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July 31, 2018

Mr. Gino J. Agnello
Clerk of the Court
U.S. Court of Appeals for the Seventh Circuit
219 South Dearborn, Rm 2722
Chicago, IL 60604

Re: *Marsha Wetzel v. Glen St. Andrew Living Community, LLC, et al.*,
No. 17-1322; Fed. R. App. P. 28(j); Opposition to Supplemental
Authority

Dear Clerk Agnello,

Pursuant to Fed. R. App. P. 28(j), Defendants-Appellees respond that Appellant's July 27 Supplemental Authority is not on point. First, defendant's liability in *Gardner v. CLC of Pascagoula L.L.C.*, 894 F.3d 654 (5th Cir. 2018), sprang from a violation of the employer-employee relationship under Title VII. The case *sub justice* raises the question of a landlord's liability for tenant-on-tenant harassment under Title VIII where no agency relationship exists. See Appellee's Brief at pages 39-44.

Second, *Gardner* does *not* establish what tools are available to a landlord to control a tenant. Instead, the court focused on how the employer could change the working conditions for the employee by assigning a security escort to protect the employee or by reassigning the employee to remove direct contact with the harassing patient who was suffering from dementia and personality disorder. *Id.* at 663. With respect to the patient, the court offered no tools other than eviction—"remove the patient from the facility." *Id.* As noted in Appellee's Brief at page 41, in the landlord-tenant setting, the power to evict "is insufficient to hold a landlord liable for his tenant's tortious actions against another." And, as Appellant acknowledged, eviction proceedings could not be commenced unless Appellant's health and safety were materially at risk—something Appellant did not allege.



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Thank you for your consideration.

Respectfully submitted,

CLAUSEN MILLER P.C.

By:

/s/ Lisa A. Hausten

Lisa A. Hausten

LAH/las

cc: Counsel of Record (via ECF)

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: July 31, 2018

By: /s/ Lisa A. Husten
Lisa A. Husten