

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	:	CHAPTER 11
OTB HOLDING LLC, et al,	:	CASE NO. 25-52415-SMS
Debtor(s).	:	
<hr/>		
KRISTINA FERRELL, Individually	:	
and as Representative of the Estate of	:	CONTESTED MATTER
JOHNATHON FERRELL, and J.D. FERRELL	:	
Movant	:	
v.	:	
OTB HOLDING LLC, et al	:	
Respondent(s).	:	
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NOTICE OF HEARING

**PLEASE TAKE NOTICE** that Movants have filed a ***Motion for Relief from Automatic Stay*** and related papers with the Court seeking an order to allow Movants to lift the automatic stay **to determine liability, liquidate claims and proceed against third parties and pursue insurance policies and proceeds.**

**PLEASE TAKE FURTHER NOTICE** that the Court will hold an initial telephonic hearing for announcements on the ***Motion for Relief from Automatic Stay*** at the following number: **toll-free number 833-568-8864**; meeting id **161 179 4270**, at **10:00 a.m.** on the **18<sup>th</sup> day of June 2025 in Courtroom 1201, United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303.**

Matters that need to be heard further by the Court may be heard by telephone, by video conference, or in person, either on the date set forth above or on some other day, all as determined by the Court in connection with this initial telephonic hearing. **Please review the “Hearing Information” tab on the judge’s webpage, which can be found under the “Dial-in and Virtual Bankruptcy Hearing Information” link at the top of the webpage for this Court, [www.ganb.uscourts.gov](http://www.ganb.uscourts.gov) for more information.**

Your rights may be affected by the Court’s ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not



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want the court to grant the relief sought in these pleadings or if you want the court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how, and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's Office is: **Clerk, U.S. Bankruptcy Court, Suite 1340, 75 Ted Turner Drive S.W., Atlanta, Georgia 30303**. You must also mail a copy of your response to the undersigned at the address stated below.

**If a hearing on the motion for relief from the automatic stay cannot be held within thirty (30) days, Movants waive the requirement for holding a preliminary hearing within thirty days of filing the motion and agrees to a hearing on the earliest possible date. Movants consent to the automatic stay remaining in effect until the Court orders otherwise.**

Dated the 28<sup>th</sup> day of April 2025.

s/ Ian M. Falcone  
Ian M. Falcone  
Attorney for Movants  
GA BAR NO. 254470

THE FALCONE LAW FIRM PC  
363 Lawrence Street  
Marietta, GA 30060  
(770) 426-9359  
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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE:	:	CHAPTER 11
OTB HOLDING LLC, et al,	:	CASE NO. 25-52415-SMS
Debtor(s).	:	
KRISTINA FERRELL, Individually	:	
and as Representative of the Estate of	:	
JOHNATHON FERRELL, and J.D. FERRELL	:	CONTESTED MATTER
Movant	:	
v.	:	
OTB HOLDING LLC, et al	:	
Respondent(s).	:	

**MOTION FOR RELIEF FROM AUTOMATIC STAY**  
**TO DETERMINE LIABILITY, LIQUIDATE CLAIMS AND PROCEED AGAINST THIRD PARTIES AND**  
**PURSUE INSURANCE POLICIES AND PROCEEDS**

COMES NOW the Movants, KRISTINA FERRELL, Individually and as Representative of the Estate of JOHNATHON FERRELL, and J.D. FERRELL (the “Movants” or “Plaintiffs”), by and through their undersigned counsel, and pursuant to 11 U.S.C. § 362(d), move this Court for an Order for relief from the automatic stay entered in the above-styled case for the purpose of allowing the Movants to proceed with discovery, testimony at trial, determination of liability, liquidate their claims and to proceed against third parties and insurance policies and proceeds in the pending litigation in the District Court of Dallas, Texas, 298<sup>th</sup> Judicial District bearing case number of DC-24-05031 (*KRISTINA FERRELL, Individually and as Representative of the Estate of JOHNATHON FERRELL, and J.D. FERRELL v. OTB Acquisition, LLC d/b/a On the Border Mexican Grill, OTB Holding, LLC, Madison Learn, Hunter Henderson and Patrick Grady*)(the “Pending Litigation”). In support of the Motion, Movants state as follows:

### THE PENDING LITIGATION BACKGROUND

1. The Pending Litigation arises from a “horrific motor vehicle crash following *the OTB Defendants*<sup>1</sup> sale, service or provision of alcohol to Defendant Patrick Grady on or about July 28, 2022 when Defendant Grady was obviously intoxicated to the extent he presented a clear danger to himself and others.” A true and correct copy of Plaintiff’s Original Petition is attached hereto as Exhibit A. (Ex. A. ¶ 14).
2. In the Pending Litigation, Movants allege that the OTB Defendants are licensed providers of alcoholic beverages in the State of Texas. On or about July 28, 2022, OTB Defendants and their agents sold, served, or provided alcoholic beverages to Defendant Grady, even though it was, or should have been apparent to OTB Defendants that Defendant Grady was intoxicated to the extent that he presented a clear danger to himself and to others. (Ex. A. ¶ 16).
3. In the Pending Litigation, Movants allege that OTB Acquisitions, LLC, and OTB Holding LLC violated the Section 2.02(b) of the Texas Alcoholic Beverage Code (the Dram Shop Act”) and that the intoxication of Patrick Grady was the proximate cause of Movant’s injuries. (Ex. A. ¶ 18).
4. In the Pending Litigation, Movants allege that the individuals that provided alcohol to Patrick Grady when he was obviously intoxicated to the extent that he presented a clear danger to himself and to others were acting within the course and scope of their employment with OTB Acquisitions and OTB Holding LLC. (Ex. A. ¶ 19).

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<sup>1</sup> The “OTB Defendants” collectively refers to OTB Acquisition, LLC d/b/a On the Border Mexican Grill, OTB Holding, LLC, Madison Learn, and Hunter Henderson.

5. In the Pending Litigation, Movants further allege that OTB Acquisitions, LLC, and OTB Holding LLC are vicariously liable for the acts and omissions of their employees under common law or provisions of the Dram Shop Act. (Ex. A. ¶ 19).
6. In the Pending Litigation, Movants allege that “[a]s a result of Defendants’ [including, but not limited to debtors, OTB Acquisitions, LLC, and OTB Holding LLC] actions, Johnathon Ferrell, deceased, sustained severe personal injuries, mental anguish and physical pain prior to his death. His estate is entitled to recover for his damages, including but not limited to, damages for mental anguish, physical injuries, pain, and necessary funeral bills and expenses, for which damages are sought under the Texas Survival Statute, codified in Chapter 71 of the Texas Civil Practice & Remedies Code. (Ex. A. ¶ 28).
7. In the Pending Litigation, Movants allege that “[a]s a result of Defendants’ [including, but not limited to debtors, OTB Acquisitions, LLC, and OTB Holding LLC] actions and the death of Johnathon Ferrell, Plaintiff Kristina Ferrell has suffered damages in the past, and will suffer damages in the future, including but not limited to, mental anguish, loss of consortium, grief, bereavement, loss of future financial contributions, loss of services, loss of advice, care and counsel, loss of society and companionship, and medical, funeral and burial expenses, for which damages are sought under the Texas Wrongful Death Act, codified in Chapter 71 of the Texas Civil Practice & Remedies Code. Plaintiffs also bring this action as heirs and for the benefit of all beneficiaries of the Estate of Johnathon Ferrell, deceased, pursuant to Section 71.021 of the Texas Civil Practice and

Remedies Code, along with all other damages they may claim at common law. (Ex. A. ¶ 29).

8. In the Pending Litigation, Movants allege that “Plaintiff Kristina Ferrell is entitled to bystander damages according to the Texas Supreme Court’s opinion in *Freeman v. City of Pasadena* (Tex. 1998). Plaintiff was located at the scene of the wreck, Plaintiff was in the vehicle during the wreck, Plaintiff contemporaneously observed the wreck, Plaintiff was closely related, and Plaintiff suffered severe emotional distress from witnessing the injuries and suffering caused to her husband by the Defendants [including, but not limited to debtors, OTB Acquisitions, LLC, and OTB Holding LLC].” (Ex. A. ¶ 33).
9. In the Pending Litigation, Movants allege that Plaintiff, Kristina Ferrell “suffered severe bodily injury, economic and mental injuries.”
10. In the Pending Litigation, Movants allege that “[a]s a result of Defendants’ actions [including, but not limited to debtors, OTB Acquisitions, LLC, and OTB Holding LLC] and the death of Johnathon Ferrell, Plaintiff J.D. Ferrell has suffered damages in the past, and will suffer damages in the future, including but not limited to, mental anguish, loss of consortium, grief, bereavement, loss of services, loss of advice, care and counsel, loss of society and companionship, funeral and burial expenses, for which damages are sought under the Texas Wrongful Death Act, codified in Chapter 71 of the Texas Civil Practice & Remedies Code.”
11. The Pending Litigation is scheduled for trial on November 3, 2025. This is the second time the Pending Litigation had been scheduled for trial.

