

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT**

MARY ANN McCONNELL, as personal representative of the Estate of Elizabeth Garcia, deceased, and as next friend of XAVIER MENDOZA, JEROME MENDOZA, and CENE MENDOZA, all minors with individual claims

Plaintiffs,

-vs-

No. _____

ALLSUP'S CONVENIENCE STORES, INC.,
a New Mexico corporation,

Defendant.

COMPLAINT FOR WRONGFUL DEATH

Plaintiff, MARY ANN McCONNELL, as personal representative of the Estate of Elizabeth Garcia, deceased, and as next friend of Elizabeth Garcia's three minor children, through her attorneys, McGINN & CARPENTER, P.A., states the following as her complaint:

JURISDICTION

1. On January 16, 2002, at the time of her abduction, rape, and murder, Elizabeth Ann Garcia was a resident of Hobbs, Lea County, New Mexico.
2. Elizabeth's death left motherless her three young children: Xavier A. Mendoza (d.o.b. 11/25/94), Jerome Mendoza (d.o.b. 7/26/96) and Cene Mendoza (d.o.b. 7/17/97).

3. Mary Ann McConnell, a qualified attorney, has been court-appointed as the personal representative to pursue this wrongful death suit on behalf of the three minor beneficiaries.

4. Mary Ann McConnell is a resident of Santa Fe, Santa Fe County, New Mexico.

5. Allsup's Convenience Stores, Inc. (hereinafter Allsup's) is a New Mexico corporation operating a chain of convenience stores throughout New Mexico whose registered agent is CT Corporation Systems, located at 123 East Marcy, Santa Fe, New Mexico 87501.

6. This court has jurisdiction over the parties and the subject matter herein.

7. This court is the appropriate venue for this action.

FACTUAL BASIS

Convenience Store Industry and Media Coverage Provided Notice of Danger

8. One of the most dangerous places to work in the state of New Mexico is on the graveyard shift in a convenience store which does not have adequate security.

9. In New Mexico, on an annual basis, convenience stores lacking adequate security precautions over the graveyard shift experience more deaths than seen in the highly dangerous mining industry.

10. The risk of injury and death on the graveyard shift in convenience stores is not as a result of the physical demands of opening and closing a register or stocking shelves. Rather, convenience stores without adequate security are known magnets for often violent crime which results in victimization of the clerks who are left to work their alone and unprotected.

11. Since as early as the 1980s, the government, academia, private entities and researchers funded by the convenience store industry have done studies into the reasons convenience stores attract crime.

12. These researchers have provided security solutions to protect late-night workers.

13. This research has been widely published and made available to convenience store owners and operators.

14. The research establishes that most of the crime and attacks upon convenience store workers occur after dark, on the graveyard shift.

15. The research establishes that convenience stores do not have to be unsafe over the graveyard shift if owners and operators adopt the countermeasures and policies that have proven to substantially reduce the risk of injury and death to clerks.

16. Measures that deter crime, stop crime, and catch these criminals include but are not limited to:

- a. staffing of more than one person on the graveyard shift, hiring a security guard, or alternatively enclosing clerks in bullet resistant glass;
- b. simply closing the store to the public during the most dangerous hours;
- c. installing and maintaining surveillance cameras to deter would be criminal activity and to catch criminals, who are often repeat criminals;

- d. providing security training to clerks that emphasizes and requires use of a personal security alarm, which alarm is functioning, properly maintained, and which device the clerks have been trained to trust and are absolutely required to wear;
- e. deterring crime by installation, maintenance, and regular testing of lighting inside and outside the store so that criminal activities and routes of escape are illuminated well; and
- f. removing all signage, obstructions, and advertisements from store windows, so that a criminal feels his actions can be clearly viewed from the street.

17. The 1993 Gainesville study, widely circulated in the industry, concludes that two clerks on duty is the number one element in deterring convenience store robbery.

18. A store without adequate security is “convenient” for criminal activity and creates a unique criminal opportunity for persons seeking easy cash and violence against clerks.

19. The risk of crime and clerk victimization increases exponentially with a store owner’s refusal to put into place security devices, policies, staffing, and technologies that deter crime, alert the authorities, and catch criminals.

20. In particular, requiring a female employee to work alone in a remote store with poor lighting and no security cameras on the graveyard shift leaves her openly vulnerable to attack, including sexual assault and rape.

21. Research by the convenience store industry's own expert, Rosemary Erickson, has established that a clerk working alone is six times more likely to be targeted for rape (86% of rapes occur when the clerk is working alone).

22. In addition to research and studies, convenience store owners have received notice of the impending threat to their employees' lives through the media, news stories, and television coverage surrounding convenience store crime, including media coverage of the dangers associated with failure to implement security precautions.

23. The extensive studies, research, and media coverage of convenience store crime on the graveyard shift available as of January, 2002, established and notified convenience store owners and operators that clerks would be subjected to criminal attack if required to work alone on the graveyard shift without adequate security.

Allsup's Direct Knowledge of Danger

24. Since as early as 1979, when a 23-year old Allsup's clerk on the night shift was forced from it's store and raped at gunpoint, Allsup's has personally known and experienced clerk victimization that results when the clerk is left to work alone and unprotected.

