

CAUSE NO. DC-2023-CV-0571

MK

RICKY CABALLERO and AGATHA CABALLERO	§	IN THE _____ DISTRICT COURT
Individually and as heirs of the ESTATE OF	§	
XAVIER CABALLERO and L.C., minor child, and	§	
JENNIFER BOIVIN, Individually and as heir of the	§	
ESTATE OF MELODI BOIVIN, and L.C. and M.B.,	§	
Minor children,	§	
<i>Plaintiffs,</i>	§	
	§	
	§	
v.	§	OF
	§	
C AND M ENTERTAINMENT, LLC d/b/a	§	
THE OFFICE GRILL AND SPORTS BAR	§	
<i>Defendant.</i>	§	LUBBOCK COUNTY, TEXAS

---

**PLAINTIFFS’ ORIGINAL PETITION, APPLICATION FOR TEMPORARY  
RESTRAINING ORDER, & REQUEST FOR TEMPORARY INJUNCTION**

---

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Plaintiffs Ricky Caballero and Agatha Caballero, Individually and as heirs to the Estate of Xavier Caballero and L.C., minor child, and Jennifer Bovin, Individually and as heir to the Estate of Melodi Boivin, and L.C. and M.B., minor children, and file this Original Petition, complaining of and about Defendant C and M Entertainment, LLC d/b/a The Office Grill and Sports Bar, and in support hereof, show the Court the following:

**I.  
DISCOVERY CONTROL PLAN**

1.1 Pursuant to Texas Rules of Civil Procedure 190, the discovery of this case is to be conducted under Level 3.

**II.  
PARTIES**

- 2.1 Plaintiff Ricky Caballero is an individual and resident of the State of Texas.
- 2.2 Plaintiff Agatha Caballero is an individual and resident of the State of Texas.
- 2.3 Plaintiff Jennifer Boivin is an individual and resident of the State of Texas.

2.4 Defendant C and M Entertainment, LLC d/b/a The Office Grill and Sports Bar (The Office Bar) is a domestic company whose registered address is 5004 Frankford Avenue Lubbock, Texas 79424. Defendant The Office Bar may be served with process through its registered agent: Orlando Romero at 1303 59<sup>th</sup> St, Lubbock, TX 79412.

**III.  
JURISDICTION AND VENUE**

3.1 Venue in Lubbock County is proper in this cause under Section 15.002(a)(3) of the Texas Civil Practice and Remedies Code because Lubbock County is the county of Defendant The Office Bar's principal office.

3.2 The amount of the Plaintiffs' damages is substantial and well in excess of the jurisdictional minimums of this Court. Many elements of damage cannot be determined with mathematical precision. Furthermore, the determination of many of these elements of damage is peculiarly within the province of the jury. Plaintiffs do not at this time seek any certain amount of damages for any of these particular elements of damage but would instead rely upon the collective wisdom of the jury to determine an amount that would fairly and reasonably compensate Plaintiffs. In order to comply with TEX. R. CIV. P. 47(c), Plaintiffs plead that they seek monetary relief in excess of \$1,000,000.00. Plaintiffs also seek judgment for all other relief to which Plaintiffs are entitled. Plaintiffs reserve the right to file an amended pleading on this issue should subsequent evidence show this figure to be either too high or too low. Further, Defendant, by residing in and organizing under the laws of the State of Texas, and/or committing tortious behavior in the State of Texas is subject to the personal jurisdiction of this Court.

**IV.  
ALCOHOL TRANSACTION AT THE OFFICE BAR**

4.1 On or about May 5-6, 2023, George Wallace (Wallace) was at The Office Bar located at 5004 Frankford Ave Lubbock, Texas 79424.

4.2 The Office Bar was a provider of alcoholic beverages under the Texas Dram Shop statute Tex. Code Ann. § 2.02 (b)(1).

4.3 As a provider of alcoholic beverages, The Office Bar, by and through The Office Bar's agents, servants and/or employees, sold, served, and/or provided alcoholic beverages to Wallace, even though it was apparent to The Office Bar, through The Office Bar's agents, servants, and/or employees, that Wallace was obviously intoxicated to the extent that he presented a clear danger to himself and others.

