

CAUSE NO. 12-003034-CV

WILLIAM PAUL CRISP, JR. AND
J. NICOLE CRISP, INDIVIDUALLY AND
AS REPRESENTATIVES OF THE
ESTATE OF LAUREN BAILEY CRISP,
Plaintiffs,

AND

DENISE WHITAKER, INDIVIDUALLY
AND AS REPRESENTATIVE OF THE
ESTATE OF DENTON JAMES WARD,
Intervenor,

VS.

LITTLE SKYNECK, INC., THE
MCDONALD'S CORPORATION,
MCDONALD'S RESTAURANTS OF
TEXAS, INC., AND MCDONALD'S USA,
LLC,
Defendants.

IN THE DISTRICT COURT

361st JUDICIAL DISTRICT

BRAZOS COUNTY, TEXAS

PLAINTIFFS' FOURTH AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, J. Nicole Crisp ("Ms. Crisp") and William Paul Crisp, Jr. ("Mr. Crisp"), Individually and as Representatives of the Estate of Lauren Bailey Crisp, Plaintiffs in the above-styled and numbered cause ("Mr. and Ms. Crisp will be collectively referred to hereinafter as "Plaintiffs" and/or the "Crisps"), and make and file this, their Fourth Amended Petition, complaining of and about Little Skyneck, Inc. ("Little Skyneck"), The McDonald's Corporation ("MCorp."), McDonald's Restaurants of Texas, Inc. ("MRT"), and McDonald's USA, LLC ("MUSA") (MCorp., MRT and MUSA will be collectively referred to hereinafter as "McDonald's"; Little Skyneck, MCorp., MRT and MUSA will be collectively referred to hereinafter as "Defendants"), and for cause of action would respectfully show as follows:

I.

DISCOVERY PLAN

Discovery in this lawsuit is intended to be conducted under Level 3, as provided by Tex. R. Civ. P. 190.4.

II.

PARTIES

Ms. Crisp is an individual residing in Dripping Springs, Hays County, Texas, and is the mother of Lauren Bailey Crisp, deceased ("Bailey").

Mr. Crisp is an individual residing in Dripping Springs, Hays County, Texas, and is the father of Bailey.

Bailey was born to the Crisps on January 23, 1993; she passed away on February 18, 2012. The Crisps raised and nurtured Bailey throughout her entire life. Bailey never married and had no children, nor did she ever make a will. As mother and father to Bailey, the Crisps are the only legal heirs to Bailey's personal assets, and to any personal assets to which she may be entitled in the future.

Little Skyneck is a domestic for-profit corporation organized and existing under the laws of the State of Texas, and has appeared and answered in this cause. Little Skyneck is the 100% owner and operator of Hurricane Harry's, a bar/nightclub which is located at 313 College Avenue, College Station, TX 77840.

MCorp. is a foreign for-profit corporation organized and existing under the laws of the State of Illinois, has appeared and answered in this cause. Upon information and belief, MCorp. is 100% owner of the real and personal property of the McDonald's Restaurant at 801 University Drive, College Station, Brazos County, Texas 77840 (the "University McDonald's").

MRT is a domestic for-profit corporation existing under the laws of the State of Texas, and has appeared and answered in this cause. Upon information and belief, MRT operates and manages the University McDonald's.

MUSA is a foreign for-profit corporation organized and existing under the laws of the State of Delaware, and has appeared and answered in this cause. Upon information and belief, MUSA has assumed some level of control over the premises at the University McDonald's since on or around January 1, 2005.

III.

VENUE AND JURISDICTION

Venue is proper in Brazos County, Texas pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1), in that all or a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Brazos County, Texas. Additionally, the registered office of Little Skyneck is located in Brazos County, Texas.

The Court has jurisdiction over this matter because the amount in controversy exceeds the minimum jurisdictional limits of the Brazos County District Courts.

The Court has personal jurisdiction over Little Skyneck as it is a Texas resident and because Little Skyneck has appeared and answered.

The Court has personal jurisdiction over MCorp., a non-resident, because MCorp. purposefully availed itself to the privileges and benefits of conducting business in Texas by maintaining a continuous and/or systematic contacts with the State of Texas during all times relevant to this litigation, including, but not limited to, conducting business from a permanent office in the State of Texas.

The Court has personal jurisdiction over MRT because MRT is a Texas resident and MRT has appeared and answered.

