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IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

BINTOU CHAM, as surviving spouse of)
FRANKLIN CALLENS, and AEYSHA)
HARRIS as Administrator of the estate of)
FRANLIN CALLENS, deceased,)

Plaintiffs,)

vs.)

ECI MANAGEMENT CORP. and)
COBB-SIX FLAGS ASSOCIATES, LTD.)

Defendants.)

CIVIL ACTION FILE
NO. 16A-1608-6

COBB COUNTY, GA
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CONSOLIDATED PRE-TRIAL ORDER

The following constitutes the parties Proposed Consolidated Pre-Trial Order in the above-styled case:

1.

The names, addresses, and phone numbers of the attorneys who will conduct trial are as follows:

Plaintiffs:

R. Scott Campbell, Esq.
Brandon Smith, Esq.
Daniel Beer, Esq.
Shiver Hamilton, LLC
3340 Peachtree Road, Suite 950
Atlanta, Georgia 30326
Phone: (404) 593-0020
Fax: (888) 501-9536

Defendants:

John H. Hall, Jr., Esq.
Jeffery Randolph Saxby, Esq.
Wayne Satterfield, Esq.
HALL BOOTH SMITH, P.C.
191 Peachtree Street, N.E., Suite 2900
Atlanta, Georgia 30303
404-954-5000 Telephone
404-954-5020 Facsimile

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2.

The estimated time required for trial is: 1 week.

3.

There are no motions or other matters pending for consideration by the Court except as follows:

Plaintiffs: Plaintiffs anticipate filing Motions in Limine and responses to any motions filed in this case, prior to trial. The parties anticipate exchanging deposition designations, counter designations, and objections prior to trial.

Defendants: Defendants expect to file motions in limine, prior to the pre-trial conference, regarding excluding Plaintiffs' reference at trial (via fact or expert witness) to alleged crimes or criminal activity which are not substantially similar to the incident which is the subject of this litigation.

Defendants object to the jury considering any evidence of punitive damages. However, in the event such damages are considered, Defendants hereby request that this Court partition the trial of this matter into three distinct phases, as follows:

- Liability and compensatory damages;
- Liability for punitive damages; and
- Assessment of punitive damages.

The parties reserve the right to file motions in limine regarding evidentiary matters prior to the start of trial and as evidentiary issues may arise during the time of trial. Counsel will confer with one another in an effort to resolve motions on evidentiary issues by agreement, if possible. The parties' request that the Court set a hearing on these Motions in Limine prior to the start of trial.

4.

The jury will be qualified as to the relationship of the following:

Plaintiffs:

- (1) Bintou Cham;
- (2) Aeysha Harris;
- (3) Shiver Hamilton, LLC;
- (4) Andrew Kiehle;
- (5) Kiehle Law Group, LLC;
- (6) ECI Management Corp. (any employee, owner, officer, or director);
- (7) Cobb-Six Flags Associates, LTD. (any employee, owner, officer, or director); and
- (8) Endurance American Specialty Insurance Company, its members, policyholders, officers, directors, and shareholders; and
- (9) Starr Indemnity & Liability Company, its members, policyholders, officers, directors, and shareholders.

Defendants: Relationship by blood or marriage to Plaintiff Bintou Cham, Plaintiff Aeysha Harris, Franklin "Basim" Callens, Asia Jones, Umar Ansari, Ivaylo, Parker Chivington, and Plaintiffs' counsel. Any current or former resident of Concepts 21 Six Flags, Lake Crossing Apartments, and Parkview Apartments. Defendants object to the jury being qualified as to the defense attorneys as they have no financial interest in the outcome of the lawsuit. Defendants reserve the right to supplement this list of relationships to qualify the jury. Defendants request the right to conduct group and individual voir dire.

While the trial court is required, upon request, to qualify potential jurors as to relationships with any and all insurance companies which have an interest in the outcome of any

particular case, no questioning may be done which will “prejudicially impress[] upon the jurors the fact that the Defendant has liability insurance.” Corley v. Harris, 171 Ga.App. 688(1984). Defendants object to any qualification as to any specific members, policyholders, officers, directors, and shareholders of any insurer. Defendants object to any qualification as to any owner or director or Defendants.

5.

(a) All discovery has been completed, unless otherwise noted, and the Court will not consider any further motions to compel discovery except for good cause shown. The parties shall be permitted to take depositions of any person(s) for the preservation of evidence for use at trial.

Defendants: Discovery has not been completed. Defendants reserve the right to take a deposition of any witness identified in supplemental responses to discovery as either a fact or expert witness and to view any evidence identified by supplemental discovery response(s). Defendants also reserve the right to take the deposition of the opposing party’s “will call” or “may call” witnesses, said depositions not to delay the trial of the case.

(b) Unless otherwise noted, the names of the parties as shown in the caption to this Order are correct and complete, and there is no question by any party as to the misjoinder or nonjoinder of any parties.

6.