25. Since at least 1979, Allsup's has known through experience that, without adequate security policies and devices, its employees working alone on the graveyard shift would be subjected to violent crime, including rape and homicide.

26. Since 1979, numerous other incidents of crime have regularly been occurring at Allsup's stores statewide and in other states, including armed robbery, kidnapping, rape, and homicide.

27. For example, on August 18, 1994, Elizabeth Williams, a 33-year-old mother of three, had worked at a Tucumcari Allsup's just six weeks when she was killed working alone on the graveyard shift. She was taken into the walk-in cooler and killed by a gunshot to the back of her head.

28. Related to the Williams' killing and based on Allsup's failure to properly train its employees and ensure their use of personal panic alarms, on January 11, 1995, Allsup's was cited by the New Mexico Department of Environment (NMDOE) for failing to furnish employment "free from recognized hazards that were causing or likely to cause death or serious physical harm to employees." The NMDOE supported its citation with the fact that Allsup's employees "had notified management that due to too many false alarms they discontinued wearing them."

29. Employees of the Tucumcari store wrote a joint letter that was made a part of the NMDOE investigation, indicating that, after the Williams slaying, Allsup's management had assigned two employees to work the graveyard shift.

30. Allsup's then used political connections to have the NMDOE citation dismissed in 1996, when the Johnson Administration came into office. Lt. Governor Walter Bradley, to whom Allsup's had made a \$2,500 political campaign contribution, told the NMDOC to drop the charges, which it did.

31. After the NMDOE charges were dropped, Allsup's ended the double coverage on the graveyard shift at the Tucumcari store where Elizabeth Williams was slain and shortly thereafter an armed robber hit the store again.

32. This demonstrated to Allsup's that having two clerks on the graveyard shift deters crime.

33. These events were reported in *The New Mexican* and served as notice of the danger posed to clerks who are left to work alone on the graveyard shift.

34. On Feb. 3, 2001, an Allsup's clerk in Taos, New Mexico, working alone on the graveyard shift was shot at least five times with a .25 caliber pistol, providing further notice of the danger to clerks left to work alone on the graveyard shift.

35. Upon information and belief, in the years just prior to Elizabeth's abduction, rape, and murder, there was an abduction and murder across the border from Hobbs, in a Texas Allsup's store. This incident served as additional warning to Allsup's.

36. These incidents have provided Allsup's with notice of danger and failure to act upon this notice establishes Allsup's deliberate indifference to the danger

37. Despite this notice, Allsup's has left its clerks defenseless and has failed to provide adequate security precautions, including multiple staffing, which is proven to reduce crime and save lives.

High Rates of Crime at Hobbs' Allsup's and Broken Promises

38. Upon information and belief, in Hobbs, New Mexico, the crime at Allsup's stores has been as great, if not greater, than the crime Allsup's has experienced in most other areas of the state or in other states.

39. The crime at its Hobb's stores has provided even greater notice that, without security, it's employees working alone would become victims of crime.

40. For example, in August, 1986, Eva Pellisier, a 21 y.o. woman working at an Allsup's in Hobbs, was required to work the graveyard shift by herself, despite having notified her employer of concerns she had for her own safety when working alone.

41. Like Elizabeth Garcia, Eva was a single mother.

42. Despite Eva's stated concerns about the unsafe store, Allsup's installed no security cameras or other appropriate devices in the store to deter crime or prevent her from becoming a victim of crime.

43. Despite Eva's stated concerns about the unsafe store, Allsup's regularly scheduled Eva to work alone during the graveyard shift.

44. In August, 1986, three men entered the Allsup's where Eva worked between 3 a.m. and 4 a.m. Before they left, the men slashed Eva's throat with a knife, and left her for dead. Eva was left in the store, bleeding to death. She was not able to call for help on the phone inside the store because it was not working. Holding her bleeding neck, she crawled to a pay phone outside the Allsup's to call 911.

45. In the hospital, surgery could not be performed immediately and Eva was not expected to live.

46. While she was awaiting surgery, her Allsup's manager came to the hospital, apologized for what had occurred and asked Eva what Allsup's could do for her. Clutching the man's hand, Eva implored the manager to make sure Allsup's never again left a woman alone to work the graveyard shift. The manager promised Eva that Allsup's would never do this again.

47. Luckily, Eva survived. After an eleven hour surgery to repair her neck, it was another five years before Eva could speak.

48. Eva, who to this day speaks with a raspy voice and who bears a hole in her chest from the tracheotomy tube, was horrified to learn of Elizabeth Garcia's death and that the Allsup's had broken its promise to protect female clerks working on the graveyard shift.

49. Eva's experience was not the only warning that Allsup's had of the high rate of violent crime occurring in its Hobbs Allsup's stores.

50. According to police incident reports, in the four years prior to Elizabeth's abduction, rape, and murder the Hobbs Allsup's stores had amassed over 400 incident reports with the Hobbs police, including but not limited to:

a. At 105 E. Main Street, at least 62 criminal incidents were recorded.