4.4 After leaving The Office Bar, Wallace was driving the wrong way on Marsha Sharp Fwy driving west in the eastbound lanes. Due to his grossly intoxicated state, Wallace drove on the wrong side of Marsha Sharp Fwy and crashed into the vehicle occupied by Xavier, Melodi, and their minor children. Xavier, Melodi, L.C., and M.B., were killed as a result of the crash. The collision was caused by Wallace's highly intoxicated state that rendered him unable to realize he was driving on the wrong side of the road, control his rate of speed, see what was in front of him, properly maneuver his vehicle, or even appreciate the risks involved with his actions.

## **V. DAMAGES**

5.1 As a result of Wallace's reckless driving itself, a direct and proximate result of his severe intoxication, which itself resulted from being overserved, Plaintiffs lost their son, daughter, and grandchildren. Plaintiffs have suffered for the wrongful death of their family members as follows:

- a. Pecuniary loss sustained in the past and which will reasonably be sustained in the future;
- b. Loss of companionship and society sustained in the past and which will reasonably be sustained in the future;
- c. Mental anguish sustained in the past and which will reasonably be sustained in the

future;

- d. Loss of consortium; and
- e. Loss of care & support.

### **Survival Damages**

5.2 Plaintiffs would show that Xavier, Melodi, L.C., and M.B. were not killed instantly in the incident in question. The following damages survived to their estate, for which Plaintiffs sue:

- a. Physical pain and mental anguish; and
- b. Funeral and burial expenses.

## **VI. PROXIMATE CAUSE**

6.1 Wallace's intoxication and The Office Bar's sale of alcoholic beverages to Wallace, after it was apparent that he was obviously intoxicated, was a proximate cause of the injuries and damages suffered by the Plaintiffs.

## **VII. DEFENDANT THE OFFICE BAR VIOLATED THE TEXAS ALCOHOLIC BEVERAGE CODE AND WAS NEGLIGENT**

7.1 Defendant The Office Bar, its agents, servants, and/or employees, at all times material were in direct violation of the Texas Alcoholic Beverage Code, Chapter 2, in their provision of alcoholic beverages to Wallace. In particular:

- 1) The Office Bar, by and through its agents, servants, and/or employees were "providers" of alcoholic beverages as defined in Tex. Alco. Bev. Code Ann. §2.01(1);
- 2) The service and/or sale of alcoholic beverages to Wallace was a "provision" of alcoholic beverages as defined in Tex. Alco. Bev. Code Ann. §2.01(2);
- 3) At the time the provision of alcohol occurred, it was apparent to The Office Bar, by and through its agents, servants and/or employees, that Wallace, the person whom they sold, served and/or provided alcoholic beverages, was

obviously intoxicated to the extent that he presented a clear danger to himself and others; and

- 4) Wallace's intoxication and The Office Bar's subsequent sale of alcoholic beverages to Wallace after it was apparent that he was obviously intoxicated was a proximate cause of the injuries and damages suffered by Plaintiffs.

7.2 When a provider of intoxicants sells, serves, or otherwise provides an alcoholic beverage to an obviously intoxicated person thereby contributing to his already dangerously intoxicated state, the provider becomes liable for any harm caused by the intoxicated person due to his intoxication. Wallace's conduct of operating a motor vehicle while intoxicated combined with The Office Bar's provision, by and through its agents, servants, and/or employees, of alcohol to Wallace while he was obviously intoxicated, was a proximate cause of the injuries and damages suffered by Plaintiffs. The Office Bar is directly liable to Plaintiffs for its violation of the Texas Alcoholic Beverage Code and resulting injuries and damages caused to Plaintiffs as a result of its over-service of alcohol to Wallace when he was obviously intoxicated.

**VIII.  
PLAINTIFFS' CLAIM OF NEGLIGENCE BASED  
ON RESPONDEAT SUPERIOR AGAINST THE OFFICE BAR**

8.1 In addition and in the alternative, at the time of the sale of alcohol to Wallace and immediately prior thereto, Defendant The Office Bar's agents, servants, and/or employees were within the course and scope of their employment for Defendant The Office Bar.

8.2 At the time of the sale of alcohol to Wallace and immediately prior thereto, Defendant The Office Bar's agents, servants, and/or employees were engaged in the furtherance of Defendant The Office Bar's business.

8.3 At the time of the sale of alcohol to Wallace and immediately prior thereto, Defendant The Office Bar's agents, servants, and/or employees were engaged in accomplishing a task for which they were employed.