The Court has personal jurisdiction over MUSA, a non-resident, because MUSA purposefully availed itself to the privileges and benefits of conducting business in Texas by maintaining continuous and/or systematic contacts with the State of Texas during all times relevant to this litigation.

IV.

AGENCY/RESPONDEAT SUPERIOR

A. Whenever in this Petition it is alleged that Little Skyneck did any act or thing, it is meant that Little Skyneck's officers, agents, servants, employees or representatives – including those officers, agents, servants, employees, or representatives at Hurricane Harry's – did such act and/or that at the time such act was done, it was done with the full authorization or ratification of Little Skyneck, or was done in the normal course and scope of employment of Little Skyneck's officers, agents, servants, employees or representatives.

B. Whenever in this Petition it is alleged that McDonald's did any act or thing, it is meant that McDonald's officers, agents, servants, employees or representatives – including those officers, agents, servants, employees, or representatives at the University McDonald's – did such act and/or that at the time such act was done, it was done with the full authorization or ratification of McDonald's, or was done in the normal course and scope of employment of McDonald's officers, agents, servants, employees or representatives. *Id.*

V.

CONDITIONS PRECEDENT

Plaintiffs will show that all conditions precedent to their right to recover have been performed or have occurred.

VI.

FACTS

The facts giving rise to this lawsuit resulted in the loss of two precious lives all too soon, under the most tragic and unfortunate of circumstances – circumstances which very easily could have been avoided but for Defendants' egregious acts and omissions. Plaintiffs ended up losing their nineteen-year-old daughter, Bailey; Denise Whitaker and Rick Ward lost their son, Denton James Ward ("Denton"), on February 18, 2012 in College Station, Brazos County, Texas. Bailey attended Blinn College's Bryan Campus, with dreams of transferring to Texas A&M University in College Station and becoming a registered nurse thereafter. Sadly, Plaintiffs will never get to see these dreams become a reality for their daughter, Bailey, who was also survived by her younger brother, Cody.

On the evening of February 17, 2012, Bailey and her roommate and best friend, Samantha Ann Bean ("Samantha"), got together with Bailey's boyfriend, Denton, and Denton's friend, Tanner Bryce Giesen ("Tanner"), to attend a Reckless Kelly concert at Hurricane Harry's – an 18-and-up nightclub at 313 College Avenue, College Station, Brazos County, Texas 77840 – which is notorious for serving alcoholic beverages to minors.¹ After Bailey, Denton and Tanner drank beer at Bailey and Samantha's apartment (Parkway Place Apartments, 1350

¹ Hurricane Harry's is currently licensed through the Texas Alcoholic Beverage Commission under License No. MB498743, exp. 8/19/2013. An open records request to the TABC revealed scores of complaints and administrative violations against Hurricane Harry's, many of which included, but were not limited to, the sale/service/delivery of an alcoholic beverage to a minor.

Harvey Mitchell Parkway, College Station, Brazos County, Texas 77845), Denton then drove Bailey, Samantha and Tanner ("the group") to Hurricane Harry's in his 1999 Toyota 4Runner (VIN #JT3HN87R8X9028789), where they were illegally served (and over-served) alcoholic beverages by the Hurricane Harry's staff.² Only Tanner, who allegedly used a fake ID to gain entry to Hurricane Harry's, was designated as 21 with a stamp on top of his right hand. Bailey, Denton and Samantha purportedly received stamps on the insides of both their wrists, to indicate they were under 21. As evidenced by a photo of the group from Bailey's camera, taken at Hurricane Harry's on the night of the Reckless Kelly concert on February 17, 2012, there are no markings or other special identification features on the top of Bailey, Samantha or Denton's hands to distinguish them as being under 21.

Nevertheless, both Tanner and Denton went to one or more bars at Hurricane Harry's on at least five (5) separate occasions, where Tanner (and possibly Denton) purchased numerous mixed drinks consisting of whiskey and coke. Many, if not all of the drinks, were shared with Bailey and Samantha. At some point during the night, Bailey was so intoxicated she fell on the patio at Hurricane Harry's. Tanner was too drunk to stand up independently, walk or dance, but he continued to buy alcoholic beverages from Hurricane Harry's employees. At no time that night did a Hurricane Harry's employee question the sobriety of the group, stop serving them drinks, or attempt to prevent them from purchasing more drinks at one or more bars within Hurricane Harry's. Hurricane Harry's: (1) continued to serve Tanner, and possibly Denton, multiple alcoholic beverages when they were already visibly intoxicated; (2) served enough drinks to one or two individuals to place all four members of the group over the legal limit for intoxication; and (3) failed to take any steps to ensure that the alcoholic beverages were being

