

SCANNED

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Cause No. C200200145



v.

JRAF ENTERPRISES INC. D/B/A THE HORSEMAN CLUB; JRAF ENTERPRISES INC. D/B/A CIRCLE A RANCH; LONE STAR OYSTER BAR OF FORT WORTH, INC. D/B/A LONE STAR OYSTER BAR; TONY TINDERHOLT; STANLEY BOGARD a/k/a FRANK BOGARD; TRAVIS KING; DANNY KING; DANIEL STEWART; DEANNA AUNGST; ALISHA RORIE; FLOYD ALLRED, JR. ALICE ALLRED; KATHRYN MEAD; JEFFREY OLYAN RYAN NETHERY; SERGIO CARRERA; ARINA ANDERSON and LAURA RUIZ

STATE OF TEXAS
COUNTY OF JOHNSON

IN THE DISTRICT COURT
OF JOHNSON COUNTY, TEXAS

FILED
DISTRICT CLERK
2002 APR 12 PM 4:54
DEPUTY

249 JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now Comes, [REDACTED] hereinafter referred to as Plaintiff, in the above styled and numbered cause and files this Original Petition, complaining of the JRAF Enterprises Inc. d/b/a the Horseman Club ("Horseman"), JRAF Enterprises Inc. d/b/a Circle A Ranch ("Circle A") and Lone Star Oyster Bar of Fort Worth, Inc. d/b/a Lone Star Oyster Bar ("Lone Star"), Tony Tinderholt, Stanley Bogard a/k/a Frank Bogard, Travis King, Danny King, Daniel Stewart, Deanna Aungst, Alisha Rorie, Floyd Allred, Jr., Alice Allred, Kathryn Mead, Jeffrey Olyan, Ryan Nethery, Sergio Carrera, Arina Anderson and Laura Ruiz, hereinafter referred to as Defendants, and for cause of action Plaintiff would respectfully show the Court and Jury the following:

JOHNSON COUNTY
DISTRICT CLERK
2002 APR 18 PM 4:30

I.
DISCOVERY CONTROL PLAN

Plaintiff brings this action under Rule 190.4 of the Texas Rules of Civil Procedure, Level Three (3).

II.

Plaintiff is an individual and a resident of Tarrant County, Texas.

- Defendant, JRAF Enterprises Inc. d/b/a The Horseman Club is a corporation doing business in the state of Texas and may be served with citation by serving CT Corporation System, 350 N. St. Paul St., Dallas, Texas 75201.

- Defendant JRAF Enterprises Inc. d/b/a Circle A Ranch is a corporation doing business in the state of Texas and may be served with citation by serving CT Corporation System, 350 N. St. Paul St., Dallas, Texas 75201.

Defendant Lone Star Oyster Bar of Fort Worth, Inc. d/b/a Lone Star Oyster Bar is a corporation doing business in the state of Texas and may be served with citation by serving the registered agent for service, Bob Birdwell, 5005 Surrey Court, Fort Worth, Texas 76180.

Defendant Tony Tinderholt is an individual and resident of Tarrant County, Texas. He may be served at his place of business 4750 Bryant Irvin Rd., Suite 868, Fort Worth, Texas.

Defendant Stanley Bogard a/k/a Frank Bogard is an individual and resident of Tarrant County, Texas. He may be served at his place of business 4750 Bryant Irvin Rd., Suite 868, Fort Worth, Texas.

Defendant Travis King is an individual and resident of Tarrant County, Texas. He may be served at his place of business 4750 Bryant Irvin Rd., Suite 868, Fort Worth, Texas.

Defendant Danny King is an individual and resident of Tarrant County, Texas. He

may be served at his place of business 4750 Bryant Irvin Rd., Suite 868, Fort Worth, Texas.

Defendant Danny Stewart is an individual and resident of Tarrant County, Texas. He may be served at his place of business 4750 Bryant Irvin Rd., Suite 868, Fort Worth, Texas.

Defendant Deanna Aungst is an individual and resident of Tarrant County, Texas. She may be served at her place of business 4750 Bryant Irvin Rd., Suite 868, Fort Worth, Texas.

Defendant Alisha Rorie is an individual and resident of Tarrant County, Texas. She may be served at her place of business 4750 Bryant Irvin Rd., Suite 868, Fort Worth, Texas.

