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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, and MARK
BYRUM
Defendants.

Case No. 17CV33824

THIRD AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL

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

(Not subject to mandatory arbitration)

Amount in controversy: \$3,377,512.79

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") was and is an Oregon corporation, authorized to transact business in the State of
Oregon.

1 2.

2 On information and belief, at all relevant times, BRIX was engaged in the business of
3 operating a restaurant called BRIX Tavern at 1338 NW Hoyt Street, Portland, Oregon in
4 Multnomah County.
5

6 3.

7
8 Upon information and belief, at all relevant times, Mark Byrum was a majority
9 member and executive of BRIX and a resident of Oregon.
10

11 **COUNT ONE: NEGLIGENCE**

12 4.

13
14 Plaintiff Yvonne Johnpoll was a customer and invitee of BRIX on or about January
15 29, 2016. Therefore, BRIX was under a duty to use reasonable diligence to ascertain the
16 condition of the premises, to warn plaintiff and to protect plaintiff from hazardous
17 conditions. It was further obligated to repair or remove hazardous conditions of which BRIX
18 knew or, in the exercise of reasonable diligence, could or should have known. Mr. Byrum
19 had a duty to exercise reasonable care toward plaintiff.
20

21 5.

22 On or about January 29, 2016, plaintiff was injured when she fell while descending a
23 set of interior stairs at the restaurant, suffering injuries.
24

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6.

BRIX and Mr. Byrum (“defendants”) were 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;

b) In failing to eliminate the hazardous conditions of the premises, which created the unreasonable risk of harm to plaintiff;

c) In failing to adequately warn plaintiff of the dangers and unreasonable risk of harm posed by the hazardous conditions of the premises that defendants knew or should have known about so as to enable plaintiff to avoid harm;

d) In failing to inspect the premises for hazardous conditions, or, upon information and belief, in failing to remedy hazardous conditions on the stairs once defendants were aware of them;

e) In failing to affirmatively protect or take reasonable precautions to protect plaintiff against the dangers posed by the hazardous conditions of the premises that defendants knew or should have known about;

f) In failing to comply with Oregon law, specifically Chapter 10 of the Oregon Structural Specialty Code, to ensure that there were handrails on both sides of the stairs;

- 1 g) In failing to provide adequate lighting on the stairs and near the stairs for its
2 invitees and customers;
- 3 h) In failing to provide a visual cue for the presence of the stairs, particularly the
4 bottom stair;
- 5
6 i) In failing to install safe, anti-slip or anti-skid flooring and/or adequate and safe
7 flooring material on the stairs and/or in failing to safely treat or construct the stairs so
8 as to avoid a hazardous condition;
- 9
10 j) In failing and neglecting to train staff, contractors and/or employees in proper
11 techniques of stair, handrail and/or floor safety;
- 12
13 k) In failing to paint or otherwise mark or outline the stairs, particularly the last stair,
14 a bright, contrasting color from the surrounding floor or construct them in such a
15 fashion as to distinguish them or alert business invitees to them; and/or
- 16
17 l) In failing to provide adequate warning devices such as cones, placards,
18 appropriate signage, or other devices to warn plaintiff and other patrons of the
19 dangerous condition posed by the stairs, particularly the bottom stair.

20 7.

21
22 BRIX and Mr. Byrum created the above hazardous condition(s), which caused
23 plaintiff to trip and/or slip and fall and sustain injuries.

24
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1 8.

2 BRIX and Mr. Byrum's negligence as alleged above was a substantial factor in
3 causing plaintiff's injuries.
4

5 9.

6
7 As a result of BRIX and Mr. Byrum's negligence as alleged above and, upon
8 information and belief, as a result of numerous prior falls by others down the same stairs, it
9 was foreseeable that plaintiff, or other customers similarly situated, would suffer injuries. In
10 fact, plaintiff incurred physical injuries, pain, and suffering, including major orthopedic
11 injuries which required multiple surgeries.
12

13 10.

14 Upon information and belief, BRIX and Mr. Byrum knew about the dangerous
15 condition of the stairs, particularly the bottom stair. Upon information and belief, six days
16 before plaintiff's fall on the unreasonably dangerous stairs at BRIX, another patron fell and
17 injured herself, and Mr. Byrum ordered that safety measures be removed from the bottom
18 stair.
19

20 11.

21
22 Upon information and belief, the above-described conduct by BRIX and Mr. Byrum
23 was deliberate, intentional, wanton, and was done with a reckless and outrageous
24 indifference to a highly unreasonable risk of harm. Upon information and belief, the above-
25 described conduct by BRIX and Mr. Byrum was done with a conscious indifference to the
26

1 health, safety and welfare of others. BRIX should be required to pay punitive damages of
2 \$1,000,000 in order to deter BRIX and others similarly situated from this and similar types of
3 conduct in the future. Additionally, Mr. Byrum should be required to pay punitive damages
4 of \$1,000,000 in order to deter Mr. Byrum and others similarly situated from this and similar
5 types of conduct in the future.
6

7 **COUNT TWO—NEGLIGENCE PER SE**

8 12.