8.4 Defendant The Office Bar's agents, servants, and/or employees conduct at all times material was in direct violation of the Texas Alcoholic Beverage Code, Chapter 2, in this provision of alcoholic beverages to Wallace. In particular:

- 1) The Office Bar, by and through its agents, servants, and/or employees were "providers" of alcoholic beverages as defined in Tex. Alco. Bev. Code Ann. §2.01(1);
- 2) The service and/or sale of alcoholic beverages to Wallace was a "provision" of alcoholic beverages as defined in Tex. Alco. Bev. Code Ann. §2.01(2);
- 3) At the time the provision of alcohol occurred, it was apparent to The Office Bar, by and through its agents, servants and/or employees, that Wallace, the person whom they sold, served and/or provided alcoholic beverages, was obviously intoxicated to the extent that he presented a clear danger to himself and others; and
- 4) Wallace's intoxication and The Office Bar's subsequent sale of alcoholic beverages to Wallace after it was apparent that he was obviously intoxicated was a proximate cause of the injuries and damages suffered by Plaintiffs.

8.5 When a provider of intoxicants sells, serves or otherwise provides an alcoholic beverage to an obviously intoxicated person thereby contributing to his already dangerously intoxicated state, the provider becomes liable for any harm caused by the intoxicated person due to his intoxication. Wallace's conduct of operating a motor vehicle while intoxicated combined with The Office Bar's provision, by and through its agents, servants, and/or employees, of alcohol to Wallace while he was obviously intoxicated, was a proximate cause of the injuries and damages suffered by Plaintiffs. The Office Bar and its agents, servants, and/or employees are directly liable to Plaintiffs for their violation of the Texas Alcoholic Beverage Code and resulting injuries caused to Plaintiffs as a result of The Office Bar and its agents, servants, and/or employees' over-service of alcohol to Wallace when he was obviously intoxicated.

**IX.  
PAST AND FUTURE DAMAGES**

9.1 All damages mentioned in the above paragraphs are in the past and future.

**X.  
REQUEST FOR JURY TRIAL**

10.1 Plaintiffs respectfully request a trial by jury in this cause and tender the appropriate fee at the time of filing of Plaintiffs' Original Petition.

**XI.  
RULE 193.7 NOTICE**

11.1 Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiffs hereby give actual notice to Defendant that any and all documents produced may be used against the Defendant producing the document at any pre-trial proceeding and/or at the trial of this matter without the necessity of authenticating the documents.

**XII.  
APPLICATION FOR TEMPORARY RESTRAINING ORDER**

12.1 The Office Bar's surveillance video(s) and drink/food receipts for the days of May 5-6, 2023, for the location 5004 Frankford Avenue Lubbock, Texas 79424, as well as Wallace's cellphone and vehicle, need to be preserved. Plaintiffs make this Application for Temporary Restraining Order and Temporary Injunction to preserve material evidence. The surveillance video(s) and drink/food receipts are currently in the possession of The Office Bar. Plaintiffs do not know the whereabouts of Wallace's cellphone and vehicle but believe they may be in the Lubbock Police Department's (LPD) possession. If the cellphone and vehicle are in LPD's possession, LPD can release the cellphone and vehicle at any time, which makes the vehicle and cellphone likely to disappear. Plaintiffs make this application to prevent The Office Bar and any of its agents, servants, and/or employees, or anyone else, from in any way using or altering any

material evidence made the basis of this application. Plaintiffs' Counsel has called The Office Bar multiple times in an attempt to reach an evidence preservation agreement with no luck.

12.2 In addition to the crucial preservation of this material evidence, it is also essential that Plaintiffs, by and through their attorneys, agents, servants, employees, and/or representatives, be granted access to this evidence, including access to the surveillance video(s) and drink/food receipts, in order to accumulate material evidence necessary for the proper investigation and/or determination of the facts and circumstances of said incident in question.

12.3 If Plaintiffs' Application for Restraining Order and Temporary Injunction is not granted, harm is imminent as the status of the evidence, surveillance video(s) and drink/food receipts for the days of May 5-6, 2023, as well as Wallace's cellphone and vehicle may be altered, damaged or destroyed if such evidence is lost, destroyed, or overridden. The harm that will result if the Temporary Restraining Order and Temporary Injunction is not issued is irreparable because if the evidence involved in the incident in question is altered, damaged or destroyed, the evidence will, or may, be lost forever.

