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1 LEWIS & LLEWELLYN LLP  
2 Marc R. Lewis (Bar No. 233306)  
3 mlewis@lewisllewellyn.com  
4 Erin H. Reding (Bar No. 252691)  
5 ereding@lewisllewellyn.com  
6 601 Montgomery Street, Suite 2000  
7 San Francisco, California 94111  
8 Telephone: (415) 800-0590  
9 Facsimile: (415) 390-2127

SAN LUIS OBISPO SUPERIOR COURT  
BY Carol L. McGolk  
Carol L. McGolk, Deputy Clerk

6 Attorneys for Plaintiffs  
7 DENISE SMART, STAN SMART,  
8 MATTHEW SMART and LINDSEY  
9 STEWART

10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
11 IN AND FOR THE COUNTY OF SAN LUIS OBISPO  
12 UNLIMITED CIVIL JURISDICTION

24CV-0046

13 DENISE SMART; STAN SMART;  
14 MATTHEW SMART; and LINDSEY  
15 STEWART, individuals,

16 Plaintiffs,

17 v.

18 CALIFORNIA POLYTECHNIC STATE  
19 UNIVERSITY, SAN LUIS OBISPO a  
20 California Public University; and DOES 1  
21 through 10 inclusive,

22 Defendant.

Case No. \_\_\_\_\_

**COMPLAINT:**

- 23 (1) NEGLIGENCE
- 24 (2) NEGLIGENT INFLICTION OF
- 25 EMOTIONAL DISTRESS
- 26 (3) WRONGFUL DEATH

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Denise Smart, Stan Smart, Matthew Smart, and Lindsey Stewart (“Plaintiffs” or the  
2 “Smart Family”) for their complaint against Defendant California Polytechnic State University, San  
3 Luis Obispo (“Defendant” or the “University” or “Cal Poly”) allege as follows:

4 **NATURE OF THE ACTION**

5 1. Kristin Smart was in the final weeks of her freshman year at Cal Poly when she was  
6 murdered by another student on the Cal Poly Campus, in his dorm room on campus.

7 2. Kristin was murdered over 27 years ago, but Plaintiffs did not begin to understand the  
8 multitude of failings by Cal Poly until May 2023, when Cal Poly’s President publicly apologized to  
9 the family and stated: “[W]e recognize that things should have been done differently – and I  
10 personally wish that they had.”

11 3. Cal Poly’s breaches of its legal duty include but are not limited to the following: it  
12 did not pursue a missing person case promptly, did not interview witnesses timely, did not seal the  
13 primary suspect’s dorm room as a crime scene, allowed the suspect’s room to be sanitized and  
14 cleaned before it was searched, and did not search the suspect’s room until sixteen days after Kristin  
15 disappeared.

16 4. Perhaps even more shocking and devastating, before the murderer killed Kristin,  
17 multiple other reports had been made about Paul Flores on the basis of his threatening, stalking, and  
18 harassing behavior.

19 5. If Cal Poly had properly acted on those reports, conducted an investigation, and  
20 appropriately disciplined the student, he would not have been on campus, and therefore would not  
21 have been able to murder Kristin. Flores also would have been prevented from assaulting and  
22 raping countless other women, in the years after he murdered Kristin.

23 6. As a result of Cal Poly’s failures, Plaintiffs have suffered immeasurable damage.

24 7. Plaintiffs lost their daughter and their sister – a profound, perpetual void and sense of  
25 incompleteness that nothing can fill.

26 8. Plaintiffs also endured decades of trauma and emotional distress caused by knowing  
27 that Kristin’s murderer was still free and that her body was still hidden, and that her murderer could  
28 hurt other women.



1 Luis Obispo.

2 20. Venue is proper in San Luis Obispo County because Cal Poly is a public university  
3 located in that county. Furthermore, the negligent acts and/or omissions proximately leading  
4 thereto, occurred in San Luis Obispo, California.

5 **PROCEDURAL POSTURE**

6 21. On August 25, 2023, Plaintiffs filed claims against Cal Poly in accordance with the  
7 California Government Claims Act.

8 22. These claims were timely because they did not begin to accrue until May 2023, when  
9 Cal Poly's President publicly apologized to the family and stated: "[W]e recognize that things  
10 should have been done differently – and I personally wish that they had."