These instances included the following which illustrate the threat of danger to clerks:

i. Two males entered the store. One went to the bathroom in the rear of the store, came back and the other male went to the rear of the store. The first male then walked behind the counter and placed his left hand on the clerk's left shoulder while standing behind him. The clerk turned and could see that the man was holding an object under his shirt, which the clerk believed to be a gun. The man forced the clerk towards the cash register and said "give me the money, I ain't fuckin' around." The clerk stated that while the man was taking the money from the register he was pressing a blunt object into the clerk's back. The man took the money and left. The second man returned from the rear of the store and asked the clerk "what happened?" then left.

ii. While a clerk was talking with two female customers, two Spanish males entered the store and made sexual remarks to one of the female customers. The other female told them to leave her alone. The males left and returned a few minutes later, entered the store and began yelling at the clerk to give them free food. One

male threw a six-pack of soda at the clerk. The clerk refused and yelled at them to leave or he was going to call the police. At that point the second male began hitting the clerk. The clerk fought back, hitting one suspect in the face with a soda can. The suspects then fled the store.

iii. A male entered store and took an item to the counter. When the employee opened the cash register, the male grabbed at the money. The employee shut the drawer on the man's hands. The man then leapt over the counter and said, "you don't want to do that!" The employee, fearing for his safety, backed away and attempted to push the remote panic button he was wearing around his neck. The man advanced again and again said, "you don't want to do that!" The employee ran away from the register area.

iv. Two males entered the store, walked behind the counter and the shorter male held a knife to clerk's throat. The other male also produced a knife during the incident. The clerk was forced to back of store at knifepoint where both males made repeated threats to kill him. The clerk told them he would cooperate and open the register. One male stood at the front of the store as a lookout while the second male took clerk to register. After the men took money and cigarettes, the clerk was struck in the head. The clerk was repeatedly punched about the head before the men left resulting in a fractured face.

v. A clerk was kneeling while stocking the cooler in rear of store. A male entered the store holding his shirt partially over his face and had an open knife in his hand. He approached the clerk and held the knife to his throat. The man yelled for a woman to open the register but she said she did not know how. The man and the clerk began to struggle for the knife. The clerk tried to get the knife away and pulled the shirt from the man's face. The man ran away after the knife fell to the ground during the struggle. The police found the knife and shirt at the store. The clerk had four lacerations on his neck.

vi. A male entered the store and asked to use the phone. The clerk refused because he had been in the store earlier and took too long on the phone and advised him to use the outside pay phone. The man asked for change for a dime, as the clerk opened the register, the male shoved her backwards stating, "This is what I really came for" and grabbed at the money. While his hands were in the register the clerk slammed the drawer shut. He then ran out of the store.

b. At 321 Dal Paso, at least 56 criminal incidents were recorded, including the following incident that illustrates the threat of danger to clerks:

i. In one instance, two males entered the store, and approached the counter to buy candy and gum. As the clerk opened the register, the taller male leaned over the counter and yelled, "Give me the money!" and reached into the drawer with his left hand and held a knife in a striking position over his head. The clerk raised his hand to protect himself from the strike. The taller male struck the clerk and both men then ran from the store.

c. At 316 N. Marland, at least 71 crimes were recorded to police, including the following which illustrate the threat of danger to clerks:

i. In one instance, a male entered the store and, wielding a screwdriver, demanded, "Give me all the money!" The clerk was afraid the man was going to hurt her so she did as she was told. The man instructed her to put the money in a bag as well as numerous other items of merchandise. The man then walked out of the store with the bags of money and merchandise.

ii. In another instance, the clerk confronted a shoplifter who responded by threatening the clerk with a box cutter.

d. At 100 E. Marland, 50 crimes recorded, including the following incidents that illustrate the threat of danger to clerks:

i. In one instance, two males entered the store and one lifted his shirt to show the clerk he had an automatic handgun and told her to leave the cash drawer open. The clerk closed the drawer, at which point the second male pulled out the gun and pointed it at her demanding the drawer to be opened. The clerk reopened the drawer. The male reached over the counter, grabbed the money and exited the store.

ii. In another instance, a male entered the store when all other customers were gone, asked to buy cigars, and emptied change from his pockets onto the counter. The clerk opened register and the male pulled a knife from his pocket pointed it at her and told her

he was going to take all the money. The clerk told him the register was open. He took money and left. Afterwards, this clerk told her manager that it terrified her to work alone. Allsup's continued to schedule her on the graveyard shift. She was not given any additional security or training. She eventually quit because she was too afraid to continue working.

e. At 5312 N. Lovington, 52 criminal incidents were recorded by the Hobbs Police, including the following incidents that provide notice of the danger and threat of injury to clerks:

i. In one incident, a clerk was at the back of the store when a male waiving a gun in his hands told the clerk to "give me the fucking money," that he was "not kidding" and pointed gun at the clerk. As the clerk gave the man the money from the register, he grabbed at some lottery tickets, took the money and fled the store on foot.

ii. In another incident, a male asked the clerk for change of a dollar. When the clerk opened the register, the man shoved the clerk backwards and grabbed money from the drawer. The clerk slammed the drawer shut on the man's fingers and the man fled.

iii. In yet another incident, three to four people were in this store, including the suspect, a male. When all the customers left, the male asked for cigarettes but since he did not have identification, the clerk refused to sell them to him. He then asked for a burrito and pulled out some money. When the clerk opened the drawer the man placed both hands in the cash drawer and said, "this is all I need." The clerk grabbed the man's arms. The man told him "you don't want to do that, I'll shoot you." The man then freed his right hand and placed it on his pocket as if to pull a gun out. The clerk released the man and stepped back. The man then emptied the register and ran out of the store.

f. At 2810 N. Lovington, 48 criminal incidents were reported.

