FILED

2013 OCT 10 P 3: 19

WINDOW 5 COURTS IN OVER COURTOUP COMMON PLEAS CULYAHOGA COUNTY, OHIO

| CARL A. JINDRA, Administrator of the Estate of Katherina Allen, deceased | )<br>) CA     | Judge: JANET R BURNSIDE   |
|--|---------------|---------------------------|
| 3342 Mueller Creek   | ) JUL         |                           |
| Brunswick, OH 44212  | ) 301         | CV 15                     |
| ,  | j             |                           |
| Plaintiff,   | ) <u>CO</u> I | MPLAINT                   |
|  |               | y Demand Endorsed Herein) |
| v.   | )             | ,                         |
| CD A CUID TO A TOTAL   | )             |                           |
| CRACKER BARREL OLD COUNTRY   | )             |                           |
| STORE, INC.  | )             |                           |
| c/o Statutory Agent  | )             |                           |
| CT Corp System   | )             |                           |
| 1300 E 9th St  | )             |                           |
| Cleveland, Ohio 44114  | )             |                           |
|  | )             |                           |
| Defendant.   | )             |                           |

## FIRST CLAIM FOR RELIEF NEGLIGENCE

- 1. Plaintiff, Carl A. Jindra, is a citizen and resident of the State of Ohio and is the duly appointed, qualified and acting Administrator of the Estate of Katherina Allen, his sister.
- 2. Defendant, CRACKER BARREL OLD COUNTRY STORE, INC., hereinafter "CRACKER BARREL," is a foreign corporation organized and existing under the laws of the State of Tennessee and licensed to engage in business under the laws of the State of Ohio.
- 3. Defendant, CRACKER BARREL, owns and operates establishments which serve food and have gift shops throughout the United States and, in particular, has a restaurant/gift shop located at 5100 Tiedeman Road in Brooklyn, Ohio which was the scene of the incident described

below.

- 4. On or about April 12, 2012, and at all time relevant herein, Defendant, CRACKER BARREL, owned, operated, controlled, managed, provided for and/or supervised the Cracker Barrel and Old Country Store restaurant located at 5100 Tiedeman Road, Brooklyn, Ohio 44144.
- 5. On said date, Plaintiff's decedent and her two minor children, Kayla Allen and Kerri Allen, were business invitees of Defendant, CRACKER BARREL's, establishment located at the aforementioned address.
- 6. On said date, and at all other times therein, Defendant, CRACKER BARREL, owed its business invitees including the Plaintiff's decedent and her two minor children a duty to take necessary steps and precautions to provide adequate security to safeguard and protect its business invitees from known and foreseeable third-party criminal acts on its premises.
- 7. On said date, Defendant, CRACKER BARREL, was negligent by failing to safeguard its premises and protect its business invitees, including Plaintiff's decedent and her two minor children, from the perpetrator, Kevin Allen's, known and foreseeable criminal shooting on its premises.
- 8. As a direct and proximate result of the Defendant's negligence, Plaintiff's decedent and her two minor children were caused to suffer catastrophic injuries resulting in their deaths.
- 9. As a direct and proximate result of the Defendant's negligence, Plaintiff's decedent and her two minor children were caused to suffer pain, fright, physical and emotional injuries, including shock and pre-death terror prior to their deaths.

WHEREFORE, Plaintiff, Carl Jindra, Administrator of the Estate of Katherina Allen, deceased, prays for judgment against the Defendant in an amount in excess of Twenty Five Thousand

and 00/100 Dollars (\$25,000.00) which will fully, fairly, and justly compensate him together with interest and costs incurred herein.

# SECOND CLAIM FOR RELIEF NEGLIGENT HIRING AND SUPERVISION

- 10. Plaintiff incorporates all facts, statements, and allegations contained in the First Claim for Relief as though expressly rewritten and restated herein as part of the Second Claim for Relief.
- 11. Defendant, CRACKER BARREL, owed its business invitees and the Plaintiff's decedents who were visiting the restaurant the duty to reasonably hire, select, train, manage, supervise and retain employees and staff that could assure the safety of its business invitees including the Plaintiff's decedent and her two minor children.
- 12. Defendant, CRACKER BARREL, failed to reasonably hire, select, train, manage, supervise and retain employees and staff that could assure the safety of its business invitees including the Plaintiff's decedent and her two minor children.
- 13. Defendant, CRACKER BARREL, failure to reasonably hire, select, train, manage, supervise and retain employees and staff that could assure the safety of its business invitees including the Plaintiff's decedent directly and proximately caused the Plaintiff's decedent and her two minor children to suffer catastrophic injuries resulting in their deaths.
- 14. As a direct and proximate results of the Defendant's negligence, Plaintiff's decedent were caused to suffer pain, fright, physical and emotional injuries, including shock and pre-death terror prior to their deaths.

