IN THE CIRCUIT COURT OF THE
9th JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: 08-CA-28717

J.J.F.; and **J.P.F.**, her husband,

Plaintiffs,

vs.

METCALF BUILDING, LLC,
a Florida corporation for profit;
KUHN MANAGEMENT, INC.,
a Florida corporation for profit; and
KUHN CONSTRUCTION, LLC,
a dissolved Florida corporation for profit;
and **ISMAEL TIRADO**;

Defendants.
_____/

AMENDED COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

Plaintiffs, **J.J.F.** and **J.P.F.**, by and through undersigned counsel, sue Defendants **METCALF BUILDING, LLC,** a Florida corporation for profit; **KUHN MANAGEMENT, INC.,** a Florida corporation for profit; **KUHN CONSTRUCTION, LLC,** a dissolved Florida corporation for profit; and **ISMAEL TIRADO**; and allege as follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. This is an action for damages in excess of the minimum jurisdictional limits of this Court of $15,000.00, exclusive of interest and costs.

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2. The Plaintiff, identified by her initials J.J.F., is a woman who was the victim of a violent sexual battery and is being identified by this pseudonym to protect her privacy. The actual identity of the Plaintiff is known to the Defendants and/or her complete identity will be provided in discovery to the Defendants.

3. The Plaintiff, identified by his initials J.P.F., is and was at all times material the husband of Plaintiff J.J.F.

4. At all times material, Plaintiffs J.J.F. and J.P.F were residents of Orange County, Florida, and are otherwise *sui juris*.

5. At all times material, Defendant METCALF BUILDING, LLC (hereafter referred to as "METCALF") was and is a Florida corporation for profit, doing business and authorized to do business in Orange County, Florida, at 100 South Orange Avenue, Orlando, Orange County, Florida.

6. At all times material, and at the time of the incident complained of, Defendant, METCALF owned, managed, operated, maintained and/or controlled the commercial building located at 100 South Orange Avenue, Orlando, Orange County, Florida, where this incident took place, and exercised jurisdiction and control over the management and functioning of the building and employed agents, employees, officers, staff, administrators, representatives, and/or servants, and said Defendant exercised jurisdiction and control over the procedures which said agents, employees, officers, staff, administrators, representatives, and servants, had the privilege and obligation to perform, and said Defendant determined

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the qualifications or lack of qualifications of said agents, employees, staff, administrators, representatives, and servants as the same related to those procedures and duties which were devised by said Defendant for the aforementioned agents, employees, staff, administrators, representatives, and servants. As part of its operations, Defendant METCALF had control over the renovation of its commercial building which was in turn arranged and/or provided by METCALF's actual employees and/or its apparent and/or contractual agents.

7. At all times material, Defendant KUHN MANAGEMENT, INC. ("KUHN MANAGEMENT") was and is a Florida corporation for profit, doing business and authorized to do business in Orange County, Florida, at 101 South Garland Avenue, Orlando, Orange County, Florida.

8. At all times material, Defendant KUHN MANAGEMENT managed, operated, maintained and/or controlled the commercial building located at 100 South Orange Avenue, Orlando, Orange County, Florida, where this incident took place, and exercised jurisdiction and control over the management and functioning of the building and employed agents, employees, officers, staff, administrators, representatives, and/or servants, and said Defendant exercised jurisdiction and control over the procedures which said agents, employees, officers, staff, administrators, representatives, and servants, had the privilege and obligation to perform, and said Defendant determined the qualifications or lack of qualifications of said agents, employees, staff, administrators, representatives, and servants as the same related to those procedures and duties which were devised by said Defendant

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for the aforementioned agents, employees, staff, administrators, representatives, and servants. As part of its management operations, Defendant KUHN MANAGEMENT had control over the renovation of the subject commercial building which was in turn arranged and/or provided by KUHN MANAGEMENT's actual employees and/or its apparent and/or contractual agents.

9. At all times material, Defendant KUHN CONSTRUCTION, LLC ("KUHN CONSTRUCTION") was a Florida corporation for profit, doing business and authorized to do business in Orange County, Florida, at 205 East Central Boulevard, Orlando, Orange County, Florida.

10. At all times material, Defendant KUHN CONSTRUCTION, operated, maintained and/or controlled the renovation of the commercial building located at 100 South Orange Avenue, Orlando, Orange County, Florida, where this incident took place, and exercised jurisdiction and control over the management and functioning of the building and employed agents, employees, officers, staff, administrators, representatives, and/or servants, and said Defendant exercised jurisdiction and control over the procedures which said agents, employees, officers, staff, administrators, representatives, and servants, had the privilege and obligation to perform, and said Defendant determined the qualifications or lack of qualifications of said agents, employees, staff, administrators, representatives, and servants as the same related to those procedures and duties which were devised by said Defendant for the aforementioned agents, employees, staff, administrators, representatives, and

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servants.

11. At all times material, Defendant ISMAEL TIRADO (hereinafter "TIRADO") was a resident of Seminole County and is otherwise *sui juris*. Upon information and belief, TIRADO is incarcerated in Jackson County, Florida. Tirado was convicted of attempted sexual battery, battery and robbery upon the Plaintiff, J.J.F.

12. At all times material, Defendant TIRADO was an employee of Defendant KUHN MANAGEMENT and/or Defendant KUHN CONSTRUCTION.

13. On or about February 21, 2005, at or about 9:00 p.m., Plaintiff J.J.F. was a business invitee lawfully on the premises of the subject commercial building at 100 South Orange Avenue, Orlando, Orange County, Florida.

14. While in the common areas of said commercial building, Plaintiff J.J.F. was physically and sexually assaulted and battered by Defendant TIRADO.

COUNT I

CLAIM OF NEGLIGENCE AGAINST DEFENDANT METCALF BUILDING FOR FAILING TO PROVIDE ADEQUATE SECURITY

Plaintiffs reallege and readopt paragraphs 1 through 14 above as if set forth fully herein and further state:

15. On or about February 21, 2005, at approximately 9:00 p.m., Plaintiff J.J.F. was lawfully on the premises of the subject commercial building.

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16. While waiting for the elevator in the common area, Plaintiff was physically and sexually assaulted and battered by Defendant TIRADO.

17. At all times hereinafter mentioned, and at the time of the incident complained of, Defendant, METCALF, held its commercial building out to the public as a safe and secure business location and encouraged members of the public and the Plaintiff to enter and use the premises and lease offices in which to conduct their business.

18. As part of its operations, Defendant METCALF had control over the renovation of its commercial building which was in turn arranged and/or provided by METCALF's actual employees and/or its apparent and/or contractual agents.

19. Upon information and belief, Defendant METCALF provided access to Defendant TIRADO to the subject building after working hours and when there was no construction work being performed, including but not limited to allowing him to sleep in the subject building because he did not have a home.