Among these incidents were numerous larcenies and robberies, including the following incident that illustrates the threat of danger to clerks:

i. the clerk was standing at register when three males came in. One male walked to the cooler and grabbed two bottles of iced tea, took them to the counter and asked about buying some beer. The clerk told him he could not sell beer after midnight. The two other males then walked to the back of the store where the beer was located. The male at the counter attempted to distract the clerk by removing money from his pocket. While the clerk was ringing up the sale, the two other males walked out with three 12-packs of beer. The clerk yelled for them to stop and the male at the counter pulled out a gun from his sweatshirt pocket, and said "don't you do anything." He then ran out of the store and joined the other two males outside and drove away.

g. At 916 W. Sanger, 60 criminal incidents were recorded by the police. The incidents include the following which illustrate the threat of danger to clerks:

i. The clerk was counting down a register when a male entered the store and said "Bitch, give me all of the money," and pointed a knife at her. The clerk stepped away from the register. The man put the knife on the counter, took the money and left the store.

ii. A male entered the store brandishing a barbeque fork. The man repeatedly stated, "money, money, money." The clerk opened the register and handed the man some money. The man demanded more then fled.

iii. A male entered the store and pointed a rifle directly at the female clerk while demanding money and lottery tickets. As the man told her to "hurry the fuck up," the clerk put money and tickets into a bag. The man fled with the money and lottery tickets.

iv. A male entered the store and asked to buy a cigar, then asked for change. As the clerk opened the register, the male said, "This is what I really want," and placed his hands in the cash drawer. The clerk attempted to shut the drawer when the man pushed him back. The man took the money and ran out of the store.

v. In another instance, a customer made sexual advances on the female clerk, demanding she lock the store.

51. Based on the frequency and the severity of the crime occurring in its Hobbs stores, Allsup's knew or should have known that failing to purchase and

implement adequate security, including, but not limited to either a two-clerk policy or closing the store to the public on the graveyard shift, would result in serious injury or death of any clerk required to work this shift alone.

Hobbs Employees Warned Allsup's of the Danger

52. Approximately one year prior to Elizabeth's abduction, rape and murder, a former Hobbs' Allsup's clerk, Lensdale Cordice, had specifically requested that Allsup's schedule more than one person during the graveyard shift to make the stores safer.

53. Mr. Cordice was told that it was Allsup's company policy to not have more than one clerk on duty during the graveyard shift.

54. Shortly after having his request refused, while working alone on the graveyard shift, he was jumped by two men with knives. He thought the men were going to kill him. He tried to use the panic button to summon help, but it wasn't functioning. The police didn't arrive until after Mr. Cordice was able to call them by phone.

55. The beating was so severe, Mr. Cordice had to have surgery to his face and months of therapy. The only response from Allsup's was a "get well" card delivered by Lonnie Allsup's. There was no offer to improve security at the stores, install cameras, add staffing or a security guard. Mr. Cordice states:

It's like they came to see if I was dead or alive and after they seen that I was alive it's like they just didn't care no more. They didn't tell me nothing else about security or none of that.

56. Upon information and belief, Lensdale Cordice was not the only Allsup's clerk to have requested multiple staffing and other security improvements at the Allsup's stores prior to Elizabeth's abduction, rape, and murder.

57. Upon information and belief, Debra Carr, an Allsup's district manager had previously told Allsup's that she needed extra employees after dark, but the company refused.

58. Upon information and belief, Allsup's had received complaints from employees that the poor exterior lighting of its stores also increased the risk of crime.

59. Despite what happened to Eva Pellisier, Elizabeth Williams, Lensdale Cordice, numerous other clerks, and despite the excessive rates of crime and consequent injury, prior to Elizabeth's abduction, rape, and murder, Allsup's refused to put in place security cameras, multiple clerk staffing policies, security guards, proper lighting, proper safety training, or close the store to the public during the graveyard shift to prevent its clerks from becoming crime victims.

60. Allsup's knew of the danger and continued to play Russian roulette with clerks' lives and well being.

Allsup's Rebuffs Warning by Law Enforcement to Make Stores Safe

61. Before Elizabeth's abduction, rape, and murder, the Hobbs Police Department's COP STAT crime-tracking program revealed that the Allsup's stores were a large component of the total crime occurring in Hobbs.

62. According to statistical data, the crime at Allsup's greatly exceeded that of similarly situated convenience stores.

63. Allsup's was such a magnet for crime, the Hobbs Police Department coined the phrase the "Allsup's problem" when describing crime in Hobbs.

