makes them a part of the instant Cause of Action as though fully set forth.

56. Plaintiffs are informed and believe and based thereon allege the real property on which the subject catastrophic incident occurred is owned by the City of Gilroy and is commonly known as Christmas Hill Park and as the site of annual **Gilroy Garlic Festival** (hereinafter "**GILROY GARLIC FESTIVAL PROPERTY**").

57. Plaintiffs are informed and believe and based thereon allege that Defendants owned, operated, entrusted, rented, leased, furnished, supplied, designed, constructed, repaired, modified, serviced, managed, controlled, supervised, maintained, inspected, occupied, used and/or possessed the **GILROY GARLIC FESTIVAL PROPERTY**.

58. Defendants were under a duty to exercise ordinary care in their ownership, operation, entrusting, renting, leasing, furnishing, supplying, designing, constructing, repairing, modifying, servicing, managing, controlling, supervising, maintaining, inspecting, occupying, use and/or possession of the **GILROY GARLIC FESTIVAL PROPERTY** in order to avoid exposing persons to an unreasonable risk of harm. The failure to perform this duty is negligence.

59. Plaintiffs are informed and believe and based thereon allege that on or about July 28, 2019, and prior thereto, Defendants so negligently and carelessly owned, operated, entrusted, rented, leased, furnished, supplied, designed, constructed, repaired, modified, serviced, managed, controlled, supervised, maintained, inspected, occupied, used, and/or possessed the **GILROY GARLIC FESTIVAL PROPERTY** as to cause, create, and/or allow to exist a dangerous, hazardous and unsafe condition which created an unreasonable and substantial risk of injury to persons having occasion to attend the 2019 **Gilroy Garlic Festival**, including Plaintiffs.

60. Plaintiffs are informed and believe and based thereon allege that Defendants were negligent in their ownership, operation, entrusting, renting, leasing, furnishing, supplying, designing, constructing, repairing, modifying, servicing, managing, controlling, supervising, maintaining, inspecting, occupying, using and/or possessing the **GILROY GARLIC FESTIVAL PROPERTY** for the 2019 **Gilroy Garlic Festival** by any or all the following: a) That the **GILROY GARLIC FESTIVAL PROPERTY** was not safe, including due to the unsafe and unsecure conditions created by Defendants, that allowed the Shooter to enter the **GILROY GARLIC FESTIVAL PROPERTY**, carrying his AK-47 assault rifle, equipped with a large, seventy-five (75) round drum style magazine, and at least four (4) high capacity forty (40) round magazines, completely undetected until after the gunman began shooting, by gaining entry through the inadequate, flimsy, low-height, unsupported chain link perimeter fence, located in an unsecure area that was not adequately monitored; b) Failure to use reasonable care to keep the **GILROY GARLIC FESTIVAL PROPERTY** in a reasonably safe condition; c) Failure to use reasonable care to discover any unsafe conditions; d) Failure to remedy and repair unsafe conditions; and/or e) Failure to give adequate warning of anything that could be reasonably expected to harm others.

61. Plaintiffs are informed and believe and based thereon allege that Defendants were aware or reasonably should have been aware of a condition concealed to Plaintiffs on the **GILROY GARLIC FESTIVAL PROPERTY**, that the 2019 **Gilroy Garlic Festival** was not safe, including due to the unsafe and unsecure conditions created by Defendants, that allowed the Shooter to enter the 2019 **Gilroy Garlic Festival** with a military style weapon undetected, through the inadequate, flimsy, low-height, unsupported chain link perimeter fence, located in an unsecure area that was not adequately monitored.

62. Plaintiffs are informed and believe and based thereon allege that Defendants were required to have the **GILROY GARLIC FESTIVAL PROPERTY** comply with appropriate safety measures that would make this large scale public event reasonably safe for the patrons, attendees, and vendors, including Plaintiffs. Defendants failed to so act.