The following is the Plaintiffs’ brief and succinct outline of the case and contentions:

Concepts 21 Six-Flags (hereinafter “the Complex”) is a 220 unit Apartment complex located off Six Flags Drive immediately off I-20. Defendant Cobb Six-Flags Associates, LTD owns the Complex and Defendant ECI Management Corp. manages it. Defendants acknowledge

they have the responsibility to take action to address hazards that exist in the Complex. Defendants further acknowledge that controlling access to the Complex or having a visible security presence on the premises is a means by which they can effectively deter crime. Unfortunately, Defendants do not believe the safety of their residents should be their top priority. Nor do Defendants believe they have any duty to attempt to prevent or deter crime in the Complex.

Defendants were aware the Complex was located in a high-crime area. Defendants were aware of numerous armed robberies in the vicinity of the complex and were aware that what was occurring in the surrounding area was something they needed to consider as it relates to the safety of the Complex. Defendants were specifically aware of multiple prior armed robberies occurring at other apartment complexes and businesses in their immediate vicinity. Defendants were also aware of numerous prior violent crimes, car thefts, and forced entry burglaries in the Complex.

Defendants made the decisions as to what security measures to implement. Defendants had the means to implement any security measures they believed were necessary. Defendants had the means and ability to gate the complex if they believed doing so was necessary. In 2007, Defendants hired a security company to patrol the premises 4 hours a day. The decision to have the security on the premises 4 hours a day was made by Defendants and not based on any analysis of the crime problem or safety concerns. Defendants did not at any time undertake a security assessment or attempt to formulate a security plan or strategy.

In 2013, Defendants hired off-duty police officers to patrol the premises. After hiring the off-duty officers Defendants reduced the hours of the security company and by the end of 2014 terminated the security company all together. Defendants set the total number of hours the off-

duty officers would be present on the premises and at the outset the agreement was they would be there 32 hours a week. There was no set schedule as to the days and times security would be present on the premises. The officers continuously requested Defendants increase the number of patrol hours, but Defendants denied these requests. Residents also requested increases in security that went unmet. By 2015 Defendants had reduced the presence of security in the Complex to on average roughly 3.5 hours a day, or less than 15% of the time. Leaving the high-crime property unpatrolled or unsecured over 85% of the time. There was no security presence in the Complex on the morning of the shooting nor had there been any security presence the day prior.

Franklin Callens and Asia Jones shared a 3-bedroom apartment in the Complex. Ms. Jones informed Defendants prior to leasing the apartment that Franklin would be residing there with her and they indicated that was acceptable and he was present with her when she signed the lease. Franklin Callens was shot in the unpatrolled unsecured Complex parking lot on the morning of December 13, 2015 as he left for work. Franklin was shot in the chest and found in the parking lot with a weak pulse, though he ultimately succumbed to his injuries. The assailants had previously stolen a car and were looking for a place to ditch the stolen car and jack another one, the Defendants' large unpatrolled unsecured parking provided such a place. After shooting Franklin the assailants stole his car and drove it off the premises.

Defendants failed to appropriately anticipate the risk of violent crime, evaluate it, and take the necessary steps to attempt to reduce or eliminate the risk. Defendants' failures include failing to undertake a security vulnerability assessment and formulate a needs-based detailed security plan, including consistent structured patrols, posting an officer at the front of the

complex, and gating the complex. Had Defendants' corrected these deficiencies the car-jacking and shooting of Franklin Callens more likely than not would have been prevented.

7.

The following is Defendants' brief and succinct outline of the case and contentions:

Defendants object to Plaintiffs' "brief and succinct outline of the case and contentions" being read to the jury at any time during the trial of the case. Defendants object to Plaintiffs' "brief and succinct outline of the case and contentions" to the extent same contains reference to purported legal principles which should be provided to the jury by the court at the conclusion of the evidence and not by the Plaintiffs.

Plaintiff Bintou Cham ("Cham") and Franklin "Basim" Callens (Calens) married in December 2012 and lived together until she kicked him out in the Summer of 2015. Asia Jones ("Jones") testified that she and Callens began a romantic relationship in May 2014 and that she and Callens lived together from August 2014 until Callens' death. Jones states that she and Callens would have been viewed as married in the Muslim faith and that they had plans to formalize their union.

On September 18, 2014, Jones leased unit 901 at the Concepts 21 at Six Flags Apartments (the "Apartments") pursuant to a Rental Agreement (hereinafter referred to as the "First Rental Agreement"). Although Jones was the only authorized tenant for Apartment 901, Callens, his brother (Umar Ansari), the brother's girlfriend, and two of Jones' sisters all lived in Apartment 901.

Jones contends that even though Callens was not identified on any of the application or lease documents, she informed the Apartments that Callens intended to live with her prior to entering into the First Rental Agreement. The representatives of the Apartments report that they

were not aware that Callens intended to live with Jones or that he resided at the Apartments. Callens did not pay rent directly to the Apartment and took any other action consistent with the status of a recognized legal tenant.