² According to Bailey's toxicology report, which was completed on March 12, 2012, her BAC was .18 – over twice the legal limit in the State of Texas.

consumed by the person or person(s) that actually purchased them. Hurricane Harry's sales numbers on the night of February 17, 2012 paint an even more shocking picture: Hurricane Harry's only sold 65 non-alcoholic beverages over approximately four hours to a crowd of over 900 patrons.³ By the combination of Hurricane Harry's acts and omissions set forth above, Hurricane Harry's over-served the entire group, and each individual member of the group.

By the time the group left Hurricane Harry's, it was in the early morning hours of February 18, 2012. Denton drove his 4Runner through the adjoined parking lots to the University McDonald's. Denton and Tanner hopped out of the 4Runner to use the restroom inside at the University McDonald's, and Bailey drove through the Drive Thru with Samantha to order food. While the University McDonald's is relatively peaceful establishment during the daytime, it turns into a regular crime scene full of assault, burglary, theft, disorderly conduct, public intoxication, etc. during the night given its proximity to the Northgate District and Texas A&M University, among other things.⁴ Despite being well aware of these criminal occurrences, McDonald's does not employ any security personnel to monitor the premises of the University McDonald's – thereby creating an unreasonably dangerous condition to invitees, licensees and trespassers alike.

What happened next is most clearly depicted by the investigation reports completed by the College Station Police Department: In the early morning of February 18, 2012, numerous African American men and women went to the University McDonald's after a fraternity party they were attending was shut down by the police due to fighting. University McDonald's shift manager, Carlos Butler, told the College Station PD that "he has hosted parties of this nature in

³ The non-alcoholic sales totaled \$97.00, while the alcoholic sales totaled \$14,343.25.

⁴ In response to an open records request regarding the more serious criminal incidents that had occurred at the University McDonald's since just 2011, the City of College Station Legal Department produced 191 pages of responsive information that included 61 different incidents. The list of offenses is shocking.

the past.” Indeed, the University McDonald’s was teeming with people when the group came upon it, such that it resembled a night club instead of a restaurant establishment. Moreover, the University McDonald’s was not secured by any off-duty police officers or private security guards.

While Bailey and Samantha ordered their food from the drive-thru, witnesses reported a black man named Marcus Jemal Jones shoulder checked either Denton or Tanner as they exited the restroom, and one of them responded verbally. At some point the fight moved outside the building, only feet from the main entrance of the University McDonald’s. Jones then hit Tanner in the face and kicked him in the chest with enough force to knock him to the ground. Several other males were reportedly involved in the assault, but none have been identified by the College Station PD. According to witnesses, a group of around 10-20 men surrounded Denton and Tanner. At least 4-5 of these men were brutally beating and jumping or stomping on Denton and Tanner.

The College Station PD was dispatched around 2:25 a.m., in response to a call from someone who witnessed the assault. With the assistance of an unknown person or persons, the girls were able to get Denton and Tanner out of the melee and into Denton’s 4Runner. Samantha drove the vehicle after she was told by some females that the foursome needed to “get out of there...it’s not safe.” Though both Denton and Tanner had been beaten badly, Denton was in worse condition than Tanner and was bleeding heavily and only semi-conscious. One witness described Denton’s face as “broken.” In a clear state of shock, desperation, fear and panic as to what had just occurred – and as Denton was in a questionable state of consciousness and bleeding to death, and Denton’s friend, Tanner, was in a similarly precarious state while Bailey

screamed for help – Samantha sped off in Denton's 4Runner to get medical care, to try and save Denton and Tanner's lives.

