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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

5 HOGAN MULGRAVE, Guardian Ad )  
6 Litem for his minor son JAKOBI )  
7 MULGRAVE, )

Case No. 16-09-02225

8 Plaintiff, )

9 v. )

COMPLAINT FOR DAMAGES  
(Negligence/Violation of Statute/  
Personal Injury)

10 MATTHEW N. ELLMERS; )  
11 RAFEAL'S GOURMET DINER LLC, )  
12 an Oregon Limited Liability Company, )  
13 dba The NILE; CG INVESTMENTS, )  
14 INC., an Oregon domestic business )  
15 Corporation, dba STRIKE CITY; and )  
16 KIMBERLY SNYDER, )

Not Subject to Mandatory  
Arbitration

17 Defendants. )

Claim exceeds \$10,000

18 Plaintiff alleges as follows:

19 1.

20 By Order of the Lane County Circuit Court, Hogan Mulgrave was appointed  
21 guardian ad litem for his minor son, Jakobi Mulgrave ("Jakobi") to pursue this lawsuit.

22 2.

23 At all material times, Plaintiff was a resident of, and domiciled within, Lane County,  
24 Oregon.

25 3.

26 At all material times, Defendant Rafeal's Gourmet Diner LLC, dba The Nile ("Defendant Nile"), was an Oregon Limited Liability Company, inactive status, doing business in Lane

1 County as a club for adult entertainment which included serving alcoholic beverages to its  
2 customers.

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4 4.

5 At all material times, Defendant Matthew N. Ellmers ("Defendant Ellmers") was  
6 domiciled and resided within Lane County, Oregon and the driver of a 1998 Isuzu Rodeo.

7 5.

8 At all material times, Defendant CG Investments, Inc. was an Oregon domestic business  
9 corporation dba Strike City, an establishment that serves alcoholic beverages to its customers.

10 6.

11 At all material times, Defendant Kimberly Snyder was an Oregon resident and the owner  
12 of the automobile driven by Defendant Ellmers.

13 7.

14 At all material times, Bertelsen Road ("Bertelsen") was a state roadway traversing in a  
15 generally north/south direction with a posted speed limit of 40 MPH and West 11th Avenue  
16 ("West 11<sup>th</sup>") was a state roadway traversing in a generally east/west direction, through Eugene,  
17 Lane County Oregon. The intersection of these two roads is controlled by a traffic light ("West  
18 11<sup>th</sup>/Bertelsen intersection").  
19

20 8.

21 On or about January 21, 2009, at roughly 9:16 p.m., Jakobi was one of four passengers  
22 heading eastbound on West 11<sup>th</sup> in a vehicle driven by his mother, Heather Mulgrave. As they  
23 proceeded through the West 11<sup>th</sup>/Bertelsen intersection, with a green light, Defendant Ellmers,  
24 proceeding southbound on Bertelsen, entered the West 11<sup>th</sup>/Bertelsen intersection at a rate of  
25 speed of 70 miles per hour or more, ran a red light, and crashed into the driver's side of the  
26

1 vehicle driven by Heather Mulgrave, instantly killing everyone in the vehicle except Jakobi ("the  
2 accident"), whose injuries are more particularly described below.

3  
4 9.

5 At the time of the accident, Defendant Ellmers was visibly intoxicated and had a blood-  
6 alcohol content of .21%, almost three times the legal limit indicating impairment for drivers of  
7 motor vehicles under Oregon's Revised Statutes.

8 10.

9 On information and belief, Defendant Ellmers was served an alcoholic beverage, or  
10 beverages, while visibly intoxicated, by an employee, or employees, of Defendant Nile at that  
11 Defendant's place of business.

12 11.

13 On information and belief, immediately before traveling to Defendant Nile's  
14 establishment, Defendant Ellmers was visibly intoxicated and was served multiple alcoholic  
15 beverages by an employee, or employees, of Defendant Strike City at that Defendant's place of  
16 business.  
17

18 DEFENDANT ELLMERS

19 12.

20 Plaintiff re-alleges each and every allegation in Paragraphs 1-11 as though fully stated.

21 COMMON LAW NEGLIGENCE

22 13.

23 Defendant Ellmers was negligent in one or more of the following particulars:

- 24 A. In failing to keep his vehicle under proper control;
- 25 B. In failing to keep his vehicle in a proper lane of traffic;
- 26

1 C. In traveling at an extremely high rate of speed that was too fast for the conditions then  
2 and there existing;

3 D. In failing to keep a proper lookout for the vehicle driven by Hcalther Mulgrave; and  
4

5 E. In failing to operate his vehicle in a legally unimpaired condition.  
6

7 NEGLIGENCE PER SE

8 14.