During February or March of 2015, Umar Ansari informed Callens of an incident where he observed a person pull a gun one morning and shoot at another person across the parking lot. After this incident, and because Umar Ansari, Callens, and the other resident of Apartment 901 would reportedly hear gun shots in the neighborhood surrounding the Apartments at night, Callens began a procedure whereby the residents of Apartment 901 would only leave in pairs/groups for safety.

In June 2015, Umar Ansari, Callens, Jones, and the other residents of Apartment 901 were all at home when they observed a young male arguing and holding a gun to the head of another young male directly outside the window of their apartment. Before Umar Ansari moved out in August 2015, he and Callens discussed the fact that Callens felt that the area was not safe and that Callens and Asia Jones planned to move at the end of Asia Jones' lease. Callens also carried a handgun (on his person or in bag) on a daily basis for his personal safety.

Jones also no longer felt the Apartments were safe when she observed the young male holding a gun to the head of another young male's heading directly outside the window of Apartment 901. Jones confirmed that she and Callens planned to move out of the Apartments because they "deemed it [] not safe, time to go."

On October 23, 2015, Jones entered into a 2 month extension (the "Second Rental Agreement") of the First Rental Agreement in order to afford her time to locate a new apartment. Jones admits that she had no conversation with the Apartment's leasing staff regarding Callens' current or future living arrangements (e.g., whether he ever actually moved in, currently lived

with her, or planned to live with her in the future) when she signed the Second Rental Agreement.

On the morning of December 13, 2015, Callens was leaving Apartment 901 reportedly on his way to work when he was car-jacked and shot dead by two juvenile males who had trespassed onto the premises. In response to prior crime in the parking lots, the Apartments had taken safety measures and hired off-duty Cobb County police officers to perform rotating day, night, and late night shift patrols (in marked patrol cars) of the Apartments' parking lot. The shooting of Callens occurred despite the Apartments' employment of off-duty Cobb County police officers to patrol the Apartments.

Cham (Callens' estranged wife) and Aeysha Harris (Callens' mother) filed this lawsuit (the "Lawsuit") against Defendants seeking to recover for the value of Callens' life, seeking the imposition of punitive damages, and seeking an award of bad faith/stubbornly litigious attorneys' fee. The Lawsuit generally alleges that Defendants are liable for Callens' death because they failed to maintain, inspect, secure, patrol and manage the Apartments.

Defendants deny Plaintiffs' allegations and assert that Callens death was caused by actions of trespassers on the property over which Defendants exhibited no control. Defendant did not have the required superior knowledge of the danger which warrants the imposition of liability for Callens death. Defendants assert that Callens was an unauthorized tenant, deemed a trespasser, and that Defendants did not "willfully or wantonly" cause Callens' injury. Even if Callens is deemed an invitee, Defendants assert that they exercised ordinary care to keep the premises safe.

Defendant reserves the right to supplement this outline up to the time of trial.

8.

The issues for determination by the jury are as follows:

Plaintiffs: Duty, breach of duty, causation, damages (including punitive damages).

Defendants: Negligence (duty, breach, proximate cause, and damages) and whether to award attorneys' fees and/or impose punitive damages. As noted in paragraph 11, Defendants contend that the Plaintiff has failed to elicit any evidence of regarding punitive damages, and such damages may not be sought as a result.

Defendants reserve the right to supplement this statement of the issues up to the time of trial.

9.

Specifications of negligence, including applicable code sections are as follows:

Plaintiffs:

Violation of O.C.G.A. § 51-3-1 by failing to use ordinary care to keep the Premises safe, including: failure to properly inspect and maintain the Premises; failure to warn of the latent dangers on the Premises; failure to properly monitor the premises; and failure to implement adequate security measures to prevent or deter crime from occurring at the Premises;

Defendants:

Defendants object to any specifications of negligence *per se*. Any claims premised on O.C.G.A. § 51-3-1, cannot be the basis for claims of negligence *per se*, as this code section does not require an owner or occupier to act or to refrain from acting in any specific way. Motes v. 6 "S" Co., 186 Ga. App. 67, 68, 366 S.E.2d 358, 360 (1988) ("So long as these duties remained undefined or defined only in abstract general terms, a breach is not properly denominated negligence *per se*..."). Moreover, O.C.G.A. § 51-3-1 is a codification of the common law, and

the violation of a statute that merely codifies a common-law rule does not constitute negligence per se. Burns v. Colonial Stores, Inc., 90 Ga. App. 492, 494-95, 83 S.E.2d 259, 262 (1954).

Defendants object to any claims involving the alleged negligent performance of a voluntary duty as no such duty was assumed under the facts of this case.

Defendants filed a Notice of Intent to Seek Apportionment Against Non-Parties pursuant to O.C.G.A. § 51-12-33 in which they identified the non-party assailants who shot Franklin "Basim" Callens as parties against whom they intend to apportion fault. Fault is to be apportioned in accordance with O.C.G.A. § 51-12-33.