20. Upon information and belief, Defendant METCALF provided Defendant TIRADO an access card enabling him to enter the subject premises during the time he sexually battered the Plaintiff, by directly or indirectly allowing access and/or failing to limit access times or requiring that access be limited to the time when work was being performed and/or the time when TIRADO was under actual supervision.

21. Defendant METCALF knew or should have known that Defendant TIRADO had a criminal record and/or was an inappropriate person to have access to the subject

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building after hours and unsupervised.

22. Defendant METCALF knew or should have known that Defendant TIRADO had access to the subject building during after hours and/or was allowed, encouraged or known to sleep in the subject building.

23. Prior to the date of the subject assault and battery upon the Plaintiff, there were prior similar crimes against persons at and within the immediate vicinity of the building which would place the Defendant on notice that such an assault and battery upon the Plaintiff was foreseeable at the Metcalf Building.

24. Prior to the date of the subject assault and battery upon the Plaintiff, there was a substantial problem with vagrants and homeless individuals at and adjacent to the Metcalf Building which was known to the Defendants.

25. Prior to the date of the subject assault and battery upon the Plaintiff, the Defendant METCALF represented to the Plaintiff and the public, directly and indirectly, that the building was safe for use by its tenants, including during the time the building was under renovation.

26. Defendant METCALF knew or should have known that the presence of reasonable security, including security guards, personnel, cameras, locks, CCTV and other security equipment would provide a deterrent to foreseeable crime, including crime of the type involved herein.

27. At all times material hereto, lawful business invitees, including the Plaintiff,

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had a right to and did in fact rely upon the ostensible security at the subject commercial building owned, managed and operated by Defendant METCALF.

28. Defendant, METCALF, had a duty to the Plaintiff and to other invitees lawfully on its premises to maintain the premises in a reasonably safe condition and to warn of the dangerous conditions existing at or near the subject commercial building.

29. Defendant, METCALF, had a further duty to provide reasonable security measures and/or responsible security personnel to control, patrol, and guard against the criminal activity which had been occurring at or near the immediate vicinity of the subject commercial building.

30. Defendant, METCALF had a further duty to adequately supervise and enforce any security measures already instituted at the time of the incident complained of herein and to insure that the security measures were adequate and were being reasonably performed. This duty included but is not limited to preventing access to the building after hours by persons not having business in the building, non-tenants of the building, and persons who present a threat of harm to tenants, guests and users of the building.

31. Defendant, METCALF, knew or should have known of the criminal activity occurring at the subject commercial building and immediate vicinity and/or having the potential and/or opportunity to occur at the subject commercial building and its immediate vicinity.

32. Defendant, METCALF, had actual or constructive notice or knowledge of a

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history of prior similar criminal activity against persons in and about the subject commercial building and its neighborhood prior to the incident in question. These criminal acts include violent crimes against persons and other crimes that would make the assault and sexual battery upon the Plaintiff foreseeable.

33. Defendant, METCALF, knew or should have recognized the likelihood of criminal activity which would endanger individuals and invitees lawfully present at the subject commercial building.

34. Defendant, METCALF, knew or should have recognized that other security measures already implemented at the time of the incident complained of herein were inadequate and/or not being performed as expected or intended.

35. Defendant, METCALF, knew or should have known or recognized that inadequate security measures would increase the likelihood of criminal activity that would endanger individuals and lawful invitees at the subject commercial building.

36. Defendant, METCALF, knew or should have known or recognized that the security measures implemented at the subject commercial building at the time of the incident complained of herein were inadequate and unreasonable due to the reasonably foreseeable risk presented hereon.

37. Defendant, METCALF, through its agents, employees, officers, staff, administrators, representatives, servants, and security personnel breached the duty owed to lawful invitees and the Plaintiff by committing one or more of the following negligent acts

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of commission and/or omission:

a. Negligently failed to provide adequate security, including security guards, locks, access control, gates, CCTV and other security devices to deter foreseeable crime;

b. Negligently failed to provide adequate security despite knowledge, actual or constructive, of the unreasonable and unforeseeable risk of harm by conditions occurring at and/or near the subject commercial building;

c. Negligently exposed this Plaintiff to a foreseeable and unreasonable risk of harm or bodily assault;

d. Negligently created a foreseeable and unreasonable risk of criminal assault;

e. Negligently failed to warn of the foreseeable and unreasonable risk of harm created by conditions at the subject commercial building of which this Defendant was aware or should have been aware and of which this Plaintiff was not aware, nor, in the exercise of reasonable care, of which she should or could have been aware;

f. Negligently failed to control and adequately supervise the subject commercial building;

g. Negligently failed to become apprised of the extent of the problem of criminal acts which occurred on or near the subject commercial building and to take reasonable preventive action;

h. Negligently failed to oversee and/or supervise existing security measures to insure that such measures were being adequately performed;

i. Negligently failed to improve any existing security measures that said Defendant, knew or through the exercise of reasonable care should have known were inadequate and/or ineffective and/or inefficiently performed or executed;

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j. Negligently failed to investigate and act accordingly upon the suspicious presence of Plaintiff's assailant at or near the subject commercial building;

k. Negligently failed to establish adequate standards for the safe operation and management of the subject commercial building;

l. Negligently failed to provide reasonable and adequately trained personnel to provide protection for said Plaintiff, and lawful invitees;

m. Negligently failed to provide reasonable and adequate orientation and supervision to employees, agents, representatives, servants, and/or security personnel in order to adequately prepare them for employment at or near the specific location, the area in which this subject commercial building is located and known to have been the scene and location of prior criminal acts of third parties;

n. Negligently failed to have adequate illumination and/or lighting so as to deter criminal activity and/or allow the Plaintiff to perceive the danger posed by the criminal assailant with enough time to avoid being battered and sexually assaulted;

o. Negligently failed to adopt such other security measures which were necessary and reasonable to protect and safeguard the lives of lawful invitees and individuals present at or near the subject commercial building such as the Plaintiff herein; and were otherwise negligent in their management of the subject commercial building;

p. Negligently allowed Defendant TIRADO to possess and use an access card to the subject building on the date of the assault and sexual battery of the Plaintiff and/or negligently failed to restrict his access to limited hours when he was under supervision;

q. Negligently failed to ensure that key card access by contractors, subcontractors and non-employees was limited in time and/or area, including the key card utilized by TIRADO.

r. Negligently failed to provide safe ingress and egress to the upper floors of the building for tenants after regular business hours when the

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Defendant knew or should have known that tenants utilized the building at those times.

38. As a direct and proximate result of Defendant METCALF's negligence, Plaintiff J.J.F. was physically and sexually assaulted, battered, and traumatized, and caused to suffer bodily injury including sexual assault, mental pain and suffering, psychological injuries, scarring, disability, handicap, disfigurement, aggravation of pre-existing conditions, and the loss of the capacity for the enjoyment of life.