64. Concerned with the alarming rates of crime at Allsup's and the disparity between crime at Allsup's versus other convenience store chains, before Elizabeth's

abduction, rape and murder, Hobbs Police Chief Tony Knott requested Allsup's to improve security.

65. Allsup's refused.

66. Specifically, on several occasions in approximately 1999 or 2000, Chief Knott spoke directly with Mark Allsup about the need for additional security precautions in the Hobbs Allsup's stores.

67. From prior experience, Chief Knott knew that Allsup's usually was unwilling to adopt policies that would help protect employees, including Allsup's continued failure to properly train employees in how to use and enforce use of the necklace personal panic alarms.

68. As had been the case at the Tucumcari Allsup's where Elizabeth Williams had worked, Chief Knott knew that Hobbs Allsup's employees regularly worked without the alarms because, whether accurate or not, employees believed the devices were non-functioning.

69. The pervasive view among Hobbs Allsup's employees was that they could not rely on these necklace alarms even after malfunctions were reported to management, so they usually didn't wear them, and this message was communicated among all low level clerks.

70. Sam Chidester, a former Hobbs Allsup's clerk, states that around the time of the Elizabeth Garcia abduction, rape, and killing, the Allsup's necklace alarms were considered "a joke" to employees and managers and that he was actually instructed, if there was an emergency, to skip the necklace and use the phone to call the police.

71. The only training Allsup's usually provided its new employees was how to operate the register. The employees received no safety training. The only advice given to graveyard shift employees was to let robbers take the merchandise.

72. Allsup's had done nothing to visibly ensure the functionality and reliability of the necklace alarms, had done nothing to correct employee perceptions about the functionality of the alarms, and had done nothing to ensure regular use of the necklace alarms, such as taking disciplinary action, creating logs for accountability, performing random checks, or providing special training about the necklace alarms.

73. This lack of response by Allsup's was all the more glaring in light of the attention that was drawn to this dangerous problem by the 1994 Elizabeth Williams slaying and the NMDOE citation to Allsup's for its failure to enforce use of the necklace alarms.

74. From prior experience, Chief Knott also knew that the Hobbs Allsup's refused to remove the posters that they would plaster on windows, which marketing advertisements for beer and snacks made it difficult for the police to see into the stores, making the stores even more attractive to criminals.

75. After reviewing the CRIME STAT information, Chief Knott hoped this conversation with Allsup's would be different. Based on the statistics, Chief Knott was specifically interested in discussing with Mark Allsup the importance of having security cameras in the Hobbs Allsup's stores.

76. Not only do functioning surveillance cameras deter crime, but they enable the police to catch criminals before further crime takes place, including possible prevention of the rape and murder of a clerk who is abducted.

77. In his conversation with Mark Allsup, Chief Knott asked for Allsup's help in trying to reduce or eliminate the crime problem.

78. Mark Allsup refused Chief Knott's advice and made it clear to Chief Knott that Allsup's did not want – and would not install - a surveillance camera system in its Hobbs stores.

79. In trying to convince Mark Allsup of the efficacy of surveillance cameras in reducing crime, Chief Knott pointed to the low crime experience of the Hobbs Town & Country convenience stores which had such a system.

80. Mark Allsup rejected this evidence and refused to consider installing security cameras.

81. Chief Knott describes Mark Allsup's demeanor and attitude toward worker safety as, "very arrogant" and refusing to accept that they had a problem, despite being faced with statistics that demonstrated the opposite.

82. In this conversation which occurred prior to Elizabeth's abduction, rape and murder, Chief Knott told Mark Allsup:

Somebody's going to be killed – what do we have to do?
Wait for somebody to be murdered? What do we have to do
– rape and kidnapping? What do we have to do?

83. Despite this plea and warning by the Hobb's Chief of Police, still Allsup's did nothing.

84. Instead, Mark Allsup arrogantly admitted to Chief Knott that it was cheaper for Allsup's to pay (workers compensation) for losing a worker's life, than it was to install cameras in all their stores.

85. When Chief Knott later learned of the abduction, rape and murder of Elizabeth Garcia, his initial thought was “why in the hell was some young woman at that Allsup’s by herself? How long did this have to go on before Allsup’s changes the way they do business?”

86. Despite its knowledge of the alarmingly high crime rate at its Hobbs stores, its knowledge of the attacks upon its clerks in New Mexico and Texas, and specific requests by employees, managers and the Hobbs Police Chief to change its behavior, Allsup’s left its stores open to the public on the dangerous graveyard shift; without security cameras, without bullet proof glass, safe enclosures, or a security guard; with poor lighting – Allsup’s left its lone clerks visibly vulnerable and defenseless in these crime magnets.

Allsup’s Sends Elizabeth Garcia to Work Alone on the Graveyard Shift

87. Elizabeth Garcia, a young mother of three trying to support her family, get an education and make a better life, applied for and was hired by Allsup’s in January, 2002.

88. She trained for a short period of time at store 145.

89. Her training consisted of learning to keep the floors and bathroom clean, how to keep the walk-in cooler stocked, and how to run the deep fryer. As for security, all she was told was to keep the money down in the register and she was told something about the necklace panic alarms.

