

CAUSE NO. _____

JOHN THOMAS HOPKINS,
Plaintiff

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IN THE DISTRICT COURT OF

v.

HARRIS COUNTY, TEXAS

BABARELLA HOUSTON, LLC dba
BARBARELLA HOUSTON
Defendant

_____ **TH JUDICIAL DISTRICT**

**PLAINTIFF’S ORIGINAL PETITION, JURY DEMAND, REQUEST FOR
DISCLOSURE, AND RULE 193.7 NOTICE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, JOHN THOMAS HOPKINS (“Plaintiff”), who brings this complaint of Defendant, BABARELLA HOUSTON, LLC dba BARBARELLA HOUSTON (“Defendant”), for causes of action which would respectfully show the Court and jury as follows:

DISCOVERY LEVEL

1. Discovery is intended to be conducted under Level 2 pursuant to Texas Rule of Civil Procedure 190.3.

PARTIES

2. Plaintiff JOHN THOMAS HOPKINS is an individual residing in Alameda County, California. Pursuant to Texas Civil Practice & Remedies Code section 30.014, the last three digits of Plaintiff’s California driver’s license number are 515 and the last three digits of his social security number are 813.

3. Defendant BABARELLA HOUSTON, LLC dba BARBARELLA HOUSTON (“Barbarella Houston”) is a domestic limited liability company doing business in the State of Texas and organized and existing under the laws of the State of Florida with its principal place of business

located at 10426 Pointview Court, Orlando, Florida 32836. This Defendant conducts a substantial amount of business in the State of Texas and has continuous and systematic contacts with this state. BABARELLA HOUSTON, LLC dba BARBARELLA HOUSTON may be served with process through its registered agent for service, Martin, Frost & Hill, PC, 3345 Cave Rd., Ste 105, Austin, Texas 78746. Pursuant to Rule 28 of the Texas Rules of Civil Procedure, Plaintiff demands that this Defendant answer in its correct name.

MISNOMER/ALTER EGO

4. In the event any parties are misnamed or are not included herein, it is Plaintiff's contention that such was a "misidentification," "misnomer," and/or such parties are/were "alter egos" of parties named herein. Alternatively, Plaintiff contends that any "corporate veils" should be pierced to hold such parties properly included in the interest of justice.

JURISDICTION AND VENUE

5. The subject matter in controversy is within the jurisdictional limits of this Court.

6. The Court has subject-matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

7. Pursuant to section 15.002(a)(1) of the Texas Civil Practice and Remedies Code, venue is proper because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in Harris County, Texas.

FACTS

8. On or about April 9, 2022, Plaintiff Hopkins was an invitee at Defendant's bar "Barbarella Houston", located at 2404 San Jacinto St, Houston, Texas 77002. After spending over an hour on the premises as a patron, Plaintiff was standing just outside the building when a bouncer told Plaintiff "You are done.", then instructed Plaintiff to immediately leave the premises. Plaintiff,

confused as to why he was being told to leave, began questioning the bouncer when the bouncer violently and without warning kicked Plaintiff in the leg, causing extreme pain and injuring Plaintiff. The injuries to Plaintiff were so severe that an ambulance was called to transport him to the emergency department of a local hospital, where Plaintiff was diagnosed with a dislocated ankle.

9. The reckless and violent culture at Barbarella Houston has earned a reputation, as this isn't the first time an incident like this has happened at this establishment. In fact, Barbarella Houston is notorious for its staff and bouncers' disrespectful, aggressive, rude, and violent treatment of its patrons, as indicated by some of their Google reviews below:



Nina Renee

4 reviews

★★★★★ 5 months ago

I have a serious physical assault incident from one of your security officers to a 5'4 woman. Who am I able to contact about this?