11 23. It was at this point that the Smart family began to understand Cal Poly's failings.

12 24. Even now, the Smart family still does not know what information, in the possession  
13 of Cal Poly's President, and uniquely available to him and/or Cal Poly, led him to make the apology.

14 25. In fact, Cal Poly's investigative file has never been fully provided to the Smart  
15 Family.

16 26. On September 15, 2023, Cal Poly responded by stating that "we have determined that  
17 all four claims were and have not been timely presented after the relevant event or occurrence within  
18 the time period required by law."

19 27. Cal Poly further stated that the only recourse available for Plaintiffs was to apply to  
20 the California State University for leave to present a late claim.

21 28. On September 25, 2023, Plaintiffs responded to Cal Poly by reiterating why the  
22 claims were, in fact, timely, and stating that even though the claims were timely presented, Plaintiffs  
23 "in an abundance of caution and without prejudice to our clients' rights and remedies" would  
24 promptly apply for leave to present late claims.

25 29. On November 7, 2023, Cal Poly responded to the Application for Leave to Present a  
26 Late Claim and "confirmed [its] prior determination that the claims were not timely presented."

27 30. Plaintiffs have complied with all procedural requirements under the Claims Act, even  
28 including applying for leave to present late claims despite those claims not being late.



1 disappeared. In fact, when multiple concerned friends from Kristin's dorm tried to report Kristin as  
2 missing on both Sunday and Monday, CPPD officers told them that it was too early to make a  
3 missing person report.

4 b. CPPD did not interview witnesses until *four days* after Kristin disappeared.

5 c. Campus police did not interview Flores, whom multiple witnesses had  
6 informally identified as the last person seen with Kristin, until *four days* after Kristin disappeared.

7 d. CPPD did not seal off Flores' dorm room as a potential crime scene, despite  
8 multiple witnesses identifying him as the last person seen with Kristin.

9 e. CPPD did not search Flores' dorm room until *sixteen days* after Kristin  
10 disappeared, despite multiple witnesses identifying him as the last person seen with Kristin.

11 f. By the time CPPD sealed and restricted access to Flores' room, more than  
12 sixteen days after Kristin disappeared, Flores had moved out of the room, and items from the room,  
13 including pieces of furniture, were missing. Furthermore, CPPD allowed a Cal Poly custodial crew  
14 to fully sanitize the room before conducting a forensic investigation, thereby destroying evidence.

15 g. CPPD did not have a crime scene investigator on-staff, struggled to retain  
16 such an investigator from another jurisdiction because they were "too busy," and did not conduct a  
17 formal crime scene investigation of Flores' room until *thirty-one days* after Kristin disappeared.

18 h. Upon information and belief, even after multiple witnesses identified Flores  
19 as the last person seen with Kristin, CPPD failed to identify Flores' substantial history of reports of  
20 aggressive and threatening behavior, which prevented CPPD from fully realizing why its  
21 investigation into Flores needed to be urgent and thorough, which it was not.

22 i. Even when CPPD did become aware of Flores' prior arrest and outstanding  
23 warrant, just days after Kristin disappeared, this information did not cause CPPD to realize why its  
24 investigation into Flores needed to be urgent and thorough.

25 j. CPPD failed to hand the case over to San Luis Obispo County's Sheriff's  
26 Office in a reasonable timeframe. It was unreasonable for CPPD to retain jurisdiction over an  
27 investigation that was clearly indicating serious foul play for an entire month. The Sheriff's Office  
28 indisputably had vastly more expertise and manpower to handle such an investigation.

1           43.     The Smart Family did not begin to understand Cal Poly’s failings until the President  
2 of Cal Poly apologized in May 2023.

3           44.     The Smart Family still does not know what information in the possession of Cal  
4 Poly’s President, uniquely available to him, led him to make the apology.

5           45.     In fact, Cal Poly’s investigative file has never been fully provided to the Smart  
6 Family.

7           46.     To add insult to injury, when Kristin’s mother requested her school files after she  
8 disappeared, Cal Poly gave her Kristin’s transcript from the spring of 1996 – the semester she was  
9 murdered. Kristin’s mother saw that Cal Poly gave Kristin a failing grade in each of her classes that  
10 semester, because she did not appear for her final exams.