Defendant reserves the right to supplement these specifications of negligence including applicable code sections up to the time of trial.

10.

If the case is based on contract, either oral or written, the terms of the contract are as follows:

Plaintiffs: Not applicable. The case is not based on contract, either oral or written.

Defendants: This is a tort case; however, Jones lived at an apartment complex owned and/or operated by Defendants and there are contractual lease agreements prohibiting Franklin "Basim" Callens' tenancy at the apartment complex.

11.

The types of damages and applicable measures of those damages are stated as follows:

Plaintiffs: Plaintiffs seek all compensatory, special, economic, consequential, general, and all other damages permissible under Georgia Law, including, but not limited to, personal injuries; pain and suffering; mental anguish, fright, shock and terror; loss of the enjoyment of

life; wrongful death; all elements of the full value of the life of Franklin Callens pursuant to O.C.G.A. § 51-4-1 et seq., and all elements of the Estate claim as well as punitive damages.

Defendants: Defendants contend that Plaintiffs are not entitled to any damages; Defendants object to the inclusion of any punitive damages or claim for attorney's fees in this case as the circumstances of the case fail to meet the requirement for punitive damages under O.C.G.A. § 51-12-5.1, or recovery of attorney's fees pursuant to O.C.G.A. 13-6-11.

12.

If the case involves divorce, each party shall present to the Court at the pre-trial conference with affidavits required by Rule 24.2: Not applicable.

13.

The following facts should be stipulated:

1. Cobb Six-Flags Associates, LTD. owned Concepts 21-Six Flags Apartments at all times relevant to this case;
2. ECI Management Corp. managed and maintained Concepts 21-Six Flags Apartments at times relevant to this case;
3. Franklin Callens was shot and killed at Concepts 21-Six Flags Apartments on the morning of December 13, 2015.

14.

The following is a list of all documentary and physical evidence that will be tendered at the trial by the Plaintiffs and Defendant. Unless noted, the parties have stipulated as to the authenticity of the documents listed and all exhibits listed may be admitted without further proof of authenticity. All exhibits shall be marked by counsel prior to trial so as not to delay the trial before the jury:

Plaintiffs:

1. 1949 Mortality Table;

2. Medical Examiner's Investigation Report;
3. Medical Examiner's Autopsy Report and photos;
4. Photographs from Medical Examiner's Autopsy Report;
5. Death Certificate of Franklin Callens;
6. Cobb County Police Department's subject Incident Report;
7. Cobb County crime reports for Concepts 21-Six Flags Apartments;
8. Cobb County crime reports for surrounding area;
9. Officer Activity Logs;
10. Daily Incident Report Logs;
11. ECI Incident Investigation Reports;
12. Notices to residents;
13. Management Agreement;
14. Staff Schedule;
15. ECI policies and procedures;
16. Courtesy officer duties document;
17. Emails produced by Defendants;
18. Maxwell emails;
19. Briscoe emails;
20. Budgets and payment ledgers;
21. Rental agreements;
22. Audio of 911 call reporting subject incident;
23. Cobb County CAD Report;
24. Cobb County Fire and Emergency Services PCR;

25. Documents produced by Defendants;
26. Probate documents;
27. Documents attached as exhibits to briefs filed in this case;
28. Google map of area;
29. Overhead photographs of Concepts 21-Six Flags Apartments and surrounding area;
30. Streetview photographs of Concepts 21-Six Flags Apartments;
31. Photographs of the complex and scene;
32. Young Funeral Home bill;
33. Photographs of Franklin Callens;
34. Franklin Callens' W2s and earning statements;
35. Marriage Certificate;
36. Fanklin Callens' Birth Certificate;
37. Villines' CV and report;
38. Vellani invoices and notes;
39. Pleadings, including discovery responses;
40. Any documents produced in discovery;
41. Exhibits tendered and used at depositions; and
42. Demonstrative exhibits.

These are all of the documents known to Plaintiffs at the present time, but Plaintiffs reserve the right to supplement the document list prior to trial. Opposing counsel will be given notice of any additional documents as soon as any become known.

Plaintiffs reserve the right to introduce any documentary evidence listed by Defendant. Plaintiffs further reserve the right to amend their list of exhibits prior to the time of trial and reserve the right to introduce new exhibits if needed for rebuttal.

Defendants: All documentary and physical evidence shall be marked by counsel prior to trial so as not to delay the trial before the jury and the parties agree to submit to opposing counsel for review and objection at least twenty-one (21) calendar days prior to the Monday of the week of trial. All objections to any exhibit for any reason shall be filed at least fourteen (14) calendar days prior to the Monday of the week of trial. All responses to each objection thereto shall be filed at least seven (7) days prior to the Monday of the week of trial.

Defendants propose that the parties may supplement sections 14(a) and 14(b) of this pretrial order by giving five (5) days notice of the same to the opposing counsel prior to trial.