39. As a further direct and proximate cause of the negligence of the Defendant, Plaintiff has incurred in the past and will incur in the future medical and psychological expenses for the treatment of her injuries, has lost income in the past and will incur lost earning capacity in the future. All of said damages are permanent and continuing in nature.

WHEREFORE, Plaintiff J.J.F. sues Defendant METCALF BUILDING for damages in excess of $15,000 including pre-judgment and post-judgment interest to the extent allowed by law, plus costs and interest, and demands trial by jury of all issues so triable.

COUNT II

CLAIM OF NEGLIGENCE AGAINST DEFENDANT KUHN MANAGEMENT

Plaintiffs reallege and readopt paragraphs 1 through 14 above as if set forth fully herein and further state:

40. On or about February 21, 2005, at approximately 9:00 p.m., Plaintiff J.J.F. was lawfully on the premises of the subject commercial building.

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41. While waiting for the elevator in the common area, Plaintiff was physically and sexually assaulted and battered by Defendant TIRADO.

42. At all times hereinafter mentioned, and at the time of the incident complained of, Defendant, KUHN MANAGEMENT, managed, maintained, operated, controlled and held the subject commercial building out to the public as a safe and secure business location and encouraged members of the public and the Plaintiff to enter and use the premises and lease offices in which to conduct their business.

43. As part of its management operations, Defendant KUHN MANAGEMENT had control over the renovation of the subject commercial building which was in turn arranged and/or provided by KUHN MANAGEMENT's actual employees and/or its apparent and/or contractual agents.

44. At all times material hereto, lawful business invitees, including the Plaintiff, had a right to and did in fact rely upon the ostensible security at the subject commercial building managed, maintained, controlled and operated by Defendant KUHN MANAGEMENT.

45. Defendant, KUHN MANAGEMENT, had a duty to the Plaintiff and to other invitees lawfully on its premises to maintain the premises in a reasonably safe condition and to warn the of dangerous conditions existing at the subject commercial building.

46. Defendant, KUHN MANAGEMENT, had a further duty to provide reasonable security measures and/or responsible security personnel to control, patrol, and guard against

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the criminal activity which had been occurring at or near the immediate vicinity of the subject commercial building.

47. Defendant, KUHN MANAGEMENT had a further duty to adequately supervise and enforce any security measures already instituted at the time of the incident complained of herein and to insure that the security measures were adequate and were being reasonably performed.

48. Defendant, KUHN MANAGEMENT, knew or should have known of the criminal activity occurring at the subject commercial building and immediate vicinity and/or having the potential and/or opportunity to occur at the subject commercial building and its immediate vicinity.

49. Defendant, KUHN MANAGEMENT, had actual or constructive notice or knowledge of a history of criminal activity against persons in and about the subject commercial building prior to the incident in question.

50. Defendant, KUHN MANAGEMENT, knew or should have recognized the likelihood of criminal activity which would endanger individuals and invitees lawfully present at the subject commercial building.

51. Defendant, KUHN MANAGEMENT, knew or should have recognized that other security measures already implemented at the time of the incident complained of herein were inadequate and/or not being performed as expected or intended.

52. Defendant, KUHN MANAGEMENT, knew or should have known or recognized

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that inadequate security measures would increase the likelihood of criminal activity that would endanger individuals and lawful invitees at the subject commercial building.

53. Defendant, KUHN MANAGEMENT, knew or should have known or recognized that the security measures implemented at the subject commercial building at the time of the incident complained of herein were inadequate and unreasonable due to the reasonably foreseeable risk presented hereon.

54. At all times material, Defendant KUHN MANAGEMENT employed, hired, retained, supervised, contracted, and/or directed Defendant, ISMAEL TIRADO.

55. Defendant, KUHN MANAGEMENT, had a duty of care to the Plaintiff and to the public to use reasonable care in their hiring, training, supervision and retention of Defendant ISMAEL TIRADO and to establish and enforce proper security and oversight to assure the security and safety of the business invitees and members of the public at the subject commercial building.

56. Defendant KUHN MANAGEMENT and their agents, servants, and employees negligently, carelessly, and recklessly failed to properly train and supervise their employees, including Defendant ISMAEL TIRADO, and failed to create or enforce security procedures to assure the safety and security of business invitees and members of the public at the subject commercial building.

57. Defendants KUHN MANAGEMENT breached their duty of care to the Plaintiff and the public in their failed security and in their negligent, careless and reckless

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supervision, training and retention of Defendant ISMAEL TIRADO.

58. At all times material, Defendant KUHN MANAGEMENT, is and was legally responsible for all criminal acts and acts of negligence on the part of ISMAEL TIRADO as set forth in Count II above by virtue of *respondeat superior* doctrine.

59. Defendant KUHN MANAGEMENT is strictly liable under Florida's *respondeat superior* doctrine for all negligent acts committed by Defendant, ISMAEL TIRADO, within the course and scope of his employment with KUHN MANAGEMENT.

60. Defendant, KUHN MANAGEMENT, through its agents, employees, officers, staff, administrators, representatives, servants, and security personnel breached the duty owed to lawful invitees and the Plaintiff by committing one or more of the following negligent acts of commission and/or omission:

a. Negligently failed to provide adequate security;

b. Negligently failed to provide adequate security despite knowledge, actual or constructive, of the unreasonable and unforeseeable risk of harm by conditions occurring at the subject commercial building;

c. Negligently exposed this Plaintiff to a foreseeable and unreasonable risk of harm or bodily assault;

d. Negligently created a foreseeable and unreasonable risk of criminal assault;

e. Negligently failed to warn of the foreseeable and unreasonable risk of harm created by conditions at the subject commercial building of which this Defendant was aware or should have been aware and of which this Plaintiff was not aware, nor, in the exercise of reasonable care, of which she should or could have been aware;

f. Negligently failed to control and adequately supervise the subject commercial building;

g. Negligently failed to become apprised of the extent of the problem of criminal acts which occurred on or near the subject commercial building and to take reasonable preventive action;

h. Negligently failed to oversee and/or supervise existing security measures to insure that such measures were being adequately performed;

i. Negligently failed to improve any existing security measures that said Defendant, knew or through the exercise of reasonable care should have known were inadequate and/or ineffective and/or inefficiently performed or executed;

j. Negligently failed to investigate and act accordingly upon the suspicious presence of Plaintiff's assailant at or near the subject commercial building;

k. Negligently failed to establish adequate standards for the safe operation and management of the subject commercial building;

l. Negligently failed to provide reasonable and adequately trained personnel to provide protection for said Plaintiff, and lawful invitees;

m. Negligently failed to provide reasonable and adequate orientation and supervision to employees, agents, representatives, servants, and/or security personnel in order to adequately prepare them for employment at or near the specific location, the area in which this subject commercial building is located and known to have been the scene and location of prior criminal acts of third parties;

n. Negligently failed to have adequate illumination and/or lighting so as to deter criminal activity and/or allow the Plaintiff to perceive the danger posed by the criminal assailant with enough time to avoid being battered and sexually assaulted;

o. Negligently failed to adopt such other security measures which were

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necessary and reasonable to protect and safeguard the lives of lawful invitees and individuals present at or near the subject commercial building such as the Plaintiff herein; and were otherwise negligent in their management of the subject commercial building.