63. Plaintiffs had the right to assume that Defendants would exercise due care in their ownership, operation, entrusting, renting, leasing, furnishing, supplying, designing, constructing, repairing, modifying, servicing, managing, controlling, supervising, maintaining, inspecting, occupying, use and/or possession of the **GILROY GARLIC FESTIVAL** PROPERTY in order avoid exposing persons to an unreasonable risk of harm, including that Defendants had taken proper precautions for the safety of the patrons, attendees, and vendors, including Plaintiffs, and that Defendants would use reasonable care in guarding them against injury. Defendants failed to so act.

64. Plaintiffs are informed and believe and based thereon allege that Defendants' negligence and misconduct as set forth herein was the proximate cause and/or substantial factor in causing the injuries and damages to Plaintiffs as set forth herein.

65. As a direct and proximate result of the negligence, carelessness, recklessness, wantonness of Defendants, Plaintiffs sustained severe and serious injury to their persons, including gun shot injuries, all permanent, serious and severe, to Plaintiffs' damage in sums in excess of the jurisdictional minimum of this court, to be established according to proof at trial.

66. As a direct and proximate result of the negligence, carelessness, recklessness, wantonness of Defendants, Plaintiffs realized significant delays in obtaining access to and receiving medical assistance.

67. As a further direct and proximate result of the negligence, carelessness, recklessness, wantonness of Defendants, Plaintiffs have been required to employ the services of hospitals, rehabilitation facilities, physicians, surgeons, nurses and other professional services and Plaintiffs have been compelled to incur expenses for ambulance service, machines, x-rays and other medical supplies and services. As a further direct and proximate result of the negligence and carelessness of Defendants, Plaintiffs are in need of future medical treatment, services, care, and other services and expenses in amounts to be shown according to proof at the time of trial of this matter.

68. As a further direct and proximate result of the negligence, carelessness, recklessness, wantonness of Defendants, Plaintiffs have loss of past, present, and future wages and loss of earning capacity in amounts to be shown according to proof at the time of trial of this matter.

69. As a further direct and proximate result of the negligence, carelessness, recklessness, wantonness of Defendants, Plaintiffs have suffered extreme shock, emotional distress, and pain and suffering.

70. As a further direct and proximate result of the negligence, carelessness, recklessness, wantonness of Defendants, Plaintiffs suffered serious emotional distress as direct victims of Defendants' negligence. Plaintiffs' emotional distress includes but is not limited to, suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame rising to the level that a reasonable person would be unable to cope. Plaintiffs have sustained general damages in the sum in excess of the jurisdictional minimum of this Court, as hereinbefore and hereinafter set forth.

71. As a further direct and proximate result of the negligence, carelessness, recklessness, wantonness of Defendants, Plaintiffs have suffered serious emotional distress as bystanders. Plaintiffs' emotional distress includes but is not limited to, suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame as well as physical injury.

WHEREFORE, Plaintiffs pray for judgment against the Defendants as set forth below.

#### **PRAYER**

WHEREFORE, Plaintiffs pray for judgment and damages against the Defendants as follows:

1. For Plaintiffs' general damages in the sum according to proof in an amount in excess of the jurisdictional limits of this Court;
2. For Plaintiffs' special and economic damages, including, but not limited to, sums incurred and to be incurred for services of hospitals, physicians, surgeons, nurses, attendant care, therapy and other medical supplies and services;
3. For loss of earnings, both past, present and future, and loss of earnings capacity, in an amount to be determined at trial;
4. For interest provided by law, including, but not limited to, [California Civil Code Section 3291](#);
5. For all statutorily allowed damages; and
6. For costs of suit and for such other and further relief as the Court may deem proper.

DATED: November 11, 2019

SCARLETT LAW GROUP

By<<signature>>

RANDALL H. SCARLETT, ESQ

ROBERT E. ORMISTON, ESQ.

Attorneys for Plaintiffs

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