THE BANKRUPTCY CASE

12. On or about March 4, 2025, Debtor, OTB Holding, LLC commenced this Bankruptcy Case by filing a Voluntary Petition under Chapter 11 of the United States Bankruptcy Code (NDGA Case No 25-52415-SMS).
13. Pursuant to 11 U.S.C. § 362(a), the Pending Litigation was stayed as to OTB Holding, LLC.
14. On or about March 4, 2025, Debtor, OTB Acquisition, LLC d/b/a On the Border Mexican Grill, commenced this Bankruptcy Case by filing a Voluntary Petition under Chapter 11 of the United States Bankruptcy Code (NDGA Case No 25-52416-SMS).
15. Pursuant to 11 U.S.C. § 362(a), the Pending Litigation was stayed as to OTB Acquisition, LLC d/b/a On the Border Mexican Grill.
16. On March 7, 2025 this Court entered an Order granting joint administration of the bankruptcy cases.

RELIEF SOUGHT

17. Movants seek to lift the automatic stay to proceed with discovery, testimony at trial, determination of liability, liquidate their claims and to proceed against third parties and insurance policies and proceeds in the Pending Litigation.
18. In addition to lifting the stay for the general relief requested above, the Movants request relief for the following specific purposes:
  - a. To proceed in the Pending Litigation to determine whether any insurance proceeds exist that would benefit Movants. To the extent any such policies are discovered, Movants seek to recover against such policies and proceeds.

- b. To utilize any and all discovery and trial methods to obtain, preserve and produce at trial any applicable evidence, including, but not limited to, the testimony of the Debtor.
- c. To proceed with the trial currently scheduled or as rescheduled or continued.

19. Movants hereby waive the right under 11 USC §362(e) to a hearing within thirty (30) days of the date it was filed.

#### ARGUMENT

20. In determining whether to lift the automatic stay for a party to proceed with pending litigation, courts apply a three-factor test: (1) whether any great prejudice to either the bankruptcy estate or the debtor will result from the prosecution of the lawsuit; (2) whether the hardship to the non-debtor party by the continuation of the automatic stay considerably outweighs the hardship to the debtor; and (3) whether the creditor has a probability of success of the merits of the case. (See *In re Robertson*, 244 B.R. 880, 882 (Bankr. N.D. Ga. 2000)).

21. Other relevant factors include:

- a. whether relief would result in a partial or complete resolution of the issues;
- b. lack of any connection with or interference with the bankruptcy case;
- c. whether the other proceedings involve the debtor as a fiduciary;
- d. whether a specialized tribunal with the necessary expertise has been established to hear the cause of action;
- e. whether the debtor's insurer has assumed full responsibility for defending it;



- f. whether the action primarily involves third parties;
- g. whether litigation in another forum would prejudice the interest of other creditors;
- h. whether the judgment claim arising from the other action is subject to equitable subrogation;
- i. whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor;
- j. the interest of judicial economy and the expeditious and economical resolution of litigation;
- k. whether the parties are ready for trial in the other proceeding; and
- l. impact of the stay on the parties and the balance of harms.

(See *In re Coachworks Holdings, Inc.*, 418 B.R. at 492-93 citing *In re Sonnox Ind., Inc.*, 907 F.2d 1280, 1286 (2nd Cir. 1990)). The relevance of the factors varies by case, and the court may weigh the factors according to the facts of the case.

22. As a threshold matter, the interests of judicial economy and expeditious and economical resolution of litigation are met by lifting the stay. The Pending Litigation commenced on April 3, 2024 and involves Debtors OTB Acquisitions, LLC, and OTB Holding LLC and three (3) additional defendants all of whom are in Texas or under the jurisdiction of Texas. Significant time and resources have been expended in the Pending Litigation by Plaintiff and Defendants alike in the form of pleadings, discovery, depositions, and expert witnesses. Moreover, the Pending Litigation is scheduled for trial on November 3, 2025.

23. Lifting the stay will not result in great prejudice to the Debtors OTB Acquisitions, LLC, and OTB Holding LLC. Allowing the Pending Litigation to move forward and come to a conclusion will liquidate the amount, if any, of Movants' claim in this bankruptcy case.
24. By liquidating their claim, Movants and the defendants OTB Acquisitions, LLC, and OTB Holding LLC in the Pending Litigation can determine their relative rights against each other and any available insurance proceeds.
25. Lifting the Stay will not cause interference with the administration of the Bankruptcy Case. It would only assist the administration of the Bankruptcy Case by liquidating Movants' claim.
26. Movants have a strong case in the Pending Litigation and a high probability of success of the merits as there is clear evidence of dram shop violations, vicarious liability, negligence, negligence per se, survival damages, wrongful death damages, bystander claim damages, and personal injury damages.
27. Failing to lift the automatic stay prejudices Movants as the Pending Litigation cannot be resolved without the participation of the Debtors OTB Acquisitions, LLC, and OTB Holding LLC, who have information that is necessary and relevant not only to the counts directed to them but also to the counts directed to other defendants. See Exhibit A ¶¶ 16 – 25.
28. Failing to lift the automatic stay is a greater hardship to Movants than to Debtors OTB Acquisitions, LLC, and OTB Holding LLC as Movants cannot resolve the Pending Litigation without the testimony of OTB Acquisitions, LLC, and OTB Holding LLC.