61. As a direct and proximate result of Defendant KUHN MANAGEMENT's negligence, Plaintiff J.J.F. was physically and sexually assaulted, battered, and traumatized, and caused to suffer bodily injury including sexual assault, mental pain and suffering, psychological injuries, scarring, disability, handicap, disfigurement, aggravation of pre-existing conditions, and the loss of the capacity for the enjoyment of life.

62. As a further direct and proximate cause of the negligence of the Defendant, Plaintiff has incurred in the past and will incur in the future medical and psychological expenses for the treatment of her injuries, has lost income in the past and will incur lost earning capacity in the future. All of said damages are permanent and continuing in nature.

WHEREFORE, Plaintiff J.J.F. sues Defendant KUHN MANAGEMENT for damages in excess of $15,000 including pre-judgment and post-judgment interest to the extent allowed by law, plus costs and interest, and demands trial by jury of all issues so triable.

COUNT III

CLAIM OF NEGLIGENT HIRING OF ISMAEL TIRADO AGAINST DEFENDANT KUHN MANAGEMENT

Plaintiffs reallege and readopt paragraphs 1 through 14 and paragraphs 40 through 62 above as if set forth fully herein and further state:

63. As a result of the criminal actions of Defendant TIRADO, Plaintiff J.J.F. was

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injured when she was physically and sexually assaulted and battered.

64. As a result of the business invitee status of Plaintiff J.J.F., the Defendant, KUHN MANAGEMENT, owed a duty to Plaintiff to use reasonable care in hiring employees, and more particularly, Defendant TIRADO.

65. The Defendant, KUHN MANAGEMENT, gave to its employee, Defendant TIRADO, a key card to enter the subject building, and as a result thereof, KUHN MANAGEMENT had the responsibility to first investigate as to the safety of such an action.

66. The Defendant, KUHN MANAGEMENT, breached the duty owed to J.J.F. by reason of the following acts of omission:

a. KUHN MANAGEMENT failed to make a reasonable investigation of Defendant TIRADO prior to hiring him and trusting him with a key card of the subject building;

b. KUHN MANAGEMENT failed to ensure that it was safe to place Defendant TIRADO in a position where he would naturally meet with business invitees, and more particularly in this case, Plaintiff J.J.F..

c. KUHN MANAGEMENT failed to maintain a hiring system that adequately involved background investigation, interviewing, the checking of references, or other mechanisms to ensure that job applicants were being honest and accurate, and were otherwise suitable for employment in a given position.

67. Had KUHN MANAGEMENT completed an appropriate investigation of Defendant TIRADO, it would have been revealed that he was unsuitable for the particular duty to be performed.

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68. In light of the information known, or which should have been known, by KUHN MANAGEMENT, it was unreasonable for KUHN MANAGEMENT to hire Defendant TIRADO and allow him unfettered and unsupervised access to the subject premises.

69. KUHN MANAGEMENT, failed to exercise the level of care, which under all the circumstances, a reasonably prudent employer would have exercised in choosing Defendant TIRADO for the particular duties to be performed.

70. In light of the information KUHN MANAGEMENT knew or reasonably should have discovered about Defendant TIRADO, KUHN MANAGEMENT's conduct in hiring Defendant TIRADO showed a reckless disregard for the safety of persons to be exposed to Defendant TIRADO in his employment capacity, or entirely lacked reasonable care for the consequences of exposing Defendant TIRADO to business invitees, or showed wantonness or recklessness in its hiring process, or otherwise showed gross carelessness and reckless indifference to the safety and welfare of KUHN MANAGEMENT's business invitees, equivalent to an intentional violation of invitees' rights, and in particular, Plaintiff J.J.F..

71. But for the negligent acts and omissions of the Defendant KUHN MANAGEMENT, as outlined herein, Defendant TIRADO would not have had the employment-related contact with Plaintiff J.J.F. which lead to the subsequent injury inflicted upon her. Hence, there is a causal connection between the employment of Defendant TIRADO with the Defendant, KUHN MANAGEMENT, and the injury inflicted upon J.J.F., a KUHN MANAGEMENT business invitee.

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72. As a direct and proximate result of Defendant KUHN MANAGEMENT's negligence, Plaintiff J.J.F. was physically and sexually assaulted, battered, and traumatized, and caused to suffer bodily injury including sexual assault, mental pain and suffering, psychological injuries, scarring, disability, handicap, disfigurement, aggravation of pre-existing conditions, and the loss of the capacity for the enjoyment of life.

73. As a further direct and proximate cause of the negligence of the Defendant, Plaintiff has incurred in the past and will incur in the future medical and psychological expenses for the treatment of her injuries, has lost income in the past and will incur lost earning capacity in the future. All of said damages are permanent and continuing in nature.

WHEREFORE, Plaintiff J.J.F. sues Defendant KUHN MANAGEMENT for damages in excess of $15,000 including pre-judgment and post-judgment interest to the extent allowed by law, plus costs and interest, and demands trial by jury of all issues so triable.

COUNT IV

CLAIM OF NEGLIGENT RETENTION AGAINST DEFENDANT KUHN MANAGEMENT

Plaintiffs reallege and readopt paragraphs 1 through 14 and paragraphs 40 through 73 above as if set forth fully herein and further state:

74. As a result of the business invitee status of Plaintiff J.J.F., the Defendant, KUHN MANAGEMENT, owed a duty to J.J.F. to use reasonable care in supervising and retaining its employees, and more particularly, Defendant TIRADO.

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75. While Defendant TIRADO was employed by the Defendant, KUHN MANAGEMENT, but prior to Defendant TIRADO's contact with Plaintiff J.J.F., the Defendant had actual or constructive notice of a problem with Defendant TIRADO's fitness for the position he held:

a. Defendant TIRADO failed to return the key card granting him access to the subject building managed by Defendant KUHN MANAGEMENT;

b. Defendant KUHN MANAGEMENT learned that Defendant TIRADO stayed after hours and slept in the subject building at night, and had done so for the entire length of his employment with Defendant KUHN MANAGEMENT, prior to coming into contact with Plaintiff J.J.F.;

c. Defendant KUHN MANAGEMENT learned that Defendant TIRADO had a criminal history of drug use and drug abuse.

76. Having received actual or constructive notice of the potential problems with Defendant TIRADO's fitness for the position he held, the Defendant, KUHN MANAGEMENT, unreasonably failed to further investigate and/or supervise Defendant TIRADO, or otherwise take corrective action, such as discharge or reassignment.