11 **Flores Is Eventually Arrested For Kristin’s Murder**

12           47.     On June 26, 1996, CPPD finally turned the case over to the Sheriff’s Office. But at  
13 that point, the damage by CPPD had already been done.

14           48.     Cal Poly’s egregious failures to pursue credible leads and conduct a proper  
15 investigation created a morass of problems that were impossible for the Sheriff to easily untangle.

16           49.     Paul Flores, the man whom multiple witnesses told CPPD was last seen with Kristin,  
17 was not arrested for her murder until April 13, 2021. It was almost twenty-five years, *a quarter of a*  
18 *century*, after Kristin first disappeared.

19           50.     However, during those two and a half decades, Flores engaged in a series of horrific  
20 and disturbing attacks on women. Set forth below is a brief summary of some of those attacks:

21           a.     Upon information and belief, one week after Kristin disappeared, Flores  
22 appeared at an Arroyo Grande high school prom after-party. At the party, witnesses observed him  
23 carrying a plastic pitcher of a mixed alcoholic drink. He pressured multiple girls to drink it, even  
24 when they declined.

25           b.     Upon information and belief, while working at Outback Steakhouse in Irvine  
26 in 1997, Flores once carried a coworker into his apartment, turned off the lights, and tried to  
27 sexually assault her until she threatened to scream and wake up his sister.

28           c.     Upon information and belief, in the 2004-2007 timeframe, Flores was at a bar

1 in Redondo Beach. A woman went outside to smoke a cigarette and Flores followed her. He  
2 grabbed her and tried to get her into his car. She hit him and he hit her back. Other patrons of the  
3 bar came outside to investigate the disturbance and Flores ran away.

4 d. Upon information and belief, in or about 2011, Flores sexually assaulted a  
5 woman at a San Pedro bar. Shortly before the assault, she had not yet finished her first beverage  
6 before she felt drugged and partially unconscious.

7 e. Upon information and belief, also in 2011, Flores was kicked out of a San  
8 Pedro bar for stalking a woman, and inappropriately touching another intoxicated woman.

9 f. In 2008, Flores met a woman at a bar, gave her a glass of what was  
10 purportedly water, and then the woman fell unconscious. She woke up several times to Flores  
11 raping her, including one time with a ball gag in her mouth as he raped her anally.

12 g. In 2013, the Los Angeles County District Attorney's Office received and  
13 reviewed rape allegations against Flores stemming from an incident in Redondo Beach.

14 h. Los Angeles Police Department investigators tracked down two women who  
15 alleged that Flores drugged and raped them after Kristin's disappearance.

16 i. During a 2020 raid of Flores' San Pedro home, law enforcement discovered a  
17 file of videos entitled "Practice." In that file, Flores had saved videos he had taken of himself  
18 sodomizing and sexually assaulting women, many of whom were unconscious in the videos.

19 j. During a 2020 raid of Flores' home, law enforcement discovered two bottles  
20 of date rape drugs.

21 51. If Cal Poly had properly and reasonably investigated Kristin's disappearance, the  
22 countless women that Flores attacked and assaulted, over the course of the subsequent twenty-five  
23 years, could have been spared the severe pain and trauma of those horrific experiences.

24 52. A jury convicted Flores of Kristin's murder and he was sentenced in March 2023  
25 when the judge overseeing the criminal trial publicly declared him "a cancer to society."

26 **Evidence Emerges That Cal Poly Could and Should Have Prevented Kristin's Murder**

27 53. Before Kristin disappeared, Cal Poly had already received multiple reports of Flores'  
28 aggressive and harassing behavior, particularly toward women.



1           54.    Those reports include, but are not limited to, the following:

2           a.    On December 17, 1995, a female Cal Poly student filed a police report stating  
3 that Flores had been harassing her. Flores had climbed the trellis of her apartment building to spy  
4 on her from the balcony. When police arrived, they found Flores and identified him as the culprit.

5           b.    On March 27, 1996, three female Cal Poly students filed police reports stating  
6 that Flores had been harassing and stalking them. He had been calling them for six weeks and had  
7 filled their entire answering machine tape with nothing but silent, hang-up calls. The three women  
8 told officers that, in December 1995, Flores had climbed on their apartment balcony and tried to  
9 break into their apartment.

10          c.    On January 14, 1996, someone reported to Cal Poly that Flores vandalized  
11 Cal Poly grounds and property while intoxicated.