12.4 Plaintiffs have no adequate remedy at law, and it is necessary to preserve the evidence at this time. Plaintiffs have no other means available to preserve the evidence.

12.5 Plaintiffs are willing to post bond if required by this Court.

12.6 For these reasons, Plaintiffs ask the Court that the Defendant be cited and be required to answer herein, according to law, and that the Court grant a Temporary Restraining Order and Temporary Injunction preserving the evidence in their possession as set out above, and preventing Defendant and its agents, employees or servants, or anyone else with notice of the Order from in any way altering the evidence involved in the incident in question as more fully set out in the following paragraphs.



### **XIII.**

#### **PRAYER**

13.1 WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request the following:

- a. That a Temporary Restraining Order be issued without notice restraining Defendant The Office Bar, its officers, agents, servants, employees, attorneys, and any and all other persons in active concert or participation with them who receive actual notice of the Temporary Restraining Order, from doing any act of any nature which would result in the alteration, destruction, repair, change, movement or modification of the surveillance video(s) and drink/food receipts for the days of May 5-6, 2023, until a hearing is had on Plaintiffs' Application for a Temporary Injunction;
- b. That a Temporary Restraining Order be issued without notice restraining all persons who receive actual notice of the Temporary Restraining Order, from doing any act of any nature which would result in the alteration, destruction, repair, change, movement or modification of Wallace's cellphone and vehicle, until a hearing is had on Plaintiffs' Application for a Temporary Injunction;
- c. That a Temporary Injunction issue after a hearing enjoining Defendant The Office Bar, its officers, agents, servants, employees, attorneys, and any and all other persons in active concert or participation with them from doing any act of any nature which would result in the alteration, destruction, repair, change, movements or modification of Defendant's surveillance video(s) and drink/food receipts for the days of May 5-6, 2023, which are the subject of this suit, until further order of the Court;

- d. That a Temporary Injunction issue after a hearing enjoining all persons who receive actual notice of the Temporary Injunction from doing any act of any nature which would result in the alteration, destruction, repair, change, movements or modification of Wallace's cellphone and vehicle, which are the subject of this suit, until further order of the Court;
- e. Compensatory damages as set forth above;
- f. Pre-judgment and post-judgment interest as allowed by law;
- g. Costs of court; and
- h. Such other relief to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

GLASHEEN, VALLES, & INDERMAN, LLP  
1302 Texas Avenue (79401)  
P.O. Box 1976  
Lubbock, Texas 79408  
Tel: (806) 776-1354  
Fax: (806) 329-0600  
Email: [efile.pedro.leyva@gvilaw.com](mailto:efile.pedro.leyva@gvilaw.com)

*/s/ Pedro Leyva*

\_\_\_\_\_  
Pedro Leyva

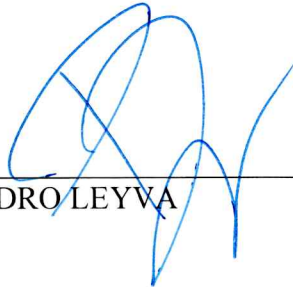
State Bar No. 24100681

**ATTORNEY FOR PLAINTIFFS**

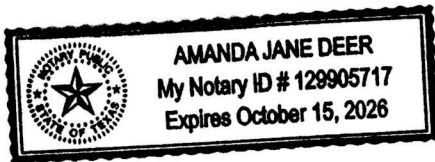
**VERIFICATION**


STATE OF TEXAS                   §  
                                                 §  
COUNTY OF LUBBOCK         §

BEFORE ME, the undersigned notary public, on this day personally appeared PEDRO LEYVA, who, after being duly sworn, stated under oath that he is the duly authorized agent for the Plaintiffs in this action; that he has read the above application and that every statement contained in the application is within his personal knowledge, and is true and correct based on his personal knowledge, information, and/or belief.

  
\_\_\_\_\_  
PEDRO LEYVA

SUBSCRIBED AND SWORN TO BEFORE ME on this the 10<sup>th</sup> day of May, 2023, to certify which witness my hand and seal of office.



  
\_\_\_\_\_  
Notary Public, State of Texas