Until the parties have had the opportunity to review each other's documentary and physical evidence, they reserve the right to assert any and all objections, including but not limited to relevance, hearsay, competence and authenticity.

The parties reserve the right to use additional documents for purposes of cross-examination, impeachment or rebuttal, and, further, to object to any documentary and/or physical evidence proposed by the opposing party which has not been produced during discovery.

15.

Special authorities relied upon by Plaintiffs relating to peculiar evidentiary or other legal questions are as follows: None at this time. Authority supporting Plaintiffs' claims was previously cited in Plaintiffs' opposition to Defendants' motion for summary judgment and will be cited in Plaintiffs' motions in limine and trial briefs as well as in the requests to charge that will be submitted at trial.

Special authorities relied upon by Defendants relating to peculiar evidentiary or other legal questions are as follows: Days Inns of America v. Matt, 265 Ga. 235, 236 (1995); Griffin v. AAA Auto Club South, 221 Ga. App. 1, 2 (1996); Clark v. Carla Gay Dress Co., 178 Ga. App. 157, 161 (1986); Ratliff v. McDonald, 326 Ga. App. 306, 313 (2014); Griffin v. AAA Auto Club South, 221 Ga. App. at 2; Britt v. Kelly & Picerne, 258 Ga. App. 843, 845 (2002); Days Inns of America v. Matt, 265 Ga. 235 (1995); Lau's Corp. v. Haskins, 261 Ga. at 491; Atlanta Gas Light Co. v. Gresham, 260 Ga. 391, 392 (1990); McKnight v. Guffin, 118 Ga. App. 168, 169 (1968); Whitfield v. Tequila Mexican Rest. No. 1, 323 Ga. App. 801, 803 (2013) *rev'd on other grounds*; Phillips v. Harmon, 297 Ga. 386 (2015); Johnson v. Atlanta Housing Auth., 243 Ga. App. 157, 160; Whitfield, 323 Ga. App. at 803; Gomez v. Julian LeCraw & Co., 269 Ga. App. 576, 577 (2004); Frank Mayes & Associates, Inc. v. Massood, 238 Ga. App. 416, 418 (1999); Mansfield v. Colwell Const. Co., 242 Ga. App. 669, 671 (2000); Craig v. Holsey, 264 Ga. App. 344, (2003), *cert. denied*, 543 U.S. 820, 125 S. Ct. 59, 160 L. Ed. 2d 29 (2004). Parker v. Hovers, 255 Ga. App. 184, 186 (2002); Travelers v. Ins. Co. v. Linn, 235 Ga. App. 641, 646 (1998); O.C.G.A. § 51-3-1; American Multi-Cinema v. Brown, 285 Ga. 442, 444 (2009); Hobday v. Galardi, 266 Ga. App. 780, 782 (2004); Jones v. Interstate North Assoc., 145 Ga. App. 366 (1978); Norman v. Jones Lang LaSalle Ams., Inc.; (""; Hubbard v. Dept. of Transp., 256 Ga. App. 342, 349-350 (2002); Groover v. Johnston, 277 Ga. App. 12, 13 (2005)("[v]iolation of a statute does not necessarily constitute negligence per se"); O.C.G.A. § 51-3-1; O.C.G.A. § 44-7-13; Norman v. Jones Lang LaSalle Ams., Inc., 277 Ga. App. 621, 627-628; Hubbard v. Dept. of Transp., 256 Ga. App. at 350 (3); O.C.G.A. § 51-12-5.1; O.C.G.A. § 13-6-11; Lilliston v. Regions Bank, 288 Ga. App. 241, 246, 653 S.E.2d 306, 311 (2007); J. Andrew Lunsford

Properties, LLC v. Davis, 257 Ga. App. 720, 722 (2002); Green v. Home Depot U.S.A., 277 Ga. App. 779, 783 (2006); Sandy Springs Toyota v. Classic Cadillac Atlanta Corp., 269 Ga. App. 470, 473 (2004); Colonial Pipeline Co. v. Brown, 258 Ga. 115, 118 (1988); Walker v. Sturbridge Partners, Ltd., 221 Ga. App. 36 (1996); Ford Motor Co. v. Stubblefield, 171 Ga. App. 331(1984).

Additionally, any authority cited by Defendants in (1) their motions in limine, (2) their responses to Plaintiffs' motions in limine, (3) any trial briefs, and (4) requested jury instructions. Defendants reserve the right to submit special authority should the evidence at trial render it necessary.

17.

All requests to charge anticipated at the time of trial will be filed in accordance with Rule 10.3.

18.