12          d.    On January 17, 1996, Cal Poly required Flores to attend a  
13 “Mediation/Information Meeting” with the Coordinator of Student Development, Nancy Day. This  
14 meeting was being held because Flores harassed a staff member at Cal Poly. At the meeting, Cal  
15 Poly discussed with Flores “the seriousness of harassing a staff member at Cal Poly” and also  
16 mentioned future possible cancellation of his housing contract with Cal Poly.

17          55.    Upon information and belief, Cal Poly had records of all of these reports at the time  
18 Kristin disappeared.

19          56.    Upon information and belief, if Cal Poly had run a CLETS (California Law  
20 Enforcement Telecommunications Systems) report on Flores at the time it received these reports of  
21 harassment by the women, they would have uncovered an additional assault and battery charge  
22 brought against Flores dated December 2, 1994.

23          57.    The CLETS system allows law enforcement throughout the state to check criminal  
24 histories, driver records, and other databases across agencies.

25          58.    These five previously reported incidents should have caused Cal Poly to conduct a  
26 thorough investigation of Flores.

27          59.    Cal Poly’s own “Sexual Misconduct Policy” states that harassment and sexual  
28 conduct are prohibited by both the Standards for Student Conduct and federal law codified in Title

1 IX.

2 60. Cal Poly's current policy states that, in response to reports of sexual misconduct, the  
3 Title IX coordinator will take "immediate steps" to investigate, there is a disciplinary process, and  
4 that process may result in probation, suspension, or expulsion.

5 61. It is unclear if Cal Poly had the same Sexual Misconduct Policy in place during the  
6 relevant period, but Title IX was enacted years before Kristin disappeared, and in effect at the time  
7 of the five previously reported incidents about Flores.

8 62. After becoming aware of five reports of Flores' harassing, stalking, and violent  
9 behavior, any reasonable university would have engaged in a disciplinary process related to Flores.

10 63. In light of the seriousness of the reports, a reasonable university would have expelled,  
11 or at least suspended, Flores.

12 64. If Cal Poly had expelled or even suspended Flores, he would not have attended  
13 classes and could have lost access to his on-campus housing.

14 65. These repercussions could have sent Flores home to his family in Arroyo Grande,  
15 miles away from Kristin and the dorm room where he murdered her.

16 66. When Flores murdered Kristin, the Smart Family lost Kristin's love, companionship,  
17 comfort, care, assistance, and affection in their lives.

18 67. This loss is profound, and it has affected the Smart Family every single day since  
19 Kristin was murdered.

20 68. Upon information and belief, Cal Poly's failure to investigate and discipline Flores  
21 for his behavior allowed Flores' continued access to Kristin, continued access to the scene of the  
22 murder, and at least partially caused Kristin's murder.

23 **Cal Poly's Failures Wreak Havoc Upon The Smart Family**

24 69. The decades between Kristin's disappearance and Cal Poly's public apology to the  
25 Family were marked by extreme emotional distress and trauma for the Smart Family.

26 70. While the Smart Family certainly would have been devastated by the immediate  
27 arrest of Flores and the prompt discovery that Kristin had been murdered, it would have at least  
28 truncated the agony of simply not knowing what happened to their daughter and sister.

1           71.     Trying to maintain hope that Kristin might one day arrive home, and having that hope  
2 repeatedly destroyed over two decades, was excruciating for the Smart Family.

3           72.     Simultaneously, suspecting that Kristin's murderer was still on the loose, and freely  
4 living his life, was also agonizing.

5           73.     The failure to find Kristin's body has been equally traumatizing and has prevented  
6 the family from ever putting Kristin to rest. Not knowing where Kristin's remains are has prevented  
7 the family from ever feeling peace, and has continued to give Flores power over them.

8           74.     The family has also been traumatized by knowing that Flores victimized countless  
9 other women after he murdered Kristin. Each time the family heard about another victim, their  
10 hearts broke all over again, wondering if those subsequent, heinous crimes could have been  
11 prevented.

12          75.     These ongoing issues were the primary sources of the Smart Family's emotional  
13 distress and trauma.

14          76.     Members of the Smart Family have experienced a quarter of a century of anxiety,  
15 hopelessness, depression, and even suicidal ideation related to thinking Kristin might come home,  
16 knowing that her killer was still free, and being unable to find her body.