Defendant Floyd Allred, Jr. is an individual and resident of Johnson County, Texas. He may be served at his place of business 4750 Bryant Irvin Rd., Suite 868, Fort Worth, Texas. He may also be served at Rt. 6 Box 816, Cleburne, Texas 76031.

Defendant Alice Allred is an individual and resident of Johnson County, Texas. She may be served at her place of business 4750 Bryant Irvin Rd., Suite 868, Fort Worth, Texas. She may also be served at Rt. 6 Box 816, Cleburne, Texas 76031.

Defendant Kathryn Mead is an individual and resident of Tarrant County, Texas. She may be served at his place of business 4750 Bryant Irvin Rd., Suite 868, Fort Worth, Texas.

Defendant Jeffrey Olyan is an individual and resident of Tarrant County, Texas. He may be served at his place of business 4750 Bryant Irvin Rd., Suite 868, Fort Worth, Texas.

Defendant Ryan Nethery is an individual and resident of Tarrant County, Texas. He may be served at his place of business 4750 Bryant Irvin Rd., Suite 850, Fort Worth,

Texas.

Defendant Sergio Carrera an individual and resident of Tarrant County, Texas. He may be served at his place of business 4750 Bryant Irvin Rd., Suite 850, Fort Worth, Texas.

Defendant Arina Anderson an individual and resident of Tarrant County, Texas. He may be served at her place of business 4750 Bryant Irvin Rd., Suite 850, Fort Worth, Texas.

Defendant Laura Ruiz is an individual and resident of Tarrant County, Texas. She may be served at his place of business 4750 Bryant Irvin Rd., Suite 850, Fort Worth, Texas.

III.

On or about April 13 and 14, 2000, Defendant JRAF Enterprises Inc. owned and operated an establishment called The Horseman Club that served alcoholic beverages located at 4750 Bryant Irvin Rd., Suite 868, Fort Worth, Texas. Defendant JRAF Enterprises Inc. maintained and used an alcoholic beverage license issued to Defendant and in Defendant's name.

Moreover, on those dates, Defendant JRAF Enterprises Inc. was a "provider" of alcoholic beverages as they sold or served alcoholic beverages under authority of a license or permit issued under the terms of the Alcoholic Beverage Code or who otherwise sold an alcoholic beverage to individuals.

IV.

On or about April 13 and 14, 2000, Defendant JRAF Enterprises Inc. owned and operated an establishment called Circle A Ranch that served alcoholic beverages located at 4750 Bryant Irvin Rd., Suite 868, Fort Worth, Texas. Defendant JRAF Enterprises Inc. maintained and used an alcoholic beverage license issued to Defendant and in

Defendant's name.

Moreover, on those dates, Defendant JRAF Enterprises Inc. was a "provider" of alcoholic beverages as they sold or served alcoholic beverages under authority of a license or permit issued under the terms of the Alcoholic Beverage Code or who otherwise sold an alcoholic beverage to individuals.

V.

On or about April 13 and 14, 2000, Defendant Lone Star Oyster Bar of Fort Worth, Inc. owned and operated an establishment called Lone Star Oyster Bar that served alcoholic beverages located at 4750 Bryant Irvin Rd., Suite 850, Fort Worth, Texas. Defendant Lone Star Oyster Bar of Fort Worth, Inc. maintained and used an alcoholic beverage license issued to Defendant and in Defendant's name.

Moreover, on those dates, Defendant, Lone Star Oyster Bar of Fort Worth, Inc. was a "provider" of alcoholic beverages as they sold or served alcoholic beverages under authority of a license or permit issued under the terms of the Alcoholic Beverage Code or who otherwise sold an alcoholic beverage to individuals.

VI.

Defendants Tony Tinderholt, Stanley Bogard a/k/a Frank Bogard, Travis King, Danny King, Danny Stewart, Deanna Aungst, Alisha Rorie, Floyd Allred, Jr., Alice Allred, Kathryn Mead, and Jeffrey Olyan are/were agents, employees and/or representatives of Defendant JRAF Enterprises Inc. d/b/a The Horseman Club and/or JRAF Enterprises Inc. d/b/a Circle A Ranch.

On or about the 13th and 14th day of April, 2000, Plaintiff [REDACTED] was employed by Defendant JRAF Enterprises Inc. d/b/a The Horseman Club and/or JRAF Enterprises Inc. d/b/a Circle A Ranch. While upon the premises of Defendant Horseman and/or Circle A, employees, agents and representatives of Defendant Horseman and/or Circle A served

and/or provided alcoholic beverages to Plaintiff [REDACTED] who was under the legal drinking age. At the time when said alcoholic beverages were served and/or provided to Plaintiff [REDACTED] it was apparent to the providers that Plaintiff [REDACTED] was obviously intoxicated to the extent that he presented a clear danger to himself and others.