90. Elizabeth also would have learned that the necklace panic alarms rarely, if ever worked, that most clerks considered them a joke, and that there was no enforcement of wearing them.

91. Indeed, the woman who trained Elizabeth believed that the necklace alarms generally did not work.

92. Elizabeth was not provided a training manual to keep as her own or even to review. There was no training manual in the store where she trained or later worked. She was given not videos to review, which might enforce the importance of wearing the necklace alarm or illustrate what to do if crime occurred.

93. Elizabeth Garcia was then transferred to work the graveyard shift at store 146 located at 5312 Lovington Highway.

94. Store 146 is open 24-hours a day.

95. Store 146 is a "liquor store" meaning it sells liquor, and therefore attracts even more crime.

96. Store 146 is located in an isolated location on the outskirts of town and in January, 2002 was surrounded by empty fields.

97. Store 146 had few lights on the exterior of the store and approximately half of those lights were not even working in January, 2002.

98. These environmental conditions at store 146 made it an attractive location for crime.

99. Elizabeth Garcia had only worked at store 146 two or three times when she was abducted, raped, and murdered.

100. Even before Elizabeth's abduction, the store had recently been robbed on the graveyard shift.

101. Prior to January 16, 2002, Elizabeth had mentioned to her assistant that she didn't feel safe working alone after dark.

102. No modifications to the schedule were made and Elizabeth was scheduled to work alone during the graveyard shift.

103. In the early morning of January 16, 2002, Elizabeth – all by herself - commenced a graveyard shift at 146.

104. Elizabeth brought textbooks to study and she laid them out on the counter.

105. Upon information and belief, at approximately 2:15 a.m., Paul Lovett noticed Elizabeth working alone in the store. He noticed that the store was in an isolated location, that criminal activity inside the store would be difficult to detect from the street because the windows were plastered with posters, and that the parking lot was only dimly lit due to absent and broken lights, which would cloak his criminal activities both inside the store and in the parking area.

106. Paul Lovett noticed that there were no video cameras in the store which might record and reveal his identity to the police.

107. Paul Lovett noticed that there was no second staff person there to get between him and Elizabeth or to report his actions to the authorities.

108. Paul Lovett noticed that there was no security guard there to defend Elizabeth.

109. Paul Lovett noticed that Elizabeth, a beautiful young woman, left by Allsup's to work alone in the dead of night, was highly vulnerable to attack.

110. If it were not for Allsup's, during late night hours like this, Elizabeth would have been safely at home, behind locked doors, with family or friends.

111. Paul Lovett seized the opportunity created by Allsup's.

112. Paul Lovett entered the store and threatened Elizabeth with a weapon.

113. Paul Lovett told Elizabeth to give him all the cash in the register. Later when the cash register transactions were examined a “no sale” appears at 2:24 a.m., indicative of a robbery.

114. Paul Lovett then forced Elizabeth into his car.

115. Around 3:00 a.m., Elizabeth’s friend came by to check in on her. Her friend found Elizabeth's books laid open on the counter where she had been studying, her jacket and book bag still behind the counter, and her car was still parked in the lot - but Elizabeth was nowhere to be found. He called the police.

116. The police arrived but there was no surveillance tape to review because there were no security cameras. The police could do nothing but draft a “missing person” report. There were no images of Paul Lovett or his vehicle which would enable them to begin a search and potentially save her life.

117. Meanwhile, Paul Lovett had taken Elizabeth to an oil field south of Sanger and French, just across from the Allsup's on 916 W. Sanger.

118. Based on DNA evidence it is known that he raped Elizabeth.

119. He stabbed Elizabeth 56 times and then he left her body in the dirt.

120. Paul Lovett wasn’t caught for approximately two years, during which time he killed another woman, Patty Simon. Evidence collected during the Simon investigation led to a DNA match in the still pending Elizabeth Garcia murder investigation.

121. Paul Lovett is currently facing kidnapping and homicide charges for the death of Elizabeth Garcia.

122. Paul Lovett may even be sentenced to death.

123. Paul Lovett will face the consequences of his actions in the criminal justice system, but absent this lawsuit, Allsup's faces no consequences for its actions, other than trivial workers compensation payments.

124. After learning of Elizabeth's abduction, rape, and murder, former Hobbs Police Chief Tony Knott (then retired) was furious that Elizabeth had been left to work alone without adequate security.

125. Tony Knott believes that if Allsup's had installed just the most basic security measures, such as surveillance cameras, this young mother who was trying to go to school and make a better life for herself and her kids, would be alive today.

126. Based on his experience of being an Allsup's clerk, Lensdale Cordice also believes that having a second clerk or security guard on duty would have saved Elizabeth's life.

127. Allsup's intentional disregard for the consequences of its defunct, inadequate, and practically non-existent security cost Elizabeth Garcia her life.

128. As of January 16, 2002, Allsup's had made a deliberate and intentional economic decision - and utterly disregarded the deadly consequences of its decisions - not to add security, close its store to the public or change its one-clerk policy.

129. Allsup's decisions were with full knowledge that, as a direct result, lone clerks on the graveyard shift would become the prey of rapists, robbers and murders.