Unfortunately, Bailey and Samantha were still new to the area, and the only way Samantha knew how to get medical care was by driving back to her apartment complex and then going to the Scott and White Medical Complex on 1600 University East. As Samantha approached the intersection of Holleman and Texas Avenue, she was paying attention to Denton, making sure he was being kept awake, and was screaming at Bailey to keep Denton awake. At this point, the chaos inside the vehicle was overwhelming. Samantha thought she had a green light as she proceeded through the intersection. According to the TxDot Crash Report, at approximately 2:38 a.m. on February 18, 2012, Samantha ran a red light at the intersection of 1900 Texas Avenue S. and 100 Holleman Drive E., College Station, Brazos County, Texas 77840, and collided with a 2004 Chevy 1500 Pickup (VIN #2GCEC19T841240469) driven by Anish Michael Tharappel, which was going through the intersection to continue eastbound onto Holleman Drive East. Denton's 4Runner was struck in between the front and rear driver's side doors by Mr. Tharappel's vehicle, causing the 4Runner to violently spin around and have the passenger's side rear strike a traffic direction pole on the northeastern side of the 1900 block of Texas Avenue. Bailey and Denton were pronounced dead at the scene; Tanner suffered incapacitating injuries, including a broken neck from which he has recovered; and Samantha suffered non-incapacitating injuries.

According to Bailey's autopsy report from the Travis County Medical Examiner's Office, Bailey died as the result of blunt force injuries suffered in the crash. Bailey's death certificate, shows she suffered a period of minutes before her death as a result of the multiple blunt force injuries (immediate cause of death), a period of minutes before her death due to a motor vehicle

collision with a traffic light pole (secondary cause of death), and a period of seconds before her death due to a motor vehicle collision with a pickup truck.

Plaintiffs must now live through the daily pain, anguish and torment of losing their only precious daughter all too early. As indicated in Bailey's obituary that was published in the *Austin American-Statesman*, Bailey was full of life, energy and promise. Plaintiffs have been stripped of countless memories that they deserved to have with Bailey in the future, ranging from Bailey's college graduation to her wedding day to the birth of her children and Plaintiffs' grandchildren. But for Defendants' acts and omissions, Bailey would still be here today with her family and friends.

VII.

DRAM SHOP ACT VIOLATIONS AGAINST LITTLE SKYNECK

The foregoing paragraphs are incorporated by reference. Liability under the Dram Shop Act, found at TEX. ALCO. BEV. CODE § 2.02, is founded upon a commercial establishment providing alcohol to an obviously intoxicated adult. Hurricane Harry's, which holds TABC License No. MB498743, provided alcoholic beverages to the group, who were all under 21 years of age, on February 17 and 18, 2012, to the point of illegal intoxication. When Hurricane Harry's provided the alcoholic beverages to the group, it was apparent the group was obviously intoxicated. Their intoxication was visible, evident, and easily observable. *Bruce v. K.K.B., Inc.*, 52 S.W.3d 250, 256 (Tex. App.—Corpus Christi 2001, pet. denied). However, Hurricane Harry's did nothing to prevent the group from leaving the premises and driving while intoxicated.

Hurricane Harry's provided alcoholic beverages to the group when they were obviously intoxicated, which was the proximate cause of Plaintiffs' injuries. Denton, while intoxicated,

drove Tanner, Samantha and Bailey to the University McDonald's, where Denton and Tanner were so severely injured, that Samantha and Bailey were placed under great duress and, while still intoxicated, Samantha made the decision to take the men to get immediate medical care, rather than waiting for the police or an ambulance.

But for the alcohol served by the Hurricane Harry's staff to the group, Samantha would not have driven Denton's 4Runner while intoxicated or gone through the red light at the intersection of Texas Avenue and Holleman Drive; and Bailey would not have been killed in the crash. The conduct of Little Skyneck, as 100% owner and operator of Hurricane Harry's, therefore constitutes Dram Shop liability, which has been a proximate cause of actual damages to the Plaintiffs in an amount within the jurisdictional limits of this Court, for which Plaintiffs seek judgment.

VIII.

NEGLIGENCE AGAINST MCDONALD'S

The foregoing paragraphs are incorporated by reference. McDonald's had a duty to exercise ordinary care to protect Bailey against an unreasonable and foreseeable risk of harm from the criminal acts of third parties, as McDonald's retained control over the security and safety of the University McDonald's. *See Timberwalk Apartments, Partners, Inc. v. Cain*, 972 S.W.2d 749, 756 (Tex. 1998). McDonald's breached this duty on February 18, 2012, by: (1) failing to provide any security whatsoever at the University McDonald's premises, despite a well-documented history of dangerous, criminal activity at the location; (2) failing to intervene or prevent the altercation that caused the injuries to Denton and Tanner; (3) encouraging large groups of people, some of who were actively violent, to congregate at the University McDonald's by hosting late night parties; (4) failing to create or enforce guidelines for when

extra security is warranted at a specific location; and (5) failing to create or enforce guidelines for staff regarding responding to and preventing dangerous activity on the premises.