VI.

Defendants Ryan Nethery, Sergio Carrera, Arina Anderson and Laura Ruiz are/were agents, employees and/or representatives of Defendant Lone Star Oyster Bar of Fort Worth, Inc. d/b/a Lone Star Oyster Bar.

On or about the 13th and 14th day of April, 2000, Plaintiff [REDACTED] was on the premises of Defendant Lone Star Oyster Bar of Fort Worth, Inc. While upon the premises of Defendant Lone Star, employees, agents and representatives of Defendant Lone Star served and/or provided alcoholic beverages to Plaintiff [REDACTED] who was under the legal drinking age. At the time when said alcoholic beverages were served and/or provided to Plaintiff [REDACTED] it was apparent to the providers that Plaintiff [REDACTED] was obviously intoxicated to the extent that he presented a clear danger to himself and others.

VII.

After leaving Defendants' premises, Plaintiff [REDACTED] drove and operated a motor vehicle. While operating said motor vehicle, he was unable to maintain control of the motor vehicle due to his intoxication. The motor vehicle Plaintiff [REDACTED] was driving collided into a curb, causing him severe injuries.

VIII.

The collision in question was proximately caused by the negligence of Defendant JRAF Enterprises, Inc. d/b/a The Horseman Club, JRAF Enterprises Inc. d/b/a Circle A Ranch and Defendant Lone Star Oyster of Fort Worth, Inc. d/b/a Lone Star Oyster Bar and their respective employees, agents and representatives acting within the course and scope

of their employment. Said negligence includes, but is not limited:

1. Serving and/or providing alcoholic beverages to Plaintiff [REDACTED] when he was under the legal drinking age;
2. Serving and/or providing Plaintiff [REDACTED] alcoholic beverages until he was in an intoxicated state;
3. Serving and/or providing Plaintiff [REDACTED] alcoholic beverages while he was in an intoxicated state;
4. Serving and/or providing Plaintiff [REDACTED] alcoholic beverages at a time when it was apparent that Plaintiff [REDACTED] was obviously intoxicated to the extent that he presented a clear and present danger to himself and others in violation of Section 101.63(a) of the Tex. Alco. Bev. Code which is negligence per se;
5. Failing to have such policies regarding the provision and/or sale of alcoholic beverages to intoxicated persons as a company exercising reasonable care would have had;
6. Failing to exercise reasonable care in the enforcement of its policies regarding the sale and/or provision of alcoholic beverages;
7. Failing to exercise reasonable care in the hiring of employees responsible for the sale and/or provision of alcoholic beverages;
8. Failing to exercise reasonable care in the training of employees responsible for the sale and/or provision of alcoholic beverages;
9. Failing to exercise reasonable care in the supervision of employees responsible for the sale and/or provision of alcoholic beverages; and
10. Other acts and omissions constituting of negligence.

Each of these acts and omissions, singularly or in combination with others,

constituted negligence which proximately caused the occurrence made the basis of this suit and Plaintiff's injuries and damages.

IX.

Non-Subscriber Negligence, Vicarious Liability

At the time of the incident made the basis of this lawsuit ("incident"), Plaintiff [REDACTED] was an employee of Defendant JRAF Enterprises Inc. d/b/a The Horseman Club. Defendant Horseman was not a subscriber to the Texas Worker's Compensation Act. As a non-subscriber, Defendant Horseman waived its common law defenses including contributory negligence, assumption of the risk, and negligence of a fellow employee.

Defendant Horseman committed negligent acts and omissions that proximately caused Plaintiff's injuries and damages. Defendant Horseman's acts and omissions include:

1. Serving and/or providing alcoholic beverages to Plaintiff [REDACTED] when he was under the legal drinking age;
2. Serving and/or providing Plaintiff [REDACTED] alcoholic beverages until he was in an intoxicated state;
3. Serving and/or providing Plaintiff [REDACTED] alcoholic beverages while he was in an intoxicated state;
4. Serving and/or providing Plaintiff [REDACTED] alcoholic beverages at a time when it was apparent that Plaintiff [REDACTED] was obviously intoxicated to the extent that he presented a clear and present danger to himself and others in violation of Section 101.63(a) of the Tex. Alco. Bev. Code which is negligence per se;
5. Failing to have such policies regarding the provision and/or sale of alcoholic beverages to intoxicated persons as a company exercising reasonable care