77. Defendant KUHN MANAGEMENT employed Defendant TIRADO in a position that granted him access to the subject building and where coming into contact with business invitees was unavoidable. Therefore, KUHN MANAGEMENT was responsible, in whole or in part, for bringing third persons, and more particularly, Plaintiff J.J.F., into contact with Defendant TIRADO. Furthermore, KUHN MANAGEMENT promotes to the public the

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position that its employees are professional, reliable, trustworthy and fit to provide the service for which they are employed. Hence, the Defendant, KUHN MANAGEMENT, had a duty to its business invitees, and more particularly, Plaintiff J.J.F., to make reasonable inquiry of Defendant TIRADO's suitability for his position both at the time of hire and once it learned of the circumstances outlined in paragraph 67, herein.

78. Had the Defendant, KUHN MANAGEMENT, properly responded to Defendant TIRADO's failure to return his key card, the following would have been revealed that:

a. Defendant TIRADO had a criminal history of drug use and drug abuse;

b. Defendant TIRADO had remained on the premises of the subject premises after hours; and that

c. Defendant TIRADO had slept on the premises of the subject premises.

79. Defendant KUHN MANAGEMENT, knew or should have known that Defendant TIRADO was predisposed to committing a wrong against business invitees and that he was employed under circumstances that provided him an opportunity or enticement to commit such a wrong.

80. KUHN MANAGEMENT's methods, practices and procedures of supervision, training and managing its employees, and more particularly, Defendant TIRADO, breached the duty owed to J.J.F. to use reasonable care in supervising and retaining employees and foreseeably contributed to the injuries sustained by the Plaintiff.

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81. Based upon the circumstances outlined herein, the Defendant, KUHN MANAGEMENT, breached its duty to J.J.F. by not reasonably investigating and taking adequate corrective actions against Defendant TIRADO. Rather, KUHN MANAGEMENT maintained Defendant TIRADO in his same position, allowing contact with business invitees, with no precautions or proper oversight in place to protect the safety and property of others.

82. KUHN MANAGEMENT's supervising and retaining of Defendant TIRADO evidences willful and malicious conduct, or a reckless disregard for the safety of persons to be exposed to Defendant TIRADO in his employment capacity, or an entire lack of reasonable care for the consequences of exposing Defendant TIRADO to KUHN MANAGEMENT's business invitees, or showed wantonness or recklessness in its supervising and retention process, or otherwise showed gross carelessness and reckless indifference to the safety and welfare of KUHN MANAGEMENT's business invitees, equivalent to an intentional violation of customer's rights, and in particular, Plaintiff J.J.F..

83. But for the negligent acts and omissions of the Defendant, KUHN MANAGEMENT, as outlined herein, Defendant TIRADO would not have had the employment-related contact with Plaintiff J.J.F. which lead to the subsequent injury inflicted upon her. Hence, there is a causal connection between the supervision, training and retention of Defendant TIRADO with the Defendant, KUHN MANAGEMENT, and the injury inflicted upon Plaintiff J.J.F.

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84. As a direct and proximate result of Defendant KUHN MANAGEMENT's negligence, Plaintiff J.J.F. was physically and sexually assaulted, battered, and traumatized, and caused to suffer bodily injury including sexual assault, mental pain and suffering, psychological injuries, scarring, disability, handicap, disfigurement, aggravation of pre-existing conditions, and the loss of the capacity for the enjoyment of life.

85. As a further direct and proximate cause of the negligence of the Defendant, Plaintiff has incurred in the past and will incur in the future medical and psychological expenses for the treatment of her injuries, has lost income in the past and will incur lost earning capacity in the future. All of said damages are permanent and continuing in nature.

WHEREFORE, Plaintiff J.J.F. sues Defendant KUHN MANAGEMENT for damages in excess of $15,000 including pre-judgment and post-judgment interest to the extent allowed by law, plus costs and interest, and demands trial by jury of all issues so triable.

COUNT V

CLAIM OF NEGLIGENCE AGAINST DEFENDANT KUHN CONSTRUCTION

Plaintiffs reallege and readopt paragraphs 1 through 14 above as if set forth fully herein and further state:

86. On or about February 21, 2005, at approximately 9:00 p.m., Plaintiff J.J.F. was lawfully on the premises of the subject commercial building.

87. While waiting for the elevator in the common area, Plaintiff was physically and

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sexually assaulted and battered by Defendant TIRADO.

88. At all times hereinafter mentioned, and at the time of the incident complained of, Defendant, KUHN CONSTRUCTION, was a construction company, hired by Defendants METCALF BUILDING and/or KUHN MANAGEMENT to renovate, refurbish, construct, build and/or improve the subject commercial building.

89. Defendant KUHN CONSTRUCTION had a duty of care to the Plaintiff and to the public to use reasonable care in their hiring, training, supervision and retention of Defendant ISMAEL TIRADO and to establish and enforce proper security and oversight to assure the security and safety of the business invitees and members of the public at the subject commercial building.

90. Defendant KUHN CONSTRUCTION and their agents, servants, and employees negligently, carelessly, and recklessly failed to properly train and supervise their employees, including Defendant ISMAEL TIRADO, and failed to create or enforce security procedures to assure the safety and security of business invitees and members of the public at the subject commercial building.

91. Defendants KUHN CONSTRUCTION breached their duty of care to the Plaintiff and the public in their failed security and in their negligent, careless and reckless supervision, training and retention of Defendant ISMAEL TIRADO.

92. At all times material, Defendant KUHN CONSTRUCTION, is and was legally responsible for all criminal acts and acts of negligence on the part of ISMAEL TIRADO by

virtue of *respondeat superior* doctrine.

93. At all times material, Defendant KUHN CONSTRUCTION employed, hired, retained, supervised, contracted, and/or directed Defendant, ISMAEL TIRADO.

94. Defendant KUHN CONSTRUCTION is strictly liable under Florida's *respondeat superior* doctrine for all negligent acts committed by Defendant, ISMAEL TIRADO, within the course and scope of his employment with KUHN CONSTRUCTION.

95. As a direct and proximate result of Defendant KUHN CONSTRUCTION's negligence, Plaintiff J.J.F. was physically and sexually assaulted, battered, and traumatized, and caused to suffer bodily injury including sexual assault, mental pain and suffering, psychological injuries, scarring, disability, handicap, disfigurement, aggravation of pre-existing conditions, and the loss of the capacity for the enjoyment of life.

96. As a further direct and proximate cause of the negligence of the Defendant, Plaintiff has incurred in the past and will incur in the future medical and psychological expenses for the treatment of her injuries, has lost income in the past and will incur lost earning capacity in the future. All of said damages are permanent and continuing in nature.

WHEREFORE, Plaintiff J.J.F. sues Defendant KUHN CONSTRUCTION for damages in excess of $15,000 including pre-judgment and post-judgment interest to the extent allowed by law, plus costs and interest, and demands trial by jury of all issues so triable.