As a direct result of McDonald's' failure to exercise ordinary care, Denton and Tanner were so severely injured and Samantha and Bailey were so distraught, they felt they needed to immediately leave the premises to seek medical care for Denton and Tanner. But for the injuries incurred by Denton and Tanner, Samantha would not have been driving the vehicle, she would not have gone through the red light at Texas Avenue and Holleman Drive, and Bailey would not have been killed in the crash. The conduct of McDonald's therefore constitutes negligence, which has been a proximate cause of actual damages to the Plaintiffs in an amount within the jurisdictional limits of this Court, for which Plaintiffs seek judgment.

IX.

PREMISES LIABILITY AGAINST MCDONALD'S

The foregoing paragraphs are incorporated by reference. McDonald's, as owner, possessor, manager and operator of the University McDonald's location, had a duty to exercise ordinary care to all invitees to keep the premises at the University McDonald's in a reasonably safe condition. This includes protecting invitees from unreasonable risk of harm, warning invitees of the risks so they may avoid them, and avoiding injury to invitees caused willfully, wantonly, or through gross negligence. As Bailey, Samantha, Denton and Tanner were customers of the University McDonald's on February 18, 2012; they were invitees to the premises. *See Adam Dante Corp. v. Sharpe*, 483 S.W.2d 452, 454 (Tex. 1972) (invitees include patrons of restaurants). Based on the extensive history of violence and other criminal activity on the premises, particularly at night and on the weekends, McDonald's knew or should have known there was an unreasonable risk of harm to all invitees during the late weekend hours at the

University McDonald's. McDonald's breached its duty of ordinary care by (1) failing to adequately warn the group of the threat of violence and criminal activity, and (2) failing to make the premises safe from the risk of violence and criminal activity by hiring security personnel or taking other similar action. McDonald's also owed a duty to the group to use ordinary care to protect those who may be harmed by the criminal acts of third parties as McDonald's knew or had reason to know of an unreasonable and foreseeable risk of harm. *See Trammel Crow Cent. Tex., Ltd. v. Gutierrez*, 267 S.W.3d 9, 12 (Tex. 2008).

The criminal activity that took place on February 18, 2012, was foreseeable based on factors including: previous crimes, proximity of the crimes, recency of the crimes, frequency of the crimes, similarity of the crimes, and publicity of the crimes. *Id.* at 15. As an invitee, Bailey was a foreseeable victim. Worst of all, McDonald's had significant knowledge of how dangerous the premises was on weekend nights, including the history of violent crimes and other criminal activity, yet they did nothing to provide warning or protection to their patrons, including the group. McDonald's breached its duty to the group by failing to warn them or make the premises safe by hiring a security guard or taking other, similar action. As a direct result of McDonald's failure to exercise ordinary care to keep their premises in reasonably safe condition, warn their patrons, and refrain from gross negligence, Denton and Tanner were so severely injured, Samantha and Bailey were placed under great duress and forced to take the men away from the premises immediately to seek medical care. If Denton and Tanner had not been brutally attacked at the University McDonald's, Samantha would not have driven the vehicle, would not have gone through the red light, and Bailey would not have been killed in the crash.

The conduct of McDonald's therefore constitutes premises liability, which has been a proximate cause of actual damages to the Plaintiffs in an amount within the jurisdictional limits of this Court, for which Plaintiffs seek judgment.

X.

SURVIVAL ACTION AGAINST MCDONALD'S

The foregoing paragraphs are incorporated by reference. Plaintiffs are the legal representatives of the Estate of Lauren Bailey Crisp. Bailey had a cause of action for the physical pain and mental anguish she suffered before she died. Bailey would have been entitled to bring an action for the injury if she had lived. McDonald's wrongful acts caused the decedent's injury. Damages are sought under the Texas Survival Act in an amount in excess of the minimal jurisdictional limits of this Court, for which Plaintiffs seek judgment.

XI.

