

CAUSE NO. _____

DC WACO RESTAURANT, INC
D/B/A DON CARLOS RESTAURANT

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IN THE DISTRICT COURT

DALLAS COUNTY TEXAS

____ JUDICIAL DISTRICT

V.

PEAKTASTIC BEVERAGE, LLC d/b/a
TWIN PEAKS RESTAURANT and
FRONT BURNER RESTAURANTS GP
LLC, and TWIN RESTAURANT
INVESTMENT COMPANY, LLC

JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL PETITION

NOW COMES Plaintiff DC Waco Restaurant, Inc. d/b/a Don Carlos Restaurant ("Plaintiff") complaining of Defendants Peaktastic Beverage, LLC d/b/a Twin Peaks Restaurant ("Twin Peaks") and its franchisor, Front Burner Restaurants GP LLC and Twin Restaurant Investment Company, LLC and for cause of action would respectfully show this Honorable Court the following:

SUMMARY OF THIS CASE

This is a case where, in an effort to make money, a business disregarded basic common sense and ordinary prudence. The owners and management of Twin Peaks invited armed, rival gang members to a meeting at their establishment where alcohol was served. Twin Peaks had been repeatedly warned by law enforcement that such meetings were not wise, and that violence could likely result. This was part of a nationwide program by the corporate franchisor that encouraged such events. Because of decisions that defy common sense, not only has the Twin Peaks lost its liquor license and franchise rights, but nine people are dead and at least eighteen are wounded. As further fallout from these imprudent

and unreasonable decisions, neighboring businesses, like the Plaintiff herein, have suffered damages.

I. FACTUAL BACKGROUND

Plaintiff owns and operates the Don Carlos immediately across the street from the Twin Peaks in Waco, Texas; they share a parking lot. Plaintiff has had multiple problems with Defendants and its rash and reckless business practices.

On Sunday May 17, 2015, a shootout erupted in Waco, Texas in the parking lot of Twin Peaks, Don Carlos Restaurant and other neighboring businesses. The shootout started amongst rival motorcycle gangs, but ultimately involved Waco law enforcement officers. The melee resulted in the deaths of nine people and left at least eighteen wounded. Law enforcement took cover and returned fire from the front walk-up of Plaintiff's business.

According to law enforcement officials, this Twin Peaks location had become a known destination for motorcycle club and gang activity due to multiple Twin Peaks sponsored events. These events included, in part, "Bike Night" every Thursday evening. Such events were encouraged by the corporate franchisor. Despite numerous warnings from the Waco Police Department, the management team at Twin Peaks refused to cooperate with any efforts or suggestions to cease special festivities directed at this particular clientele. Instead, Twin Peaks through its operating partner, Jay Patel, hosted a special event on Sunday May 17, 2015 for the biker clientele deemed the "Texas Region 1 Confederation of Clubs and Independents Meeting." This meeting was promoted by Twin Peaks through targeted advertisements, including photos of scantily-clad dressed women holding various firearms.

As a result, patrons of Plaintiff's place of business were trapped inside the establishment as thousands of bullet rounds were fired by law enforcement officials and gang members. Law enforcement agents used Plaintiff's porch and surrounding walls to protect themselves from incoming fire. At least four cars in the parking lot of Plaintiff's place of business now have multiple bullet holes in them.

Immediately following the incident, businesses surrounding Twin Peaks were closed by law enforcement agents. The Waco Police Department issued a statement indicating it considers the area located in Central Texas Marketplace on Interstate 35 a crime scene. This area includes Plaintiff's place of business, which has been closed and unable to serve patrons since Sunday, May 17, 2015. At the time of the incident, the owners of Don Carlos Restaurant had discussed selling the business, going so far as to value the business and speak to a broker. After the shootout, that process ended.

II. DISCOVERY PLAN

Plaintiff intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure.

III. PARTIES

Plaintiff DC Waco Restaurant, Inc., has its primary place of business located at 4719 S. Jack Kultgen Expy., Waco, TX 76712.

Defendant Peaktastic Beverage LLC d/b/a Twin Peaks Restaurant has its place of business located at 4671 Jack Kultgen Expy., Waco, TX 76711.

Defendant Front Burner Restaurants GP, LLC has its place of business located at 4803 Broadway St. Addison, TX 75001.

Defendant Twin Restaurant Investment Company, LLC has its place of business located at 4803 Broadway St. Addison, TX 75001.

Defendant Peaktastic Beverage LLC, Inc. is a domestic corporation doing business in the State of Texas. It may be served by and through its registered agent: Ronak P. Parikh, 18900 Dallas Parkway Suite 125 Dallas, TX 75287.