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COUNT VI

CLAIM OF NEGLIGENT HIRING OF ISMAEL TIRADO *AGAINST DEFENDANT KUHN CONSTRUCTION*

Plaintiffs reallege and readopt paragraphs 1 through 14 and paragraphs 86 through 96 above as if set forth fully herein and further state:

97. As a result of the criminal actions of Defendant TIRADO, Plaintiff J.J.F. was injured when she was physically and sexually assaulted and battered.

98. As a result of the business invitee status of Plaintiff J.J.F., the Defendant, KUHN CONSTRUCTION, owed a duty to Plaintiff to use reasonable care in hiring employees, and more particularly, Defendant TIRADO.

99. The Defendant, KUHN CONSTRUCTION, gave to its employee, Defendant TIRADO, a key card to enter the subject building, and as a result thereof, KUHN CONSTRUCTION had the responsibility to first investigate as to the safety of such an action.

100. The Defendant, KUHN CONSTRUCTION, breached the duty owed to J.J.F. by reason of the following acts of omission:

a. KUHN CONSTRUCTION failed to make a reasonable investigation of Defendant TIRADO prior to hiring him and trusting him with a key card of the subject building;

b. KUHN CONSTRUCTION failed to ensure that it was safe to place Defendant TIRADO in a position where he would naturally meet with business invitees, and more particularly in this case, Plaintiff J.J.F.;

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c. KUHN CONSTRUCTION failed to maintain a hiring system that adequately involved background investigation, interviewing, the checking of references, or other mechanisms to ensure that job applicants were being honest and accurate, and were otherwise suitable for employment in a given position.

101. Had KUHN CONSTRUCTION completed an appropriate investigation of Defendant TIRADO, it would have been revealed that he was unsuitable for the particular duty to be performed.

102. In light of the information known, or which should have been known, by KUHN CONSTRUCTION, it was unreasonable for KUHN CONSTRUCTION to hire Defendant TIRADO.

103. KUHN CONSTRUCTION, failed to exercise the level of care, which under all the circumstances, a reasonably prudent employer would have exercised in choosing Defendant TIRADO for the particular duties to be performed.

104. In light of the information KUHN CONSTRUCTION knew or reasonably should have discovered about Defendant TIRADO, KUHN CONSTRUCTION's conduct in hiring Defendant TIRADO showed a reckless disregard for the safety of persons to be exposed to Defendant TIRADO in his employment capacity, or entirely lacked reasonable care for the consequences of exposing Defendant TIRADO to business invitees, or showed wantonness or recklessness in its hiring process, or otherwise showed gross carelessness and reckless indifference to the safety and welfare of KUHN CONSTRUCTION's business invitees, equivalent to an intentional violation of invitees' rights, and in particular, Plaintiff

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J.J.F..

105. But for the negligent acts and omissions of the Defendant KUHN CONSTRUCTION, as outlined herein, Defendant TIRADO would not have had the employment-related contact with Plaintiff J.J.F. which lead to the subsequent injury inflicted upon her. Hence, there is a causal connection between the employment of Defendant TIRADO with the Defendant, KUHN CONSTRUCTION, and the injury inflicted upon J.J.F., a KUHN CONSTRUCTION business invitee.

106. As a direct and proximate result of Defendant KUHN CONSTRUCTION's negligence, Plaintiff J.J.F. was physically and sexually assaulted, battered, and traumatized, and caused to suffer bodily injury including sexual assault, mental pain and suffering, psychological injuries, scarring, disability, handicap, disfigurement, aggravation of pre-existing conditions, and the loss of the capacity for the enjoyment of life.

107. As a further direct and proximate cause of the negligence of the Defendant, Plaintiff has incurred in the past and will incur in the future medical and psychological expenses for the treatment of her injuries, has lost income in the past and will incur lost earning capacity in the future. All of said damages are permanent and continuing in nature.

WHEREFORE, Plaintiff J.J.F. sues Defendant KUHN CONSTRUCTION for damages in excess of $15,000 including pre-judgment and post-judgment interest to the extent allowed by law, plus costs and interest, and demands trial by jury of all issues so triable.

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COUNT VII

CLAIM OF NEGLIGENT RETENTION AGAINST DEFENDANT KUHN CONSTRUCTION

Plaintiffs reallege and readopt paragraphs 1 through 14 and paragraphs 86 through 107 above as if set forth fully herein and further state:

108. As a result of the business invitee status of Plaintiff J.J.F., the Defendant, KUHN CONSTRUCTION, owed a duty to J.J.F. to use reasonable care in supervising and retaining its employees, and more particularly, Defendant TIRADO.

109. While Defendant TIRADO was employed by the Defendant, KUHN CONSTRUCTION, but prior to Defendant TIRADO's contact with Plaintiff J.J.F., the Defendant had actual or constructive notice of a problem with Defendant TIRADO's fitness for the position he held:

a. Defendant TIRADO failed to return the key card granting him access to the subject building managed by Defendant KUHN CONSTRUCTION;

b. Defendant KUHN CONSTRUCTION learned that Defendant TIRADO stayed after hours and slept in the subject building at night, and had done so for the entire length of his employment with Defendant KUHN CONSTRUCTION, prior to coming into contact with Plaintiff J.J.F.;

c. Defendant KUHN CONSTRUCTION learned that Defendant TIRADO had a criminal history of drug use and drug abuse.

110. Having received actual or constructive notice of the potential problems with Defendant TIRADO's fitness for the position he held, the Defendant, KUHN

CONSTRUCTION, unreasonably failed to further investigate and/or supervise Defendant TIRADO, or otherwise take corrective action, such as discharge or reassignment.

111. Defendant KUHN CONSTRUCTION employed Defendant TIRADO in a position that granted him access to the subject building and where coming into contact with business invitees was unavoidable. Therefore, KUHN CONSTRUCTION was responsible, in whole or in part, for bringing third persons, and more particularly, Plaintiff J.J.F., into contact with Defendant TIRADO. Furthermore, KUHN CONSTRUCTION promotes to the public the position that its employees are professional, reliable, trustworthy and fit to provide the service for which they are employed. Hence, the Defendant, KUHN CONSTRUCTION, had a duty to its business invitees, and more particularly, Plaintiff J.J.F., to make reasonable inquiry of Defendant TIRADO's suitability for his position both at the time of hire and once it learned of the circumstances outlined in paragraph 101, herein.

112. Had the Defendant, KUHN CONSTRUCTION, properly responded to Defendant TIRADO's failure to return his key card, the following would have been revealed that:

a. Defendant TIRADO had a criminal history of drug use and drug abuse;

b. Defendant TIRADO had remained on the premises of the subject premises after hours; and that

c. Defendant TIRADO had slept on the premises of the subject

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premises.