Ulysis Ramos

13 reviews

★★★★★ 3 years ago

I've been going to this place for 4 years and not once have I had an incident until tonight. Me, my girlfriend and her friends decided to go to 90s night and everything was going fine until I stepped out to walk her to her car. I walked up to the bouncer who checked my arm for the stamp and let me go in and before I could reach the door, one of the bouncers tells me that I'm banned and I can't go back anymore. I ask him why and he tells me that me and some "friends" of mine were being rude and disrespectful to a bouncer and threw a beer can at him. I tell the guy I was nowhere near Barbarella last Saturday. Not one of those bouncers were there that night and refuse to call one of their employees so I call my girlfriend and she tells them we were not there that night. He refuses to back and tell me that me and the guy were a black shirt and that we looked alike. I was racial profiled and refused entry inside. I don't know his name but hes an Asian guy who has blonde highlights and tattoos on his left arm and wears glasses. I've always sung the praises of this place to EVERYBODY and now they treat me like this because YOU assume I'm the guy because we look alike. I hope to get ahold of the manager or owner to tell them this because I was racial profiled and wrongfully accused of something I did not do AT ALL.





Kyle Tweedie

13 reviews

★★★★★ 2 years ago

Aggressive staff. No desire to go back.



Jess N

1 review

★★★★★ 5 months ago

I used to really enjoy coming here since the music is very fun to dance to and the people on the dance floor are full of good vibes and energy. However, this past Saturday my friend was physically assaulted by one of the bouncers. Someone in our group happened to break the rules, my female friend got singled out so the bouncer decided to be especially aggressive towards her when kicking us out. He kept shoving and pushing her after she specifically asked to not be touched. My friend also suffers from trauma so this incident caused her to have a full blown panic attack. When she had simply gotten his hands off of her, he decided to push even harder causing her to break her nail and develop cuts on her feet. What's worse is that when we tried to get names or even the managers names, the bouncers gave us a fake name and wouldn't tell us the manager's name. Absolutely unacceptable, everyone makes mistakes and I understand that my friend had broken the rules but that doesn't give someone the right to physically assault someone. Take your business elsewhere if you want to be respected especially if you're a woman.



NEGLIGENCE BY DEFENDANT BABARELLA HOUSTON, LLC dba BARBARELLA HOUSTON

10. At the time and on the occasion in question, Defendant Barbarella Houston had a duty to exercise the degree of reasonable care that a reasonably prudent bar would use to avoid harm to others under circumstances similar to those described herein, and to protect its patrons.

11 Plaintiff's injuries were directly and proximately caused by Barbarella Houston's negligent, careless, and reckless disregard of said duty.

12. On the occasion in question, Plaintiff's damages were proximately caused by the negligence, carelessness, recklessness and assault by Defendant employees of Barbarella Houston in one or more of the following non-exclusive particulars:

- a. In failing to keep patrons safe from being assaulted by Barbarella Houston employees while on the premises;
- b. In failing to use ordinary care to ensure its patrons were safely treated on the premises by Barbarella Houston employees;
- c. In failing to properly train its employees on safe treatment methods of patrons on the premises;
- d. In failing to use ordinary care to avoid using excessive force against patrons on the premises;
- e. In failing to use ordinary care in the screening, investigating, hiring, retaining, and supervising of competent or unfit employees; and/or
- f. In allowing its employees to knowingly and intentionally committing assault.

13. Each and all of the above and foregoing acts, both omission and commission, 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 pled herein.

ASSAULT BY DEFENDANT'S EMPLOYEE

14. At the time and on the occasion in question, Defendant's employee intentionally, knowingly, or recklessly caused Plaintiff's bodily injuries by violently injuring Plaintiff by striking and/or forcefully kicking Plaintiff with his feet and legs. The Defendant's employee's unjustified and unprovoked actions constitute criminal and civil assault for which Plaintiff seeks the recovery of actual and exemplary damages.

- a) In failing to keep patrons safe from being assaulted by Barbarella Houston employees or owners while on the premises;
- b) In failing to use ordinary care to ensure its patrons were safely treated on the premises by Barbarella Houston employees;
- c) In failing to properly train its employees on safe treatment methods of patrons on the premises;

- d) In failing to use ordinary care to avoid using excessive force to against patrons on the premises;
- e) In failing to use ordinary care in the screening, investigating, hiring, retaining, and supervising of competent or unfit employees; and/or
- f) In allowing its employees to knowingly and intentionally committing assault.

15. Each and all of the above and foregoing acts, both omission and commission, 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 pled herein.