The testimony of the following persons may be introduced by depositions:

Plaintiffs:

1. Bintou Cham;
2. Aeysha Harris;
3. Tyra Smith;
4. Jennifer Cohen;
5. Julie George;
6. Wade Gibson;
7. Cynthia Pigg;
8. Harris Carlock;
9. Jaquez Maffett;

10. Lanar T. Briscoe;
11. Douglas D. Maxwell, Jr.;
12. Officer Christopher Mabe;
13. Officer Rivion Cole;
14. Officer Bradley Jones;
15. Officer Brian Scurr;
16. Officer Bruce Danz;
17. Officer Cayla Coleman;
18. Officer Eric Smith;
19. Officer James Uzee;
20. Officer David Whitley;
21. Officer Shawn Murphy;
22. Officer Darrell Easter;
23. Officer Robert Hickman;
24. Officer Amias Gossett;
25. Officer Andrew Creighton;
26. Officer Robert Latham;
27. Officer David Cutler;
28. John C. Villines;
29. Karim Vellani;
30. Asia Jones;
31. Umar Ansari;
32. Parker Chivington;

33. Ivaylo Yosifov;
34. Cassie Boggs, MD;
35. Temperance Hunton;
36. Cecil Bowers;
37. Mark Watkins;
38. Harold A. Phillips;
39. Robert J. Cernich;
40. Jason T. Garrett;
41. Matthew A. Joiner;
42. Gary B. Shepherd;
43. Christopher Iverson Green;
44. Cameron Miguel Mathis;
45. Coketa N. Owens;
46. Candace Orange;
47. Roy Carter;
48. Doretha M. Patterson;
49. Rhonda V. Sewell;
50. Chantee F. Dillon;
51. Vicki S. Jones;
52. Any law enforcement personnel involved in any aspect of the investigation of the
subject incident;
53. Any crime victim identified in the crime reports produced;
54. All applicable records custodians;

55. All persons identified as Plaintiffs' "may call" witnesses; and

56. All persons identified as Defendant's "may call" witnesses.

Any objection to the depositions or questions or arguments in the depositions shall be called to the attention of the Court prior to trial.

Defendants:

Defendants reserve the right to introduce the testimony of any witness deposed for any purpose by way of that person's deposition. Any objection to the depositions or questions or arguments in the depositions shall be called to the attention of the court fourteen (14) days prior to the first Monday of the trial calendar.

Defendants reserve the right to introduce the deposition testimony of any other witness or expert who may become unavailable for trial. Additionally, Defendants reserve the right to file page and line objections to the depositions which may be offered by Plaintiffs until the date specified by the court for the filing of such objections. In the event that the court does not specify a particular date for the filing of such objections, Defendants will file their objections at or before the time the other party seeks to offer any such deposition into evidence.

19.

(a) The following are lists of witnesses Plaintiffs will have present at trial:

1. Bintou Cham; and
2. Aeysha Harris.

(b) The following are lists of witnesses Plaintiffs may have present at trial:

1. Wade Gibson;
2. Julie George;
3. Tyra Smith;

4. Jennifer Cohen;
5. Cynthia Pigg;
6. Harris Carlock;
7. Jaquez Maffett;
8. Lanar T. Briscoe;
9. Douglas D. Maxwell, Jr.;
10. John Villines;
11. Karim Vellani;
12. Asia Jones;
13. Umar Ansari;
14. Parker Chivington;
15. Ivaylo Yosifov;
16. Cecil Bowers;
17. Mark Watkins;
18. Harold A. Phillips;
19. Robert J. Cernich;
20. Jason T. Garrett;
21. Matthew A. Joiner;
22. Gary B. Shepherd;
23. Temperance Hunton;
24. Cassie Boggs, MD;
25. Officer Christopher Mabe;
26. Officer Rivion Cole;

27. Officer Bradley Jones;
28. Officer Brian Scurr;
29. Officer Bruce Danz;
30. Officer Cayla Coleman;
31. Officer Eric Smith;
32. Officer James Uzee;
33. Officer David Whitley;
34. Officer Shawn Murphy;
35. Officer Darrell Easter;
36. Officer Robert Hickman;
37. Officer Amias Gossett;
38. Officer Andrew Creighton;
39. Officer Robert Latham;
40. Officer David Cutler;
41. Christopher Iverson Green;
42. Cameron Miguel Mathis;
43. Coketa N. Owens;
44. Candace Orange;
45. Roy Carter;
46. Doretha M. Patterson;
47. Rhonda V. Sewell;
48. Chantee F. Dillon;
49. Vicki S. Jones;

50. Any records custodian needed for authentication, any person for purposes of rebuttal, any person for purposes of impeachment;
51. Any law enforcement personnel involved in any aspect of the investigation of the subject incident;
52. Any crime victim identified in the crime reports produced;
53. Any witness listed on Defendants' will-call or may-call witness list; and
54. Any witness listed in the Exhibits needed to discuss or authenticate same.

This represents a list of witnesses Plaintiffs may call. Plaintiffs reserve the right to amend this witness list and will give opposing counsel notice in the event additional witnesses are identified. Plaintiffs have not listed every person identified in the records produced by the parties that may be needed to authenticate or introduce any records into evidence. However, each and every record has been provided to Defendants and Plaintiffs anticipate the cooperation of Defendants so that Plaintiffs need not bring unnecessary witnesses.