113. Defendant KUHN CONSTRUCTION, knew or should have known that Defendant TIRADO was predisposed to committing a wrong against business invitees and that he was employed under circumstances that provided him an opportunity or enticement to commit such a wrong.

114. KUHN CONSTRUCTION's methods, practices and procedures of supervision, training and managing its employees, and more particularly, Defendant TIRADO, breached the duty owed to J.J.F. to use reasonable care in supervising and retaining employees and foreseeably contributed to the injuries sustained by the Plaintiff.

115. Based upon the circumstances outlined herein, the Defendant, KUHN CONSTRUCTION, breached its duty to J.J.F. by not reasonably investigating and taking adequate corrective actions against Defendant TIRADO. Rather, KUHN CONSTRUCTION maintained Defendant TIRADO in his same position, allowing contact with business invitees, with no precautions or proper oversight in place to protect the safety and property of others.

116. KUHN CONSTRUCTION's supervising and retaining of Defendant TIRADO evidences willful and malicious conduct, or a reckless disregard for the safety of persons to be exposed to Defendant TIRADO in his employment capacity, or an entire lack of reasonable care for the consequences of exposing Defendant TIRADO to KUHN CONSTRUCTION's business invitees, or showed wantonness or recklessness in its

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supervising and retention process, or otherwise showed gross carelessness and reckless indifference to the safety and welfare of KUHN CONSTRUCTION's business invitees, equivalent to an intentional violation of customer's rights, and in particular, Plaintiff J.J.F..

117. But for the negligent acts and omissions of the Defendant, KUHN CONSTRUCTION, as outlined herein, Defendant TIRADO would not have had the employment-related contact with Plaintiff J.J.F. which lead to the subsequent injury inflicted upon her. Hence, there is a causal connection between the supervision, training and retention of Defendant TIRADO with the Defendant, KUHN CONSTRUCTION, and the injury inflicted upon Plaintiff J.J.F.

118. As a direct and proximate result of Defendant KUHN CONSTRUCTION's negligence, Plaintiff J.J.F. was physically and sexually assaulted, battered, and traumatized, and caused to suffer bodily injury including sexual assault, mental pain and suffering, psychological injuries, scarring, disability, handicap, disfigurement, aggravation of pre-existing conditions, and the loss of the capacity for the enjoyment of life.

119. As a further direct and proximate cause of the negligence of the Defendant, Plaintiff has incurred in the past and will incur in the future medical and psychological expenses for the treatment of her injuries, has lost income in the past and will incur lost earning capacity in the future. All of said damages are permanent and continuing in nature.

WHEREFORE, Plaintiff J.J.F. sues Defendant KUHN CONSTRUCTION for damages in excess of $15,000 including pre-judgment and post-judgment interest to the extent

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allowed by law, plus costs and interest, and demands trial by jury of all issues so triable.

COUNT VIII

CLAIM AGAINST ISMAEL TIRADO

Plaintiffs reallege and readopt paragraphs 1 through 14 as if set forth herein and further allege:

120. On or about February 21, 2005, at approximately 9:00 p.m., Plaintiff J.J.F. was lawfully on the premises of the subject commercial building on her way to her office.

121. At all times material, Defendant TIRADO was an employee of Defendant KUHN MANAGEMENT and/or Defendant KUHN CONSTRUCTION.

122. While waiting for the elevator in the common area, Plaintiff was physically and sexually assaulted and battered by Defendant TIRADO.

123. At all times material, Defendant TIRADO intended to cause and did cause a harmful contact with Plaintiff's person, including physical and sexual assault, and battery.

124. At no time did the Plaintiff consent to any such contact, including the sexual assault and battery by Defendant TIRADO.

125. As a direct and proximate result of the intentional acts of Defendant TIRADO, Plaintiff J.J.F. was physically and sexually assaulted, battered, and traumatized, and caused to suffer bodily injury including sexual assault, mental pain and suffering, psychological injuries, scarring, disability, handicap, disfigurement, aggravation of pre-

existing conditions, and the loss of the capacity for the enjoyment of life.

126. As a further direct and proximate cause of the intentional acts of Defendant TIRADO, Plaintiff J.J.F. has incurred in the past and will incur in the future medical and psychological expenses for the treatment of her injuries, has lost income in the past and will incur lost earning capacity in the future. All of said damages are permanent and continuing in nature.

WHEREFORE, Plaintiff J.J.F. sues Defendant ISMAEL TIRADO for damages in excess of $15,000 including pre-judgment and post-judgment interest to the extent allowed by law, plus costs and interest, and demands trial by jury of all issues so triable.

COUNT IX

CLAIM OF NEGLIGENCE AGAINST DEFENDANT METCALF BUILDING FOR ALLOWING TIRADO ACCESS TO BUILDING

Plaintiffs reallege and readopt paragraphs 1 through 14 above as if set forth fully herein and further state:

127. On or about February 21, 2005, at approximately 9:00 p.m., Plaintiff J.J.F. was lawfully on the premises of the subject commercial building.

128. On said date and time, Defendant TIRADO was inside the Metcalf Building with the express or implied consent of Defendant METCALF BUILDING.

129. While waiting for the elevator in the common area, Plaintiff was physically and sexually assaulted and battered by Defendant TIRADO.

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130. At all times hereinafter mentioned, and at the time of the incident complained of, Defendant, METCALF owed its tenants a duty of reasonable care in limiting access, particularly after normal business hours, so that persons not having business in the building were prevented from entering it where they might commit criminal acts, including violent crimes against persons.

131. Asa part of its operation of the office building where this incident occurred, Defendant METCALF had control over the renovation of its commercial building which was in turn arranged and/or provided by METCALF's actual employees and/or its apparent and/or contractual agents. As part of this renovation, Defendant METCALF had actual and/or constructive knowledge of the use of the building by contractors and subcontractors.

132. Defendant METCALF had the duty to control after hours and tenant-only access, including but not limited through the use of key cards, gates, personnel and keys.

133. Upon information and belief, Defendant METCALF provided and/or allowed access by Defendant TIRADO to the subject building after working hours, in tenant-only areas, and when there was no construction work being performed, including but not limited to allowing him to sleep in the subject building.

134. Defendant METCALF knew, or in the exercise of reasonable care should have known, that Defendant TIRADO was entering the Metcalf Building after hours and/or was sleeping in the building prior to the assault and sexual battery of the Plaintiff.

135. Defendant METCALF, by and/or through its employees, agents or contractors,

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provided Defendant TIRADO an access card enabling him to enter the subject premises during the time he sexually battered the Plaintiff, by directly or indirectly allowing access and/or failing to limit access times or requiring that access be limited to the time when work was being performed and/or the time when TIRADO was under actual supervision.

136. Defendant METCALF knew or should have known that Defendant TIRADO had a criminal record and/or was an inappropriate person to have access to the subject building after hours and unsupervised.