**NEGLIGENT SECURITY BY DEFENDANT BABARELLA HOUSTON, LLC
dba BARBARELLA HOUSTON**

16. Defendant Barbarella Houston made a conscious decision to either train its bouncers, employees and owners to violently attack and abuse the customers, or failed to train its bouncers, employees and owners to protect its customers. Additionally, Barbarella Houston was on notice of past specific instances of similar criminal conduct sufficient enough to require properly trained staff to prevent these types of injuries from occurring. Barbarella Houston had knowledge of previous activity at 2404 San Jacinto St, including recent activity in the weeks, months, and years immediately preceding this event. There were similar events that occurred quite often and Barbarella Houston had notice of these from its own social media platforms. Barbarella Houston:

- a) Failed to monitor security cameras;
- b) Failed to maintain security cameras that recorded;
- c) Failed to properly train its bouncers, employees and owners;
- d) Failed to properly train its bouncers, employees and owners about illegal assault of patrons;

- e) Failed to be attentive; and
- f) Failed to observe ordinary care and prudence under the circumstances.

17. Barbarella Houston's acts and omissions, taken singularly or in combination with others, constituted negligence which proximately caused the occurrence made the basis of this action and caused injury to both plaintiffs.

**NEGLIGENT SECURITY REACTION BY DEFENDANT
BABARELLA HOUSTON, LLC dba BARBARELLA HOUSTON**

18. Prior to Plaintiff being injured, Barbarella Houston knew or should have known of conditions that posed an unreasonable risk of harm its customers. Barbarella Houston (through its bouncers, employees, owners, and social media) were aware of their staff's disrespectful, aggressive, rude, and violent treatment of its patrons, and of injuries that occurred prior to those suffered by Plaintiff. As such, Barbarella Houston had a duty to take reasonable and prudent action to reduce the risk of harm to patrons at the bar and to protect them and warn them. This cause of action has been recognized by the Supreme Court of Texas for ten years in *Del Lago Partners v. Smith*, 307 S.W.3d 762 (Tex. 2010). In fact, the Court noted, "The Third Restatement of Torts clarifies further: '[I]n certain situations criminal misconduct is sufficiently foreseeable as to require a full negligence analysis of the actor's conduct. Moreover, the actor may have sufficient knowledge of the immediate circumstances to foresee that party's misconduct.'" (italics in the original). "More generally, criminal misconduct is sometimes foreseeable because of immediately preceding conduct." "Del Lago's duty arose not because of prior similar criminal conduct but because it was aware of an unreasonable risk of harm at the bar that very night. When a landowner 'has actual or constructive knowledge of any condition on the premises that poses an unreasonable risk of harm to invitees, he has a duty to take whatever action is reasonably prudent' to reduce or eliminate that risk." (emphasis in original).

19. Barbarella Houston, through its bouncers, employees, contractors, and owners, knew or should have known of previous aggressive behavior and assaultive conduct. Barbarella Houston failed to act reasonably under the circumstances in numerous ways including, but not limited to:

- a) Failed to properly respond to aggressive and violent behavior of it's agents;
- b) Failed to properly train its bouncers, employees and owners;
- c) Failed to prevent its customers from being injured by its bouncers, employees and owners;
- d) Failed to be attentive; and
- e) Failed to observe ordinary care and prudence under the circumstances.

20. Barbarella Houston's failure to act reasonably under the circumstances proximately caused the injuries suffered by the Plaintiff.

RESPONDEAT SUPERIOR AND DIRECT NEGLIGENCE

21. Pursuant to the doctrine of respondeat superior, Defendant Barbarella Houston is vicariously liable for the conduct of its employees, who were acting in the course and scope of their employment as bouncers for Defendant Barbarella Houston during the occurrence made the basis of this lawsuit and whose conduct directly and proximately caused Plaintiff's injuries and damages. Further, Defendant Barbarella Houston is also directly liable for Plaintiff's injuries and damages, as described herein.

22. Further, the conduct of Defendant, either individually or through its employees violates the Texas Penal Code because they caused serious bodily injury to the plaintiff, as well as the commission of an assault.

**GROSS NEGLIGENCE AND HATE CRIME CONDUCT BY DEFENDANT
BABARELLA HOUSTON, LLC dba BARBARELLA HOUSTON**

23. Defendant's acts and/or omissions set forth above constitute gross negligence under §41.001(11) of TEX. CIV. PRAC & REM. CODE because, when viewed objectively from the standpoint of the Defendant at the time of its occurrence, each act and/or omission involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and the Defendant had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others. Defendant's gross negligence was a proximate cause of the incident made the basis of this lawsuit.