130. Thus Allsup's actions constitute willful and intentional acts resulting in the death of Elizabeth Garcia.

131. Even after Elizabeth's death, Allsup's still refuses to staff more than one person during the graveyard shift.

132. Instead of addressing the danger to its employees in light of Elizabeth Garcia's death, Allsup's steadfastly resists any efforts by its employees to make their jobs safer – even efforts that cost Allsup's nothing. One recent employee states that Allsup's retaliated against her after she complained about the lack of safety during the graveyard shift. She was also told that it was not even acceptable for her to even ask her husband to stay with her at the store when she was working alone.

133. Year after year and day after day, employees working the graveyard shifts at Allsup's experience batteries, assaults with deadly weapons, armed robberies, rapes, and threats; and year after year, Allsup's does nothing to improve safety, but rather chalks it up to the cost of doing business.

COUNT I
ALLSUP'S WILLFUL AND INTENTIONAL MISCONDUCT RESULTING IN
WRONGFUL DEATH

All previous paragraphs are incorporated herein by reference.

134. Allsup's knew that its deliberate economic decision not to purchase or provide adequate security, close its stores to the public on the graveyard shift or change its one clerk policy would result in serious injury, rape, or death to its clerks.

135. Among other things, Allsup's knew this from the following sources:

- a. the media and law enforcement studies regarding convenience store crime, including but not limited to the industry's own expert's study that shows the incidence of rape is decreased six fold when there is more than one clerk on duty;
- b. the 1979 incident in which an Allsup's clerk was abducted and raped;

- c. the Eva Pellisier incident, Eva's request that Allsup's never leave a woman alone to work a graveyard shift, and Allsup's promise to Eva that it would not do so;
- d. the Mitch Austin shooting in Taos;
- e. the Elizabeth Williams death in Tucumcari and related NMDOE citation relating to necklace alarms, and the decreased incidence of robbery while that store had double staffing, followed by robberies when the staffing was again dropped;
- f. the Texas rape;
- g. the approximate 400 incidents of crime that occurred at the Hobbs Allsup's stores in the four years before Elizabeth Garcia's abduction, rape, and murder, all of which were documented in police records and available to Allsup's;
- h. the requests of its own employees, including but not limited to Debra Carr and Lensdale Cordice, asking for additional staffing at night;
- i. the crime statistics affirmatively provided by the Hobbs Police Department to Mark Allsup relating to the "Allsup's crime problem";
- j. Hobbs Police Department Chief of Police, Tony Knott, requests to Mark Allsup to improve security at the Hobbs stores, including the addition of surveillance cameras to deter and reduce crime and assist in the apprehension of criminals;

- k. the graveyard shift robbery that occurred at store 146 just the evening before Elizabeth's abduction, rape, and murder.

136. Allsup's owed a non-delegable duty to Elizabeth Garcia to provide a reasonably safe work environment or to close its store to the public over the graveyard shift it was unwilling to provide a safe work environment during that time.

137. By requiring a lone woman to work the graveyard shift at the Allsup's store in Hobbs without adequate security, Allsup's deliberately created an inherently dangerous situation for Elizabeth Garcia.

138. Despite the research and standards in the industry and specific requests by law enforcement, employees and managers – all issued before Elizabeth Garcia was killed - Allsup's made a deliberate, willful and intentional decision not to provide adequate security by failing to do any or all of the following:

- a. staff its stores with more than one person over the graveyard shift, provide a security guard, or alternatively provide a bullet resistant enclosure;
- b. if unwilling to provide security over the graveyard shift, simply close the store to the public during those hours;
- c. install and maintain surveillance cameras to deter would be criminal activity and to catch criminals, who are often repeat criminals;
- d. install and maintain adequate lighting outside the store, including regular testing to ensure the lighting was functioning, which lighting prevents criminals from feeling they can escape cloaked in darkness;

- e. pay for adequate training of clerks that emphasizes and requires use of a personal security alarm which alarm is functioning, properly maintained, and which device the clerks have been trained to trust and are absolutely required to wear; and
- f. remove the signs, marketing posters, and product advertisements from the windows so that would be criminals feel their actions will be viewable from the street.

139. Despite its knowledge of the inherent danger, and without just cause or excuse, Allsup's made a deliberate decision to create an inherently dangerous situation for Elizabeth Garcia.

140. Allsup's intentionally, willfully or in utter disregard for the consequences of its behavior, required Elizabeth Garcia, a beautiful, young mother of three, and new Allsup's employee to work alone during the graveyard shift of the 5312 Lovington Hwy store, knowing among other things:

- a. the extreme and inherent danger of working alone in these circumstances based on the information described in ¶¶ 134 and 137, above;
- b. a clerk working alone was six times more likely to be raped;
- c. the store remained open during the most dangerous time – the graveyard shift;
- d. the 5312 store had no bullet proof resistant or protected enclosure for its employees on the graveyard shift;

- e. the 5312 store did not have adequate lighting and that many of the few lights it had were not functioning, leaving the store dimly lit and attractive to criminals;
- f. the store was located in an extremely remote area, on the edge of town, surrounded by dark, empty fields which made the store even more attractive to criminals;
- g. the store had no surveillance cameras, making it all the more attractive to criminals who would otherwise be deterred based on fear of being caught.
- h. the store had no security guard to deter criminals and defend clerks from assault, abduction, rape, and murder;
- i. Elizabeth had not been properly trained;
- j. the panic button system had been so ignored by the company that most of the devices were non functioning or were believed to be non functioning such that employees did not take them seriously and thus did not use them.