(c) Defendants will have present at trial:

None.

(d) Defendants may have present at trial:

Lanar Briscoe

Harris Carlock

Jennifer Cohen

Officer Creighton

Julie George

Wade Gibson

Christopher Green (via deposition)

Jaquez Maffett

Cameron Mathis (via deposition)

Douglas Maxwell

Cynthia Pigg

Tyra Smith

Karim Villani

Witnesses listed by Plaintiffs in their pretrial order.

Anyone identified by Plaintiffs in this section.

Anyone identified in discovery or depositions.

Defendants object to Plaintiffs being permitted to call any witness at trial (unless previously deposed or specifically agreed between counsel) who were not specifically identified by name in Plaintiffs' response to Defendant's Interrogatory 9 requiring that Plaintiffs "State specifically the names and addresses of all witnesses known to you or your attorney who have any relevant knowledge concerning the occurrence and claims set forth in your Complaint. As to each such witness, please designate which of these persons, if any, are expert witnesses and which, if any, were eyewitnesses."

Defendants propose that the parties may supplement this section by giving five (5) days' notice of the same to the opposing party prior to trial. Defendants reserve the right to supplement this list of witnesses up to the time of trial.

Opposing counsel may rely on representation that the designated party will have a witness present unless notice to the contrary is given in sufficient time prior to trial to allow the other party to subpoena the witness or obtain his testimony by other means.

20.

The form of the verdicts to be considered by the jury are as follows:

Plaintiffs:

Plaintiffs anticipate the need for a special verdict form, which will be presented prior to closing argument based upon the evidence and rulings of the Court.

Defendants:

PHASE I

QUESTION 1:

We, the Jury, find in favor of:

A. _____ Plaintiffs.

OR

B. _____ Defendants.

If you chose option A – CONTINUE.

If you chose option B – STOP. DO NOT ANSWER ANY OTHER QUESTIONS.

HAVE YOUR FOREPERSON DATE AND SIGN THIS VERDICT FORM AND RETURN IT TO THE COURTROOM.

QUESTION 2:

A. We award damages to Plaintiff Bintou Cham in the amount of

\$ _____

A. We award damages to Plaintiff Aeysha Harris in the amount of

\$ _____

QUESTION 3

We find the percentages of fault as follows:

Criminal Assailant A who shot Franklin Callens _____%

Criminal Assailant B who was involved in the shooting of Franklin Callens _____%

Defendant Cobb-Six Flags Associates, Ltd. (if applicable) _____%

Defendant ECI Management Corp. (if applicable) _____%

Note: Place a number between 0% - 100% in each of the above blanks. If you add the numbers together, the total must be 100%.

PHASE II

QUESTION 4

If you found Defendant Cobb-Six Flags Associates, Ltd. liable, do you find by the preponderance of the evidence that Defendant Cobb-Six Flags Associates, Ltd. acted in bad faith, was stubbornly litigious, or caused the Plaintiffs unnecessary trouble and expense, making an award of attorneys' fees appropriate?

_____ Yes

_____ No

QUESTION 5

If you found Defendant ECI Management Corp. liable, do you find by the preponderance of the evidence that Defendant ECI Management Corp. acted in bad faith, was stubbornly litigious, or caused the Plaintiffs unnecessary trouble and expense, making an award of attorneys' fees appropriate?

_____ Yes

_____ No

QUESTION 6

If you found Defendant Cobb-Six Flags Associates, Ltd. liable, do you find by clear and convincing evidence that Defendant Cobb-Six Flags Associates, Ltd.'s conduct showed that entire want of care which raises the presumption of conscious indifference to consequences such

that punitive damages should be imposed to punish or deter them from repeating such wrongful conduct?

_____ Yes

_____ No

QUESTION 7

If you found Defendant ECI Management Corp. liable, do you find by clear and convincing evidence that Defendant ECI Management Corp.'s conduct showed that entire want of care which raises the presumption of conscious indifference to consequences such that punitive damages should be imposed to punish or deter them from repeating such wrongful conduct?

_____ Yes

_____ No

PHASE III

1. If you found Defendant Cobb-Six Flags Associates, Ltd. acted in bad faith, was stubbornly litigious, or caused the Plaintiffs unnecessary trouble and expense, what amounts, if any, do you find, by a preponderance of the evidence, to be the total and full amounts of attorneys' fees that should be awarded to Plaintiff Bintou Cham against Defendant Cobb-Six Flags Associates, Ltd.? \$ _____

2. If you found Defendant Cobb-Six Flags Associates, Ltd. acted in bad faith, was stubbornly litigious, or caused the Plaintiffs unnecessary trouble and expense, what amounts, if any, do you find, by a preponderance of the evidence, to be the total and full amounts of attorneys' fees that should be awarded to Plaintiff Aeysha Harris against Defendant Cobb-Six Flags Associates, Ltd.? \$ _____

3. If you found Defendant ECI Management Corp. acted in bad faith, was stubbornly litigious, or caused the Plaintiff unnecessary trouble and expense, what amounts, if any, do you find, by a preponderance of the evidence, to be the total and full amounts of attorneys' fees that should be awarded to Plaintiff Bintou Cham against Defendant ECI Management Corp.?

