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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

YVONNE JOHNPOLL,
Plaintiff,

v.

BRIX TAVERN, LLC
Defendants.

Case No. 17CV33824

FIRST AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL

(Personal injuries—Negligence and
Premises Liability; Negligence Per Se)

(Not subject to mandatory arbitration)

Amount in controversy: \$2,334,629.94

Filing fee authority of \$834: ORS
21.160(1)(d)

Plaintiff demands a jury trial and alleges:

1.

Upon information and belief, at all relevant times, defendant BRIX TAVERN, LLC (“BRIX” or “defendant”) was and is an Oregon corporation, authorized to transact business in the State of Oregon.

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2.

On information and belief, at all relevant times, BRIX was engaged in the business of operating a restaurant called BRIX Tavern at 1338 NW Hoyt Street, Portland, Oregon in Multnomah County (“the restaurant”).

COUNT ONE: NEGLIGENCE

3.

Plaintiff Yvonne Johnpoll was a customer and invitee of the restaurant on or about January 29, 2016. Therefore, the restaurant was under a duty to use reasonable diligence to ascertain the condition of the premises, to warn plaintiff and to protect plaintiff from hazardous conditions. It was further obligated to repair or remove hazardous conditions of which the restaurant knew or, in the exercise of reasonable diligence, could or should have known.

4.

On or about January 29, 2016, plaintiff was injured when she fell while descending a set of interior stairs at the restaurant, suffering injuries.

5.

BRIX was negligent in one or more of the following particulars:

- a) In failing to exercise reasonable care to discover the hazardous conditions of the premises, which created an unreasonable risk of harm to plaintiff;

- 1 b) In failing to eliminate the hazardous conditions of the premises, which
2 created the unreasonable risk of harm to plaintiff;
- 3 c) In failing to adequately warn plaintiff of the dangers and unreasonable risk of
4 harm posed by the hazardous conditions of the premises that BRIX knew or should
5 have known about so as to enable plaintiff to avoid harm;
- 6
7 d) In failing to inspect the premises for hazardous conditions, or, upon information
8 and belief, in failing to remedy hazardous conditions on the stairs once BRIX was
9 aware of them;
- 10
11 e) In failing to affirmatively protect or take reasonable precautions to protect
12 plaintiff against the dangers posed by the hazardous conditions of the premises
13 that BRIX knew about;
- 14
15 f) In failing to comply with Oregon law, specifically Chapter 10 of the Oregon
16 Structural Specialty Code, to ensure that there were handrails on both sides of the
17 stairs;
- 18
19 g) In failing to provide adequate lighting on the stairs and near the stairs for its
20 invitees and customers;
- 21
22 h) In failing to provide a visual clue for the presence of the stairs, particularly the
23 bottom stair;
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1 i) In failing to install safe, anti-slip or anti-skid flooring and/or adequate and safe
2 flooring material on the stairs and/or in failing to safely treat or construct the stairs so
3 as to avoid a hazardous condition;

4
5 j) In failing and neglecting to train staff, contractors and/or employees in proper
6 techniques of stair, handrail and/or floor safety;

7
8 k) In failing to paint or otherwise mark or outline the stairs, particularly the last stair,
9 a bright, contrasting color from the surrounding floor or construct them in such a
10 fashion as to distinguish them or alert business invitees to them; and/or

11 l) In failing to provide adequate warning devices such as cones, placards,
12 appropriate signage, or other devices to warn plaintiff and other patrons of the
13 dangerous condition posed by the stairs, particularly the bottom stair.
14

15 6.

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17 BRIX created the above hazardous condition(s), which caused plaintiff to trip and/or
18 slip and fall and sustain injuries.

19 7.

20
21 BRIX's negligence as alleged above was a substantial factor in causing plaintiff's
22 injuries.

23 8.

24
25 As a result of BRIX's negligence as alleged above and, upon information and belief,
26 as a result of numerous prior falls by others down the same stairs, it was foreseeable that

1 plaintiff, or other customers similarly situated, would suffer injuries. In fact, plaintiff
2 incurred physical injuries, pain, and suffering, including major orthopedic injuries which
3 required multiple surgeries.

4
5 9.