137. Defendant METCALF knew or should have known that persons other than tenants and employees of tenants should not have key card or other access to the subject building after normal business hours and, in particular, after construction had ceased during work days.

138. Defendant METCALF knew or should have known that Defendant TIRADO had access to the subject building during after hours and/or was allowed, encouraged or known to sleep in the subject building.

139. Prior to the date of the subject assault and battery upon the Plaintiff, the Defendant METCALF represented to the Plaintiff and the public, directly and indirectly, that the building was safe for use by its tenants, including during the time the building was under renovation.

140. At all times material hereto, lawful business invitees, including the Plaintiff, had a right to and did in fact rely upon the ostensible security at the subject commercial

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building owned, managed and operated by Defendant METCALF, including the use of key card access systems and security gates.

141. Defendant, METCALF, had a duty to the Plaintiff and to other invitees lawfully on its premises to maintain the premises in a reasonably safe condition and to warn of the dangerous conditions existing at or near the subject commercial building.

142. Defendant, METCALF had a further duty to adequately supervise and enforce any security measures already instituted at the time of the incident complained of herein and to insure that the security measures were adequate and were being reasonably performed. This duty included but is not limited to preventing access to the building after hours by persons not having business in the building, non-tenants of the building, and persons who present a threat of harm to tenants, guests and users of the building.

143. Defendant, METCALF, knew or should have recognized that one of the primary purposes of having a key card access system was to prevent persons such as Defendant TIRADO from having access to the interior of the building, and thus to tenants and their employees, after normal business hours when there was no supervision.

144. Defendant METCALF knew, or in the exercise of reasonable care should have known, that its failure to properly secure the building through key card access would endanger its tenants and their employees, and expose them to the foreseeable risk of criminal assault by persons accessing the building.

145. Defendant, METCALF, knew or should have known that the key card access

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system security measures implemented at the subject commercial building at the time of the incident complained of herein were inadequate and unreasonable due to the reasonably foreseeable risk presented hereon.

146. Defendant, METCALF, through its agents, employees, officers, staff, administrators, representatives, servants, and contractors breached the duty owed to lawful invitees and the Plaintiff by committing one or more of the following negligent acts of commission and/or omission:

a. Negligently failed to ensure key card control, manage its key cards and limit key card access to provide reasonably adequate security for its tenants and their employees;

b. Negligently failed to provide reasonable and/or adequate security despite knowledge, actual or constructive, of the unreasonable and unforeseeable risk of harm by conditions occurring at and/or near the subject commercial building;

c. Negligently exposed this Plaintiff to a foreseeable and unreasonable risk of harm or bodily assault by allowing Defendant TIRADO to have access to the Metcalf Building after hours and when there was no supervision;

d. Negligently created a foreseeable and unreasonable risk of criminal assault which caused harm to the Plaintiff;

e. Negligently failed to warn of the foreseeable and unreasonable risk of harm created by conditions at the subject commercial building of which this Defendant was aware or should have been aware and of which this Plaintiff was not aware, nor, in the exercise of reasonable care, of which she should or could have been aware;

f. Negligently failed to control and adequately supervise the subject commercial building;

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g. Negligently failed to become aware of who was in possession of and/or utilizing key cards to access the Metcalf Building;

h. Negligently failed to monitor key card access and limit its use by time and/or person;

i. Negligently failed to follow and/or establish adequate standards for the safe operation and management of the subject commercial building;

j. Negligently failed to adopt such other security measures which were necessary and reasonable to protect and safeguard the lives of lawful invitees and individuals present at or near the subject commercial building such as the Plaintiff herein; and were otherwise negligent in their management of the subject commercial building;

k. Negligently allowed Defendant TIRADO to possess and use an access card to the subject building on the date of the assault and sexual battery of the Plaintiff and/or negligently failed to restrict his access to limited hours when he was under supervision;

l. Negligently failed to ensure that key card access by contractors, subcontractors and non-employees was limited in time and/or area, including the key card utilized by TIRADO.

m. Negligently failed to provide safe ingress and egress to the upper floors of the building for tenants after regular business hours when the Defendant knew or should have known that tenants utilized the building at those times.

147. As a direct and proximate result of Defendant METCALF's negligence, Plaintiff J.J.F. was physically and sexually assaulted, battered, and traumatized, and caused to suffer bodily injury including sexual assault, mental pain and suffering, psychological injuries, scarring, disability, handicap, disfigurement, aggravation of pre-existing conditions, and the loss of the capacity for the enjoyment of life.

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148. As a further direct and proximate cause of the negligence of the Defendant, Plaintiff has incurred in the past and will incur in the future medical and psychological expenses for the treatment of her injuries, has lost income in the past and will incur lost earning capacity in the future. All of said damages are permanent and continuing in nature.

WHEREFORE, Plaintiff J.J.F. sues Defendant METCALF BUILDING for damages in excess of $15,000 including pre-judgment and post-judgment interest to the extent allowed by law, plus costs and interest, and demands trial by jury of all issues so triable.

COUNT X

SPOUSAL CONSORTIUM CLAIM OF J.P.F. AGAINST ALL DEFENDANTS

Plaintiffs re-allege and re-adopt paragraphs 1 through 148 as if set forth fully herein and further allege:

149. At all times material Plaintiff J.P.F. was and is the husband of Plaintiff J.J.F.

150. Plaintiff J.P.F. has had to devote himself substantially to the care and treatment of his wife due to the injuries she sustained at the hands of the Defendants.

151. As a direct and proximate cause of the Defendants' negligence, recklessness and intentional acts, as set forth in Counts One through Eight above, Plaintiff J.P.F. as the husband of Plaintiff J.J.F., has been deprived of his wife's society, companionship, consortium, and assistance and services in and about his home, in the past and will continue to be deprived in the future and has had to incur costs for medical care and treatment of his

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wife, as well as other expenses that would not have been incurred or spent but for the negligence of the Defendants as set forth herein.

WHEREFORE, Plaintiff J.P.F., sues all the Defendants for damages in excess of $15,000 as well as costs, post-judgment interest and attorney's fees to the extent allowed by law and demands trial by jury of all issues so triable.

WE HEREBY CERTIFY that a true copy of the foregoing was served by email and U.S. Mail this 28th day of August, 2008 to: Geoffrey D. Ringer, Esq., Ringer, Henry , Buckley & Seacord, P.A., *(Attorneys for Kuhn Construction, LLC)* 14 East Washington Street, Suite 200, Orlando, FL 32801; Carlos M. Llorente, Esq., Law Office of Robert T. Tacher, (*Attorneys for Metcalf Building LLC*) 3230 W. Commercial Boulevard, Suite 250, Ft. Lauderdale, FL 33309 and Wayne Tosko, Esq., Vasquez & Tosko, LLP, *(Attorneys for Kuhn Management, Inc.),* Landmark Center Two, 225 East Robinson Street, Suite 525, Orlando, FL 32801-4328.

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