17          77.     The extreme emotional distress has affected the Smart Family's ability to form  
18 relationships with other people, and trust other people.

19          78.     The emotional distress has also prevented members of the Smart Family from  
20 pursuing educational and professional opportunities.

21          79.     During those twenty-five years, the Smart Family doggedly pushed law enforcement  
22 to investigate and arrest Flores but, because CPPD had compromised and destroyed evidence in the  
23 investigation during that first critical month of Kristin's disappearance, the evidence of Flores'  
24 culpability was difficult to confirm.

25          80.     The failures by CPPD created insurmountable hurdles to overcome.

26          81.     If Cal Poly had done the right thing from the outset, Flores would have never had the  
27 opportunity to kill Kristin.

28          82.     If Cal Poly had done the right things from the outset, Flores would have never had

1 the opportunity to victimize countless other women.

2 83. Even after Kristin died, if Cal Poly had conducted a reasonable investigation, Flores  
3 would have been arrested and convicted decades earlier, and the Smart Family would have been  
4 spared decades of emotional distress and trauma.

5 84. In May 2023, Cal Poly's President, Jeffrey Armstrong, issued a public apology to the  
6 Smart family, stating: "[W]e recognize that things should have been done differently – and I  
7 personally wish that they had."

8 85. Cal Poly's failures are indefensible, and it must be held accountable to prevent this  
9 cycle of callous negligence from ever occurring again.

10 **FIRST CAUSE OF ACTION**

11 **(Negligence Brought By All Plaintiffs Against All Defendants)**

12 86. Plaintiffs re-allege and incorporate by reference the allegations set forth in each of  
13 the preceding paragraphs of this Complaint as though fully set forth herein.

14 87. When Cal Poly's law enforcement arm, CPPD, voluntarily assumed a protective duty  
15 toward Plaintiffs to investigate Kristin's disappearance, it undertook that action on behalf of  
16 Plaintiffs, thereby inducing reliance.

17 88. As a result, Cal Poly owed a legal duty of care to Plaintiffs.

18 89. Cal Poly breached its duty of care by failing to reasonably investigate and act on  
19 prior reports of Flores' behavior. Cal Poly's breaches include, but are not limited to:

20 a. Failing to properly investigate and discipline Flores in December 1995, when  
21 a female Cal Poly student filed a police report stating that Flores had been harassing her.

22 b. Failing to properly investigate and discipline Flores in March 1996, when  
23 three female Cal Poly students filed police reports stating that Flores had been harassing them.

24 c. Failing to properly investigate and discipline Flores in January 1996, when he  
25 vandalized Cal Poly grounds and property while intoxicated.

26 d. Failing to properly investigate and discipline Flores in January 1996, when he  
27 harassed a Cal Poly staff member.

28 e. Failing to run a CLETS report on Flores in response to any of the four above-

1 mentioned incidents, which would have notified Cal Poly of Flores' additional assault and battery  
2 charge, stemming from December 1994.

3 90. Cal Poly also breached its duty by failing to conduct a reasonable investigation into  
4 Kristin's disappearance and into Flores himself. Cal Poly's breaches include, but are not limited to:

5 a. Failing to take a missing person report until *four days* after Kristin  
6 disappeared.

7 b. Failing to interview witnesses until *four days* after Kristin disappeared.

8 c. Failing to interview Flores, whom multiple witnesses had informally  
9 identified as the last person seen with Kristin, until *four days* after Kristin disappeared.

10 d. Failing to seal off Flores' dorm room as a potential crime scene, despite  
11 multiple witnesses identifying him as the last person seen with Kristin.

12 e. Failing to search Flores' dorm room until *sixteen days* after Kristin  
13 disappeared, despite multiple witnesses identifying him as the last person seen with Kristin.

14 f. Failing to seal and restrict access to Flores' room until more than sixteen days  
15 after Kristin disappeared such that Flores had moved out of the room, and items from the room,  
16 including pieces of furniture, were missing.

17 g. Allowing a Cal Poly custodial crew to fully sanitize the room before  
18 conducting a forensic investigation, thereby destroying evidence.

19 h. Failing to have a crime scene investigator on-staff, and failing to conduct a  
20 formal crime scene investigation of Flores' room until *thirty-one days* after Kristin disappeared.