WHEREFORE, Plaintiff, Carl Jindra, Administrator of the Estate of Katherina Allen, deceased, prays for judgment against the Defendant in an amount in excess of Twenty Five Thousand

and 00/100 Dollars (\$25,000.00) which will fully, fairly, and justly compensate him together with interest and costs incurred herein.

### THIRD CLAIM FOR RELIEF CONSCIOUS PAIN AND SUFFERING

- 15. Plaintiff incorporates all facts, statements, and allegations contained in the First and Second Claims for Relief as though expressly rewritten and restated herein as part of the Third Claim for Relief.
- 16. Prior to her death, Plaintiff's decedent, Katherina Allen, sustained physical and mental pain and anguish, and suffering in contemplation of her impending death, and by reason thereof, her Estate is entitled to damages in an amount exceeding Twenty-Five Thousand Dollars (\$25,000).

WHEREFORE, Plaintiff, Carl Jindra, Administrator of the Estate of Katherina Allen, deceased, prays for judgment against the Defendant in an amount in excess of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) which will fully, fairly, and justly compensate him together with interest and costs incurred herein.

#### FOURTH CLAIM FOR RELIEF WRONGFUL DEATH

- 17. Plaintiff incorporates all facts, statements, and allegations contained in the First, Second and Third Claims for Relief as though expressly rewritten and restated herein as part of the Fourth Claim for Relief.
- 18. As a result of Katherina Allen's untimely and tragic death, her beneficiaries at law have sustained damages that include, but are not limited to:
  - a. Loss of care, comfort, companionship and consortium;

- b. Loss of guidance and tutelage;
- c. Loss of inheritance;
- d. Loss of net accumulations;
- e. Loss of life's pleasures;
- f. Loss of support;
- g. Loss of earnings;
- h. Loss of society;
- I.. Loss of companionship;
- j. Loss of love;
- k. Loss of affection;
- l. Loss of solace;
- m. Loss of protection;
- o. Loss of moral guidance;
- p. Loss of counsel;
- q. Loss of moral support;
- s. Loss of familial care; and
- t. Loss of advice.
- 19. By reason of the wrongful acts alleged herein, the Plaintiff and the heirs and next of kin of Katherina Allen, deceased, have sustained losses for which they are entitled to recover damages in wrongful death, and, further, Katherina Allen's heirs and next of kin have sustained mental anguish, grief, torment and distress, and have incurred funeral expenses, for all of which they are entitled to recover damages.

WHEREFORE, Plaintiff, Carl Jindra, Administrator of the Estate of Katherina Allen, deceased, prays for judgment against the Defendant in an amount in excess of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) which will fully, fairly, and justly compensate him together with interest and costs incurred herein.

### FIFTH CLAIM FOR RELIEF PUNITIVE DAMAGES

- 20. Plaintiff incorporates all facts, statements, and allegations contained in the First, Second, Third and Fourth Claims for Relief as though expressly rewritten and restated herein as part of the Fifth Claim for Relief.
- 21. The conduct, actions, and/or omissions of Defendant, individually and/or by its agents, servants, or employees, and relative to the operation, control, management, supervision and training of Defendant's restaurant on or about April 12, 2012, were in conscious disregard for the rights and safety of Katherina Allen and her two minor children, and had a great probability of causing substantial harm and proximately caused the pre-death injuries and death to Katherina Allen described herein.
- 22. As a result of Defendant's conscious disregard for the rights and safety of Katherina Allen, the Estate is entitled to punitive damages against Defendant.

WHEREFORE, Plaintiff, Carl Jindra, Administrator of the Estate of Katherina Allen, deceased, prays for judgment against the Defendant in an amount in excess of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) which will fully, fairly, and justly compensate him together with interest and costs incurred herein.

Respectfully submitted,

amie R. Lebovitz, Esquire

S. Ct. No. 0025000

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Attorneys for Plaintiff

#### JURY TRIAL DEMAND

A Trial By Jury is Hereby Requested in the within cause of action.

Jamie R. Lebovitz

Attorney for Plaintiff