Defendant Front Burner Restaurants GP, LLC is a domestic corporation doing business in the State of Texas. It may be served by and through its registered agent: Scott Gordon, 4803 Broadway Addison, TX 75001.

Defendant Twin Restaurant Investment Company, LLC is a domestic corporation doing business in the State of Texas. It may be served by and through its registered agent: Scott Gordon, 4803 Broadway Addison, TX 75001.

VENUE AND JURISDICTION

Venue is proper in Dallas County under Section 15.002 of the Texas Civil Practice and Remedies Code since Dallas County is the county of the defendants' principal offices in this state.

IV. CAUSES OF ACTION

A. NEGLIGENCE

At the time of the incident, Twin Peaks was operating its place of business negligently. Twin Peaks had a duty to exercise ordinary care and operate its place of business in a reasonable and prudent manner. That duty was breached, and such negligence was a proximate cause of Plaintiff's injuries. Under the theory of agency and single employer "alter ego" theory, Twin Peaks' negligence and actions as a franchisee are imputed vicariously onto its franchisor, Front Burner Restaurants, Twin Restaurant

Investment Company, LLC. Further, because the Twin Peaks and Front Burner Restaurants, Twin Restaurant Investment Company, LLC franchisor was aware of its franchisee's activities, but failed to take efforts to cease such activities, the franchisor was a passive participant in those activities, and profited from them. The franchisor's withdrawal of franchise rights after the shootout was too little, and too late.

The negligence of Twin Peaks, Front Burner Restaurants and Twin Restaurant Investment Company, LLC were a proximate cause of Plaintiff's injuries. Defendants breached its duty of reasonable care in one or more of the following ways, among others:

1. Failing to properly screen, hire, and train Jay Patel;
2. Failing to observe and heed instructions from Waco Police Department concerning motorcycle-related special events;
3. Advertising and promoting special events catered to motorcycle gangs in the central Texas region despite numerous warnings from law enforcement officials as to the violent nature of said gangs and clubs;
4. Failing to hire security personnel to oversee and control the special event despite law enforcement recommendations;
5. Failing to institute an overflow parking plan for the special event despite law enforcement recommendations;
6. Failing to properly supervise and control patrons;
7. Failing to create or enforce safety rules;
8. Failing to create or enforce safety rules regarding the hosting of special motorcycle related events; and
9. Failure to stop serving alcohol and/or over-serving gang members while allowing open carry of handguns, assault rifles and other firearms.

Each of these acts and omissions, singularly or in combination with others, constitute negligence, which were the proximate cause of this incident and the injuries sustained by Plaintiff.

B. GROSS NEGLIGENCE/RECKLESSNESS

Plaintiff will further show that the acts and/or omissions of Defendants, as described above, when viewed objectively from the Defendants' standpoint, involve an extreme degree of risk considering the probability and magnitude of the potential harm to others. Defendants had actual subjective awareness of the risk involved, but nevertheless proceeded in conscious indifference to the rights, safety, and/or welfare of the others, including Plaintiff. Defendants knew or should have known of the risk posed by hosting a special event for rival motorcycle gangs, and failed to control or prevent their violent actions which were the proximate cause of this incident and the injuries sustained by Plaintiff.

As such, Defendants' actions and omissions constitute gross negligence and malice as those terms are understood by law.

V. DAMAGES

Plaintiff seeks damages for lost profits, past and future, associated with the closure of its business as a result of Defendants' actions. Plaintiff additionally seeks market value damages for permanent injury to its property, actual or intrinsic value damages for permanent injury to its property, replacement value damages, sentimental value damages and damages for cost of repairs and loss of use for temporary injury to its property. Plaintiff also seeks any profit that may have been realized from a sale of the business as consequential damage, damages of which Defendants should have been aware

reasonably could result. Because of the egregious nature of Defendants' actions, Plaintiff seeks punitive damages.

VI. REQUEST FOR JURY TRIAL

Plaintiff respectfully demands a jury trial and tenders the appropriate fee with this petition.

IX. PRAYER

By reason of all the above and foregoing, and on account of the injuries suffered by Plaintiff as a result of this incident, Plaintiff is entitled to recover from Defendants damages set forth in this petition, within the jurisdictional limits of this Court. Plaintiff seeks damages over \$1,000,000. Plaintiff also seeks post judgment interest at the maximum legal rate, costs of court, and any other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

THE BUZBEE LAW FIRM

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