\$ _____

4. If you found Defendant ECI Management Corp. acted in bad faith, was stubbornly litigious, or caused the Plaintiff unnecessary trouble and expense, what amounts, if any, do you find, by a preponderance of the evidence, to be the total and full amounts of attorneys' fees that should be awarded to Plaintiff Aeysha Harris against Defendant ECI Management Corp.?

\$ _____

5. What amounts, if any, do you find, by clear and convincing evidence, to be the total and full amount of punitive damages that should be imposed upon Defendant Cobb-Six Flags Associates, Ltd. to deter future wrongful conduct? \$ _____

6. What amounts, if any, do you find, by clear and convincing evidence, to be the total and full amount of punitive damages that should be imposed upon Defendant ECI Management Corp. to deter future wrongful conduct? \$ _____

This ___ day of _____ 2018.

Foreperson

21.

- (a) The possibilities of settling the case are: poor.
- (b) The parties do want the case reported in its entirety.
- (c) The cost of take-down will be: shared.
- (d) Other matters: none at this time.

This 26th day of February, 2018.

Respectfully Submitted,
SHIVER HAMILTON, LLC

/s/ R. Scott Campbell

Jeff P. Shiver
Georgia Bar No. 001303
Alan J. Hamilton
Georgia Bar No. 320698
R. Scott Campbell
Georgia Bar No. 142384
Attorneys for Plaintiffs

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/s/ Jeffery R. Saxby
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Counsel for Defendants

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IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

BINTOU CHAM, as surviving spouse of)
FRANKLIN CALLENS, and AEYSHA)
HARRIS as Administrator of the estate of)
FRANLIN CALLENS, deceased,)

Plaintiffs,)

vs.)

ECI MANAGEMENT CORP. and)
COBB-SIX FLAGS ASSOCIATES, LTD.)

Defendants.)


CIVIL ACTION FILE
NO. 16A-1608-6

COBB COUNTY, GA
FILED IN OFFICE
2018 FEB 27 PM 2:00
ANGEL I. DAVIS
STATE COURT CLERK-14

ORDER

It is hereby ordered that the foregoing, including any attachments thereto, constitutes the *Consolidated Pre-Trial Order* in the above case and supersedes the pleadings which may not be further amended except by order of the court to prevent manifest injustice.

SO ORDERED, this 27th day of February, 2018.



The Honorable Toby Progers
Judge, State Court of Cobb County

**IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA**

BINTOU CHAM, as surviving spouse of)	
FRANKLIN CALLENS, and AEYSHA)	
HARRIS as Administrator of the estate of)	
FRANLIN CALLENS, deceased,)	CIVIL ACTION FILE
)	NO. 16A-1608-6
Plaintiffs,)	
)	
vs.)	
)	
ECI MANAGEMENT CORP. and)	
COBB-SIX FLAGS ASSOCIATES, LTD.)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the foregoing ***Consolidated Pre-Trial Order*** with the Clerk of Court using the Peach Court File & Serve system, which will automatically send notification to the following counsel of record:

Jeffery Randolph Saxby, Esq.
HALL BOOTH SMITH, PC
191 Peachtree Street NE, Suite 2900
Atlanta, Georgia 30303

This 26th day of February, 2018.

Respectfully submitted,

SHIVER HAMILTON, LLC

/s/ R. Scott Campbell
R. Scott Campbell
Georgia Bar No. 142384
Attorney for Plaintiffs

SHIVER HAMILTON, LLC
3340 Peachtree Road, Suite 950
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Phone: (404) 593-0020
Facsimile: (888) 501-9536

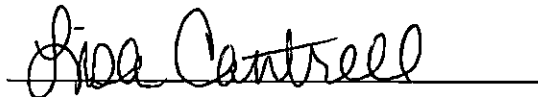
CERTIFICATE OF SERVICE

This is to certify that I have this date served copies of the within and foregoing Order by mailing same (through the Cobb County Mail System) to the parties in this case as follows:

R. Scott Campbell, Esq.
Brandon Smith, Esq.
Daniel Beer, Esq.
Shiver Hamilton, LLC
3340 Peachtree Rd., Ste 950
Atlanta, GA 30326

John H. Hall, Jr., Esq.
Jeffery Randolph Saxby, Esq.
Wayne Satterfield, Esq.
Hall Booth Smith, PC
191 Peachtree St., NE, Ste 2900
Atlanta, GA 30303

This 27th day of February, 2018.



Lisa Cantrell
Judicial Assistant to Judge Toby Producers
State Court of Cobb County
(770) 528-1731