DAMAGES

24. As a direct and proximate cause of Defendant's act and/or omission, Plaintiff sustained severe injuries and damages and brings this suit for exemplary damages and the following actual damages which resulted from the occurrence in question:

- a) Reasonable medical care and expenses in the past. These expenses were paid and/or incurred by and/or on behalf of Plaintiff for the necessary care and treatment of the injuries resulting from the incident complained of herein and such charges are reasonable and were usual and customary charges for such services in or near Harris County, Texas;
- b) Reasonable and necessary medical care and expenses which, in all reasonable probability, will be incurred in the future;
- c) Physical pain and suffering in the past;
- d) Physical pain and suffering which, in all reasonable probability, will be incurred in the future;
- e) Physical impairment in the past;
- f) Physical impairment which, in all reasonable probability, will be incurred in the future;
- g) Mental anguish in the past;

- h) Mental anguish which, in all reasonable probability, will be incurred in the future;
- i) Lost wages in the past;
- j) Lost wages which, in all reasonable probability, will be incurred in the future;
- k) Lost earning capacity in the past;
- l) Lost earning capacity which, in all reasonable probability, will be incurred in the future;
- m) Loss of enjoyment of life in the past; and
- n) Loss of enjoyment of life which, in all reasonable probability, will be incurred in the future.

25. Based on the above enumerated damages caused by Defendant's negligent, careless, reckless, and intentional acts and/or omissions, the amount of Plaintiff's damage exceeds the jurisdictional minimums of this Court. The amount of damages that would reasonably and fairly compensate Plaintiff for his injuries is to be properly determined by a jury after consideration of all the evidence presented at trial. Further, Plaintiff invokes Section 41.008(c)(4) because Defendant's conduct was committed knowingly and intentionally as such, there is no limitations on the amount of recovery of exemplary damages. However, in satisfaction of the requirements of Rule 47(c), Plaintiff states that they seek monetary relief over \$1,000,000.00 at this time. Plaintiff makes this damage calculation pursuant to Rule 47. This statement is made solely for the purpose of providing information on the nature of the case, does not affect Plaintiff's substantive right, and is made subject to Plaintiff's right to amend.

RULE 193.7 NOTICE

26. Pursuant to Rule 193.7 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff hereby gives actual notice to the Defendant that any documents produced in response to written discovery will be used in pretrial proceedings and/or at trial without the necessity of authenticating the documents, unless the Defendant objects pursuant to Rule 193.7.

REQUEST FOR DISCLOSURE TO DEFENDANT

27. Plaintiff requests Defendant disclose, within 30 days of service of this request, the information or materials described in Texas Rule of Civil Procedure 194.2. Failure to timely respond shall constitute an abuse of discovery pursuant to Texas Rule of Civil Procedure 215.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests the following relief:

- a. That Defendant be cited to appear and answer herein;
- b. Trial by jury, which is hereby demanded;
- c. An award of actual damages, including, but not limited to reasonable medical care and expenses in the past; reasonable and necessary medical care and expenses which, in all reasonable probability, will be incurred in the future; physical pain and suffering in the past; physical pain and suffering which, in all reasonable probability, will be incurred in the future; physical impairment in the past; physical impairment which, in all reasonable probability, will be incurred in the future; mental anguish in the past; mental anguish which, in all reasonable probability, will be incurred in the future; lost wages in the past; lost wages which, in all reasonable probability, will be incurred in the future; lost earning capacity in the past; lost earning capacity which, in all reasonable probability, will be incurred in the future; loss of enjoyment of life in the past; and loss of enjoyment of life which, in all reasonable probability, will be incurred in the future - all within the jurisdictional limits of this Court;
- d. Exemplary damages;

- e. Court costs, taxable costs, prejudgment, and post judgment interest at the maximum rates allowed by law; and
- f. Such other and further relief, general or special, legal, or equitable, to which Plaintiff(s) is entitled.

Respectfully submitted,

THE MANGINELLO LAW FIRM, PLLC

/s/ Ralph P. Manginello

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