- would have had;
6. Failing to exercise reasonable care in the enforcement of its policies regarding the sale and/or provision of alcoholic beverages;
 7. Failing to exercise reasonable care in the hiring of employees responsible for the sale and/or provision of alcoholic beverages;
 8. Failing to exercise reasonable care in the training of employees responsible for the sale and/or provision of alcoholic beverages;
 9. Failing to exercise reasonable care in the supervision of employees responsible for the sale and/or provision of alcoholic beverages; and
 10. Other acts and omissions constituting of negligence.

Each of these acts and omissions, singularly or in combination with others, constituted negligence which proximately caused the occurrence made the basis of this suit and Plaintiff's injuries and damages.

Defendant Horseman's agents, employees and/or representatives, Tony Tinderholt, Stanley Bogard a/k/a Frank Bogard, Travis King, Danny King, Danny Stewart, Deanna Aungst, Alisha Rorie , Floyd Allred, Jr., Alice Allred, Kathryn Mead, and Jeffrey Olyan, negligently and proximately caused Plaintiff's injuries and damages. Defendant Horseman's employee's negligent acts and omissions include:

1. Providing alcohol to an employee they knew to be a minor
2. Allowing a minor employee to consume alcohol;
3. Allowing an intoxicated minor employee to leave Defendant Horseman's premises;
4. Failing to establish policies and procedures regarding the provision of alcoholic beverages to minor employees as a company exercising reasonable care would have had;

5. Failing to establish policies and procedures regarding the provision sale of alcoholic beverages to minor employees as a company exercising reasonable care would have had;
6. Failing to train employees in the policies and procedures regarding the provision of alcoholic beverages to minor employees as a company exercising reasonable care would have had;
7. Failing to train employees in the policies and procedures regarding the provision sale of alcoholic beverages to minor employees as a company exercising reasonable care would have had;
8. Failing to enforce policies and procedures regarding the provision of alcoholic beverages to minor employees as a company exercising reasonable care would have had; and
9. Other negligent acts and omissions.

At the time of the accident at issue, the employees who allowed and encouraged [REDACTED] page to drink alcoholic beverages while on duty were acting in the course and scope of their duties with Defendant Horseman. Therefore, Defendant Horseman is vicariously liable for its employees' negligent acts and omissions.

Whether taken separately or in any combination, the foregoing acts and omissions were a proximate cause of Plaintiff's injuries and damages.

X.

In 1999, there were nearly 2 alcohol-related traffic deaths per hour, one every thirty minutes, 43 per day and 303 per week. That is the equivalent of 2 jetliners crashing week after week. (NHTSA, NCSA, 1999). In Texas, in the year 2000, over 50% of traffic deaths were alcohol related. In Texas, in the year 2000, there were 635 deaths of intoxicated 15-20 year olds in alcohol related crashes. (NHTSA, FARS data 2000).

Defendants and their employees engaged in pattern and practice of providing alcohol to minors. This pattern and practice resulted in catastrophic bodily injury and death to other minors who were allowed to consume alcohol on Defendants' premises. Defendants were aware that other minors have suffered catastrophic bodily injury and death in the past, but still allowed and encouraged minors to consume alcohol on Defendants' premises.

Defendants in this case ignored the known dangers associated with drunk driving and serving/providing alcohol to minors. Defendants are guilty of gross negligence at the time of the above-described accident as their actions show a complete and conscious disregard for the rights, safety and welfare of Plaintiff and others who occupied the roads on the night of the accident. Plaintiff seeks recovery of punitive damages in a sum far in excess of the minimum jurisdictional limits of the Court.

XI.

Defendants violated § 2.02 of the ALCOHOLIC BEVERAGE CODE in that they provided alcoholic beverages to Plaintiff [REDACTED] when it was apparent to said "providers" that Plaintiff [REDACTED] was obviously intoxicated to the extent that he presented a clear danger to himself and others. The resulting intoxication of Plaintiff [REDACTED] who, while intoxicated, operated a motor vehicle, was a proximate cause of the damages suffered.

XII.