9 Defendant Ellmers was negligent *per se* for violating the following Oregon statutes:

10 ORS 811.100 by traveling at a rate of speed that was too fast for the conditions then and  
11 there existing;

12 ORS 811.260 and 811.265 for failing to stop at an intersection controlled by lights when  
13 the light was red;

14 ORS 813.010 for driving with an alcohol content of .21, almost three times greater than  
15 .08.

16 15.

17 Jakobi is within the class of people intended to be protected by the above statutes.

18 DEFENDANT RAFEAL'S GOURMENT DINER, LLC, DBA THE NILE

19 16.

20 Plaintiff re-alleges each and every allegation in Paragraphs 1-15 as though fully stated.

21 LIABILITY FOR STATUTORY VIOLATION

22 17.

23 Defendant Nile is liable for Jakobi's injuries and damages for violating Oregon Revised  
24 Statute 471.565, by serving alcohol to Defendant Ellmers when he was visibly intoxicated.  
25  
26

18.

Jakobi is within the class of people intended to be protected by ORS 471.565.

COMMON LAW NEGLIGENCE

19.

Defendant Nile was negligent for serving alcohol to Defendant Ellmers when he was visibly intoxicated, and when Defendant Nile knew, or should have known, that Defendant Ellmers would drive when leaving its business.

DEFENDANT STRIKE CITY

20.

Plaintiff re-alleges each and every allegation in Paragraphs 1-19 as though fully stated.

LIABILITY FOR STATUTORY VIOLATION

21.

Defendant Strike City is liable for Jakobi's injuries and damages for violating Oregon Revised Statute 471.565, by serving alcohol to Defendant Ellmers when he was visibly intoxicated.

22.

Jakobi is within the class of people intended to be protected by ORS 471.565.

COMMON LAW NEGLIGENCE

23.

Defendant Strike City was negligent for serving alcohol to Defendant Ellmers when he was visibly intoxicated, and when Defendant Strike City knew, or should have known, that Defendant Ellmers would drive when leaving its business.

DEFENDANT KIMBERLY SNYDER

COMMON LAW NEGLIGENT ENTRUSTMENT

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24.

Plaintiff alleges each and every allegation in paragraphs 1-23 as though fully stated.

25.

Defendant Kimberly Snyder was negligent in one of more of the following ways:

1. By entrusting her vehicle to Defendant Ellmers when she knew, or should have known, of his prior excessive use of alcohol would result in his operating her vehicle in a negligent manner.

26.

As a result of all Defendants' negligence, and for The Nile's and Strike City's violation of ORS 471.565, Jakobi has incurred reasonable and necessary medical expenses, the amount of which is presently unknown. These expenses will continue to accumulate and will be made known prior to trial.

27.

As a result of all Defendants' negligence, and for The Nile's and Strike City's violation of ORS 471.565, Jakobi will suffer future necessary and reasonable medical expenses in an amount that is presently unknown but will be made known prior to trial.

28.

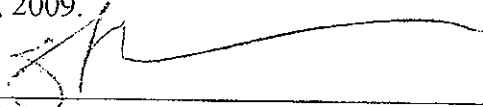
While Jakobi's current medical condition is uncertain, it is believed that, as a result of all Defendants' negligence, and for The Nile's and Strike City's violation of ORS 471.565, Jakobi suffered a loss of earning potential in the amount of \$50,000 per year for the remainder of his life, from age 22 to his expected death, in the total amount of \$2,800,000, or such other sum as may be proven at trial.

As a result of all Defendants' negligence, and for The Nile's and Strike City's violation of ORS 471.565, Jakobi suffered general pain and suffering, including emotional pain from the loss of his mother; a fractured pelvis; a fractured clavicle; a fractured skull; laceration/damage to his spleen, kidney and liver; brain damage; reduction of his capacity to sustain a future injury; anxiety and fear; separation anxiety; a loss of his normal activities; interference with his regular lifestyle; and interference with his ability to enjoy life. Some or all of these injuries may be permanent. All injuries described in this paragraph are non-economic damages in the amount of \$10,000,000, or such other sum as may be proven at trial.

WHEREFORE, Plaintiff prays for Judgment against each defendant as follows:

1. For non-economic damages of \$10,000,000, or such other sum as may be proven at trial;
2. For economic damages for Jakobi's reasonable and necessary current and future medical expenses in an amount to be proven at trial;
3. For economic damages of \$2,800,000, or such other sum that may be proven at trial for Jakobi's loss of earning capacity; and
4. For his costs and disbursements incurred herein.

DATED: February 2, 2009.

  
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Ralph Bradley, OSB# 80020  
Attorney for Plaintiff