WRONGFUL DEATH ACTION AGAINST MCDONALD'S

The foregoing paragraphs are incorporated by reference. The Crisps are the surviving parents of Bailey, deceased. Plaintiffs are the statutory beneficiaries of Bailey, deceased. McDonald's are corporate entities and their intentional and negligent acts caused injury to Bailey, which resulted in her death. Had Bailey survived, however, she would have been entitled to bring an action for her injuries against McDonald's. Additionally, McDonald's actions caused Plaintiffs to suffer actual injury, as outlined more fully below in Section XIII. Plaintiffs bring their wrongful death claims against McDonald's under the Texas Wrongful Death Act, TEX. CIV. PRAC. & REM. CODE § 71.002. Plaintiffs also bring their wrongful death claims under the constitution of the State of Texas.

XII.

GROSS NEGLIGENCE AGAINST DEFENDANTS

The acts and/or omissions of Defendants, when viewed objectively from the standpoint of Defendants at the time of the occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, including Bailey, Samantha, Denton and Tanner. Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety and welfare of others, including Plaintiffs. The acts or omissions of Defendants constitute gross negligence, as that term is defined in TEX. CIV. PRAC. & REM. CODE §41.001(11). The grossly negligent acts and/or omissions of Defendants were a proximate cause of actual damages to the Plaintiffs in an amount within the jurisdictional limits of this Court, for which Plaintiffs seek judgment.

XIII.

ACTUAL DAMAGES

The foregoing paragraphs are incorporated by reference. Plaintiffs allege that Defendants' conduct, as more specifically set forth above, and for which Defendants are jointly and severally liable, has been a producing and proximate cause of damages to them in an amount within the jurisdictional limits of this Court. Such damages include, but are not limited to the following:

- a. Medical expenses and funeral expenses;
- b. Mental anguish and pain and suffering of Bailey, deceased;
- c. Mental anguish and pain and suffering of the Plaintiffs;
- d. Loss of companionship and society;
- e. Loss of economic support in the past and in the future;

- f. Loss of advice and counsel;
- g. Loss of support;
- h. Bailey's services; and
- i. Expenses for psychological treatment.

XIV.

EXEMPLARY DAMAGES

The foregoing paragraphs are incorporated by reference. Plaintiffs are entitled to recover exemplary damages from Defendants, because Plaintiffs' damages result from Defendants' gross negligence. Plaintiffs are entitled to recover exemplary damages under the standards for recovery of exemplary damages described in TEXAS CIV. PRAC. & REM. CODE § 41.003.⁵

XV.

ATTORNEY'S FEES

Plaintiffs seek their reasonable and necessary attorney's fees for services rendered through the trial of this matter, together with conditional awards of attorney's fees in the event of an appeal, under equity.

XVI.

PREJUDGMENT INTEREST

Plaintiffs specifically plead for pre and post-judgment interest at the highest legal rate.

⁵ Plaintiffs contend a conflict exists at the appellate court level (the same appellate court, in fact), regarding whether, based upon a finding of gross negligence, punitive damages are recoverable under the Dram Shop Act. *Cf. I-Gotcha, Inc. v. McGinnis*, 903 S.W.2d 829, 841-44 (Tex. App.—Fort Worth 1995, writ denied) (concluding club acted with gross negligence, and awarding punitive damages of \$1,500,000.00 under the Dram Shop Act) *with Steak & Ale of Texas, Inc v. Borneman*, 62 S.W.3d 898, 910-11 (Tex. App.—Fort Worth 2001, no pet.) (holding punitive damages are not available for a violation of the Dram Shop Act). Accordingly, Plaintiffs have a good-faith basis for bringing their gross negligence claim against Little Skyneck, and requesting punitive damages in connection therewith.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer, and that upon final hearing (Plaintiffs tender the required jury demand fee in connection with this filing), Plaintiffs have the following relief:

1. Judgment against Defendants, jointly and severally, for their actual, consequential and additional damages as alleged and proven by Plaintiffs;
2. An award of reasonable and necessary attorney's fees rendered through the trial of this matter, together with conditional awards of attorney's fees in the event of an appeal to the Third Court of Appeals, as well as reasonable and necessary attorney's fees in the event of an appeal to the Supreme Court of Texas;
3. Exemplary damages in an amount found within the jury's discretion;
4. Prejudgment and post-judgment interest on Plaintiffs' actual damages at the highest legal rate;
5. Costs of court; and
6. Such other and further relief to which Plaintiffs may be justly entitled, at law or in equity.

Respectfully submitted,

DE LEON & WASHBURN, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was served via fax and/or ProDoc e-service, on this 24th day of July, 2013, as follows:

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