141. New Mexico law creates a duty on the part of an employer not to engage in willful or intentional acts that a reasonable person would expect to result in injury.

142. Numerous individuals, who reflect this “reasonable person standard” believed Allsup’s acts and omissions would result in injury and warned Allsup’s of this prior to Elizabeth’s abduction, rape and murder.

143. By the acts and omissions described throughout this Complaint, Allsup’s breached its legal duty.

144. Allsup's breach of duty was substantially certain to cause injury to its employees, including but not limited to, Elizabeth Garcia.

145. Allsup's breach of duty was committed knowingly, as established to the prior notice and specific warnings it received and which are described throughout this Complaint.

146. That Allsup's culpable *mens rea* was sufficient to be actionable in tort is demonstrated by the sheer amount of information and warning of danger it had received and experienced before leaving Elizabeth Garcia alone without security on the graveyard shift.

147. That Allsup's culpable *mens rea* is sufficient to be actionable in tort is further demonstrated by the acts and omissions described throughout this Complaint, which include, but are not limited to:

- a. the fact that it had previously promised to Eva Pellisier, who nearly lost her life working alone on a graveyard shift, that it would cease leaving women alone during this dangerous shift;
- b. the Elizabeth Williams 1994 death which led to public knowledge and a regulatory citation for Allsup's failure to ensure functionality and use of the necklace alarms;
- c. the fact that after Elizabeth Williams 1994 death, Allsup's increased its staffing at that store to two on the graveyard shift and experienced no robberies until it reduced staffing to one, after using political connections to get the NMDOE citation dismissed;

- d. the words of Tony Knott, who describes the attitude of Mark Allsup as “arrogant” with regard to worker safety concerns Chief Knott had expressed;
- e. Mark Allsup’s statement to Tony Knott that it was cheaper for Allsup’s to make workers compensation payments than to install surveillance cameras.

148. As a direct and proximate result of the defendant's acts and omissions, the 5312 N. Lovington Hwy Allsup’s and its lone clerk, Elizabeth Garcia, was deliberately placed in an inherently dangerous situation where it was expected that Elizabeth would be a crime victim and suffer harm.

149. As a direct and proximate result of Allsup’s willful and intentional acts and omissions, Elizabeth Garcia was abducted, raped and murdered; her children were left motherless; and her Estate has suffered damages, including extreme fear, pain and suffering prior to her death; lost enjoyment of life; lost earnings; lost household services; and funeral expenses, all accompanied by additional damages for the aggravating circumstances attendant to Allsup’s behavior.

WHEREFORE, Plaintiffs request judgment against Allsup’s in an amount that will fully compensate the Estate of Elizabeth Garcia and her children. Plaintiffs further request aggravating circumstances damages, punitive damages, costs of this litigation, pre-judgment interest, post-judgment interest and such other and further relief as this Court may deem just and proper.

COUNT II
LOSS OF PARENTAL CONSORTIUM

All previous paragraphs are incorporated herein by reference.

150. Elizabeth Garcia was the natural parent and sole care giver of her three young children: Xavier Mendoza, now age 9; Jerome Mendoza, now age 7; and Cene Mendoza, now age 6.

151. Elizabeth Garcia lived with and was the primary caregiver for Xavier Mendoza, Jerome Mendoza and Cene Mendoza, and provided for their food and shelter.

152. Xavier, Jerome, and Cene relied on Elizabeth to raise them and Elizabeth Garcia was an exceptional mother to her children: providing them with counsel; instilling them with spiritual and moral values; raising them to behave well; providing guidance about the golden rule and inspiring them to care about the well being of others; developing them into good citizens; teaching them how to be healthy physically, mentally, and emotionally; encouraging their involvement in sport and the pursuit of education; showering them with attention and love; and filling them with self esteem.

153. Although others will try their best, there is no substitute person who can provide these services to Xavier, Jerome, and Cene to the degree and in the manner that Elizabeth, their loving and trusted mother, was able to do.

154. It was foreseeable that Xavier, Jerome, and Cene would be harmed by Elizabeth's unnecessary and wholly preventable death.

155. As a proximate result of the intentional and/or willful acts and omissions of Allsup's, Xavier Mendoza, Jerome Mendoza and Cene Mendoza have suffered the loss

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of companionship, society, affection, love, guidance and support from their sole caregiver and mother, Elizabeth Garcia.

156. Xavier Mendoza, Jerome Mendoza, and Cene Mendoza each, individually, possesses a separate claim for loss of consortium against Allsup's.

WHEREFORE, Xavier Mendoza, Jerome Mendoza and Cene Mendoza through their next friend, Mary Ann McConnell, request judgment against Allsup's for their individual losses of parental consortium. Plaintiffs' further request punitive damages, costs, pre-judgment interest, post-judgment interest and such other and further relief as this Court may deem just and proper.

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