6 Upon information and belief, BRIX knew about the dangerous condition of the stairs,
7 particularly the bottom stair. Upon information and belief, six days before plaintiff's fall on
8 the unreasonably dangerous stairs at BRIX, another patron fell and injured herself, and Mark
9 Byrum, a BRIX executive, ordered that safety measures be removed from the bottom stair.
10

11 10.

12
13 Upon information and belief, the above-described conduct by BRIX was deliberate,
14 intentional, wanton, and was done with a reckless and outrageous indifference to a highly
15 unreasonable risk of harm. Upon information and belief, the above-described conduct by
16 BRIX was done with a conscious indifference to the health, safety and welfare of others, and
17 BRIX should be required to pay punitive damages of \$1,000,000 in order to deter BRIX and
18 others similarly situated from this and similar types of conduct in the future.
19

20 **COUNT TWO—NEGLIGENCE PER SE**

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22 11.

23 Plaintiff incorporates and re-alleges Paragraphs 1-10 above.

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12.

At all relevant times, the stairs did not have handrails on both sides, in violation of Oregon law, specifically Chapter 10 of the Oregon Structural Specialty Code. This presented a foreseeable safety hazard to customers and invitees.

13.

At all relevant times, BRIX were negligent per se in violating Chapter 10 of the Oregon Structural Code, Section 1009.15 by having a restaurant with a stairway without handles on each side.

14.

At all relevant times, Chapter 10 of the Oregon Structural Specialty Code was in full force and effect and were intended to protect business invitees, individuals, and patrons of commercial establishments such as restaurants (*e.g.*, BRIX) within the state of Oregon, including plaintiff, from the type of harm that ultimately befell plaintiff.

15.

BRIX had a heightened duty of care to plaintiff because the unreasonably hazardous conditions alleged above could not be encountered with reasonable safety even if plaintiff was aware of them.

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16.

As a result of the negligence of BRIX, plaintiff has incurred reasonable and necessary medical expenses in the amount of approximately 175,961.79. Plaintiff will incur further medical expenses prior to and through the time of trial. Plaintiff reserves the right to amend the pleadings to conform to the evidence prior to and at trial.

17.

Plaintiff will incur reasonable and necessary future medical expenses in an amount to be determined at trial, but not to exceed \$200,000. Plaintiff reserves the right to amend the pleadings to conform to the evidence prior to and at trial.

18.

As a result of the negligence of BRIX as alleged above, plaintiff suffered major orthopedic injuries which required surgeries. Plaintiff suffered, continues to suffer, and will permanently suffer from pain, disability, discomfort, impaired use of her body, and a reduced capacity to enjoy life. Plaintiff has incurred noneconomic damages in the amount of \$1,000,000.

19.

Upon information and belief, the above-described conduct was deliberate, intentional and wonton, and was done with a reckless and outrageous indifference to a highly unreasonable risk of harm, and was done with a conscious indifference to the health, safety, and welfare of others, and BRIX should be required to pay punitive damages of \$1,000,000

1 in order to deter BRIX and others similarly situated from this and similar types of conduct in
2 the future.

3
4 Therefore, plaintiff prays for judgment against BRIX as follows:

- 5 1) Noneconomic damages in an amount that the jury determines is just and
6 reasonable, and not to exceed \$1,000,000;
- 7 2) Economic damages for past medical expenses in the amount of \$175,961.79, which
8 will continue to increase through this litigation and through the time of trial;
- 9 3) Economic damages for future medical expenses in an amount reasonable and
10 necessary to be determined at trial, and not to exceed \$200,000;
- 11 4) \$1,000,000 in punitive damages;
- 12 5) Plaintiff's prejudgment interest, costs, and disbursements incurred herein; and
13 6) Such other relief as the court deems equitable, just, and reasonable.

14
15 Plaintiff requests a trial by jury.

16
17 Dated this 13th day of April, 2018.

18
19
20 By s/ Kristin L. Olson

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1 **CERTIFICATE OF SERVICE**

2

3 I certify that on April 13, 2018, I served the foregoing PLAINTIFF'S FIRST
4 AMENDED COMPLAINT on the following:

5 Sarah Pettey
6 Dipendra Rana
7 Wiles Law Group
8 510 SW Fifth Avenue, Sixth
9 Floor
10 Portland, OR 97204
11 Via email and US mail
12 Attorneys for Brix Tavern

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By /s/ Kristin L. Olson
Kristin L. Olson

Of Attorneys for plaintiff