9
10 Plaintiff incorporates and re-alleges Paragraphs 1-11 above.

11 13.

12
13 At all relevant times, the stairs did not have handrails on both sides, in violation of
14 Oregon law, specifically Chapter 10 of the Oregon Structural Specialty Code. This presented
15 a foreseeable safety hazard to customers and invitees.
16

17 14.

18
19 At all relevant times, BRIX and Mr. Byrum were negligent per se in violating Chapter
20 10 of the Oregon Structural Code, Section 1009.15 by allowing BRIX to have a stairway
21 without handles on each side.
22

23 15.

24 At all relevant times, Chapter 10 of the Oregon Structural Specialty Code was in full
25 force and effect and were intended to protect business invitees, individuals, and patrons of
26 commercial establishments such as restaurants (*e.g.*, BRIX) within the state of Oregon,

1 including plaintiff, from the type of harm that ultimately befell plaintiff.

2
3 16.

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

7
8 17.

9 As a result of the negligence of BRIX and Mr. Byrum, plaintiff has incurred
10 reasonable and necessary medical expenses in the amount of approximately \$177,512.79.
11 Plaintiff will incur further medical expenses prior to and through the time of trial. Plaintiff
12 reserves the right to amend the pleadings to conform to the evidence prior to and at trial.
13

14
15 18.

16 Plaintiff will incur reasonable and necessary future medical expenses in an amount to
17 be determined at trial, but not to exceed \$200,000. Plaintiff reserves the right to amend the
18 pleadings concerning her reasonable and necessary future medical expenses to conform to
19 the evidence prior to and at trial.
20

21 19.

22 As a result of the negligence of BRIX and Mr. Byrum as alleged above, plaintiff
23 suffered major orthopedic injuries which required surgeries. Plaintiff suffered, continues to
24 suffer, and will permanently suffer from pain, disability, discomfort, impaired use of her
25
26

1 body, and a reduced capacity to enjoy life. Plaintiff has incurred noneconomic damages in
2 the amount of \$1,000,000.

3
4 20.

5 Upon information and belief, the above-described conduct was deliberate, intentional
6 and wonton, and was done with a reckless and outrageous indifference to a highly
7 unreasonable risk of harm, and was done with a conscious indifference to the health, safety,
8 and welfare of others, and BRIX should be required to pay punitive damages of \$1,000,000
9 in order to deter BRIX and others similarly situated from this and similar types of conduct in
10 the future. Similarly, Mr. Byrum should be required to pay punitive damages of \$1,000,000
11 in order to deter Mr. Byrum and others similarly situated from this and similar types of
12 conduct in the future.
13

14
15 Therefore, plaintiff prays for judgment against BRIX and Mr. Byrum as follows:

- 16 1) Noneconomic damages in an amount that the jury determines is just and
17 reasonable, and not to exceed \$1,000,000;
- 18 2) Economic damages for past medical expenses in the amount of 177,512.79, which
19 will continue to increase through this litigation and through the time of trial;
- 20 3) Economic damages for future medical expenses in an amount reasonable and
21 necessary to be determined at trial, and not to exceed \$200,000;
- 22 4) \$1,000,000 in punitive damages against BRIX;
- 23 5) \$1,000,000 in punitive damages against Mr. Byrum;
- 24 6) Plaintiff's prejudgment interest, costs, and disbursements incurred herein; and
25
- 26 7) Such other relief as the court deems equitable, just, and reasonable.

1 Plaintiff requests a trial by jury.

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3 Dated this 14th day of September, 2018.

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5
6 By s/ Kristin L. Olson

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26 Attorneys for plaintiff

1 **CERTIFICATE OF SERVICE**

2
3 I certify that on September 14, 2018, I served the foregoing PLAINTIFF'S THIRD
4 AMENDED COMPLAINT on the following:

5 Art Duncan
6 Wiles Law Group
7 510 SW Fifth Avenue, Sixth
8 Floor
9 Portland, OR 97204
10 Attorney for Brix Tavern
11 Via email and US mail

12 Mr. Philip R Bennett
13 Smith Freed & Eberhard PC
14 111 SW 5th Ave 43rd Fl
15 Portland OR 97204
16 Attorney for Mark Byrum
17 Via email and US mail

18
19 By /s/ Kristin L. Olson
20 Kristin L. Olson

21
22 Of Attorneys for plaintiff
23
24
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