Plaintiff alleges that as a direct and proximate result of the aforementioned acts in violation of § 2.02 of the ALCOHOLIC BEVERAGE CODE, he was caused to suffer grave and serious injuries. In connection with these injuries, Plaintiff would show the Court and Jury that he has suffered severe mental anguish and physical pain in the past, is suffering at the time of filing hereof, and will in all reasonable medical probability, continue to suffer

for the remainder of his natural life. While generally injured as a result of the motor vehicle accident, the particular serious injuries are to Plaintiff's wrists, hands, shoulders, chest, spine, abdomen, pelvis, legs, neck, head, arms, and body generally. By reason of the above and foregoing, Plaintiff has been damaged in a sum within the jurisdictional limits of the Court.

XIII.

Plaintiff would also show the Court and Jury that as a direct and proximate result of the Defendants' actions, he has been caused to incur reasonable and necessary doctor bills and medical expenses in the past, is continuing the same at the time of filing hereof, and will in all reasonable probability, continue in the future, for which Defendants are bound and liable. Plaintiff's past medical expenses to date exceed \$51,200.26. In connection with medical expenses, Plaintiff is entitled to recover a sum within the jurisdictional limits of the Court.

XIV.

As a further proximate result of the Defendants' actions, Plaintiff has been unable to work and thus deprived of any salary or wages and has suffered lost wages in the past and Plaintiff has suffered a loss of earning capacity in the future, all in a sum within the jurisdictional limits of the Court.

XV.

As a proximate result of the Defendants' actions, Plaintiff has suffered past loss of physical mobility and capacity, scarring, loss of enjoyment of life probability will suffer such in the future for the remainder of his natural life, all in a sum within the jurisdictional limits of the Court.

XVI.

NOTICE OF DISCOVERY

Please note that discovery has been served on Defendants with this Petition. If you

claim that you did not receive said discovery, contact the undersigned attorney immediately to receive an additional copy. Plaintiff has attached discovery as the following exhibits to this petition and have served them upon each Defendant:

1. Exhibit 1 Plaintiff's Request for Disclosure to Defendant JRAF Enterprises Inc. d/b/a The Horseman Club
2. Exhibit 2 Plaintiff's Request for Disclosure to Defendant JRAF Enterprises Inc. d/b/a Circle A Ranch
3. Exhibit 3 Plaintiff's Request for Disclosure to Defendant Lone Star Oyster Bar of Fort Worth, Inc. d/b/a Lone Star Oyster Bar
4. Exhibit 4 Plaintiff's Request for Disclosure to Defendant Tony Tinderholt
5. Exhibit 5 Plaintiff's Request for Disclosure to Defendant Stanley Bogard a/k/a Frank Bogard
6. Exhibit 6 Plaintiff's Request for Disclosure to Defendant Travis King
7. Exhibit 7 Plaintiff's Request for Disclosure to Defendant Danny King
8. Exhibit 8 Plaintiff's Request for Disclosure to Defendant Daniel Stewart
9. Exhibit 9 Plaintiff's Request for Disclosure to Defendant Deanna Aungst
10. Exhibit 10 Plaintiff's Request for Disclosure to Defendant Alisha Rorie
11. Exhibit 11 Plaintiff's Request for Disclosure to Defendant Floyd Allred, Jr.
12. Exhibit 12 Plaintiff's Request for Disclosure to Defendant Alice Allred
13. Exhibit 13 Plaintiff's Request for Disclosure to Defendant Kathryn Mead
14. Exhibit 14 Plaintiff's Request for Disclosure to Defendant Jeffrey Olyan
15. Exhibit 15 Plaintiff's Request for Disclosure to Defendant Ryan Nethery
16. Exhibit 16 Plaintiff's Request for Disclosure to Defendant Sergio Carrera
17. Exhibit 17 Plaintiff's Request for Disclosure to Defendant Arina Anderson
18. Exhibit 18 Plaintiff's Request for Disclosure to Defendant Laura Ruiz

XVII.

WHEREFORE, premises considered, Plaintiff prays that Defendants be cited to

appear and answer herein and upon trial, Plaintiff have:

- 1) Judgment against Defendants, jointly and severally, for Plaintiff's damages set forth above, in an amount within the jurisdictional limits of the Court;
- 2) Judgment against Defendants for exemplary damages in an amount within the jurisdictional limits of the Court;
- 3) Interest on said judgment at the legal rate from the date of Judgment;
- 4) Prejudgment interest as allowed by law;
- 5) Costs of Court; and
- 6) Such other and further relief to which Plaintiff may be entitled in law or in equity.

Respectfully submitted,



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ATTORNEY FOR PLAINTIFF