21 i. Failing to identify Flores' substantial history of reports of aggressive and  
22 threatening behavior, which prevented CPPD from fully realizing why its investigation into Flores  
23 needed to be urgent and thorough, which it was not.

24 j. Failing to recognize and act on the importance of Flores' prior arrest and  
25 outstanding warrant.

26 k. Failing to hand the case over to San Luis Obispo County's Sheriff's Office in  
27 a reasonable timeframe.

28 91. Cal Poly's negligence, recklessness, and/or lack of diligence were a substantial factor

1 in causing the harm suffered by Plaintiffs.

2 92. It was highly foreseeable to Cal Poly that its failure to reasonably investigate and act  
3 on prior reports of Flores' behavior posed a substantial risk of harm to Plaintiffs.

4 93. It was also highly foreseeable to Cal Poly that its failure to conduct a reasonable  
5 investigation into Kristin's disappearance and into Flores himself posed a substantial risk of harm to  
6 Plaintiffs.

7 94. As a direct and proximate result of Cal Poly's negligence, recklessness, and/or lack  
8 of diligence, Plaintiffs have suffered damages in an amount to be proven at trial.

9 **SECOND CAUSE OF ACTION**

10 **(Negligent Infliction of Emotional Distress Brought By All Plaintiffs Against All Defendants)**

11 95. Plaintiffs re-allege and incorporate by reference the allegations set forth in each of  
12 the preceding paragraphs of this Complaint as though fully set forth herein.

13 96. When Cal Poly's law enforcement arm, CPPD, voluntarily assumed a protective duty  
14 toward Plaintiffs to investigate Kristin's disappearance, it undertook that action on behalf of  
15 Plaintiffs, thereby inducing reliance.

16 97. As a result, Cal Poly owed a legal duty of care to Plaintiffs.

17 98. Cal Poly breached its duty to Plaintiffs by failing to act with reasonable care so as to  
18 avoid foreseeable harm to Plaintiffs.

19 99. As set forth above, it was highly foreseeable to Cal Poly that: (1) its failure to  
20 reasonably investigate and act on prior reports of Flores' behavior posed a substantial risk of harm to  
21 Plaintiffs; and (2) its failure to conduct a reasonable investigation into Kristin's disappearance and  
22 into Flores himself posed a substantial risk of harm to Plaintiffs.

23 100. As a direct and proximate result of Cal Poly's negligence, Plaintiffs suffered severe  
24 emotional distress and sustained damages in an amount to be proven at trial.

25 **THIRD CAUSE OF ACTION**

26 **(Wrongful Death Brought By Plaintiffs Stan and Denise Smart Against All Defendants)**

27 101. Plaintiffs re-allege and incorporate by reference the allegations set forth in each of  
28 the preceding paragraphs of this Complaint as though fully set forth herein.

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102. Negligent acts by Cal Poly caused Kristin Smart’s death.

103. Cal Poly’s negligent acts were at least partially to blame for her death.

104. Cal Poly owed a duty to Plaintiffs to act reasonably and rationally under the circumstances.

105. Cal Poly failed to act in such a way and breached that duty.

106. Cal Poly breached its duty by failing to reasonably investigate and act on prior reports of Flores’ behavior, which posed a substantial risk of harm to Plaintiffs.

107. As a direct and proximate result of Cal Poly’s negligent acts and breach, Plaintiffs lost, among other things, Kristin’s love, companionship, comfort, care, assistance, affection, and future income and earning potential.

108. Plaintiffs sustained damages in an amount to be proven at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against Cal Poly as follows:

- 1. For money damages according to proof;
- 2. For pre- and post-judgment interest on money damages allowed by law;
- 3. For costs of suit herein, including attorneys’ fees as allowed by law; and
- 4. For such other and further relief as the court may deem proper.

Dated: January 18, 2024

LEWIS & LLEWELLYN LLP

By: 

Marc R. Lewis  
Attorneys for Plaintiffs  
DENISE SMART, STAN SMART, MATTHEW  
SMART and LINDSEY STEWART




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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial as to all causes of action.

Dated: January 18, 2024

LEWIS & LLEWELLYN LLP

By:   
\_\_\_\_\_  
Marc R. Lewis  
Attorneys for Plaintiffs  
DENISE SMART, STAN SMART, MATTHEW  
SMART and LINDSEY STEWART