29. Movants will not collect any judgment obtained against Debtor and merely seek to liquidate their claim and pursue the Pending Litigation against the other non-debtor parties and any available insurance proceeds.
30. Relief from the automatic stay is provided pursuant to 11 USC 362(d)(l) where cause can be shown.
31. Movants waive the requirements of 11 USC § 362(e) which would otherwise require a hearing on said Motion within thirty (30) days. Movants waive such provisions and consent to the automatic stay remaining in effect with respect to Movants until such time as the Court orders otherwise.

WHEREFORE, Movants pray that:

- A. The Court enter an Order lifting the automatic stay and authorizing Movants, and any other parties to the Pending Litigation, to proceed with any and all discovery and trial methods to ascertain, preserve and produce at trial any applicable evidence, including, but not limited to, the testimony of Debtors OTB Acquisitions, LLC, and OTB Holding LLC, determine liability, liquidate their claims and to proceed against third parties and insurance policies and proceeds in the Pending Litigation.
- B. In addition to lifting the stay for the general relief requested above, the Movants request relief for the following specific purposes:

- a. To proceed in the Pending Litigation to determine whether any insurance proceeds exist that would benefit Movants. To the extent any such policies are discovered, Movants seek to recover against such policies and proceeds.
- b. To utilize any and all discovery and trial methods to obtain, preserve and produce at trial any applicable evidence, including, but not limited to, the testimony of the Debtor.
- c. To proceed with the trial as currently scheduled or as rescheduled or continued.
- C. The Court enter an Order confirming that the automatic stay entered in the present case does not prevent Movants from proceeding in the Pending Litigation against any other potentially liable party, including, but not limited to, the named defendants.
- D. The right to a hearing within 30 days be waived.
- E. The Court award such other and further relief as it deems just and reasonable.

Dated the 28th day of April 2025.

s/ Ian M. Falcone  
Ian M. Falcone  
Attorney for Movants  
GA BAR NO. 254470

THE FALCONE LAW FIRM PC  
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Marietta, GA 30060  
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**UNITED STATES BANKRUPTCY COURT  
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OTB HOLDING LLC, et al,	:	CASE NO. 25-52415-SMS
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KRISTINA FERRELL, Individually	:	
and as Representative of the Estate of	:	CONTESTED MATTER
JOHNATHON FERRELL, and J.D. FERRELL	:	
Movant	:	
v.	:	
OTB HOLDING LLC, et al	:	
Respondent(s).	:	
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CERTIFICATE OF SERVICE

This to certify that I have on this day served all parties in this matter with a copy of the foregoing **“MOTION FOR RELIEF FROM AUTOMATIC STAY TO DETERMINE LIABILITY, LIQUIDATE CLAIMS AND PROCEED AGAINST THIRD PARTIES AND PURSUE INSURANCE POLICIES AND PROCEEDS”** using the Bankruptcy Court’s Electronic Case Filing program, which sends a notice and an accompanying link to this document to the parties who are registered to receive service via the CM/ECF system and to the following creditors via US Mail pre-paid postage at the addresses below as follows:

<u>PERSON SERVED</u>	<u>REPRESENTING</u>
<b>Thomas D. Berghman</b> 500 N. Akard St., Ste 4000 Dallas, TX 75201	<b>TSCA-250, LP</b>
<b>Lyn Dodson</b> Cozen O'Connor Suite 400 1230 Peachtree Street NE Atlanta, GA 30309	<b>U.S. Foods, Inc.</b>
<b>Niclas A. Ferland</b> Barclay Damon, LLP 9th Floor 545 Long Wharf Drive New Haven, CT 06511	<b>Westland Garden State Plaza, L.P.</b>

<b>Robert L LeHane</b> Kelley Drye & Warren LLP 3 World Trade Center 175 Greenwich Street New York, NY 10007	<b>Kite Realty Group</b> <b>Realty Income Corporation</b> <b>Regency Centers, L.P.</b>
<b>Jonathan S. Petree</b> Munsch Hardt Kopf & Harr, P.C. 500 N. Akard St., Ste. 4000 Dallas, TX 75201	<b>TSCA-250, LP</b>
<b>Craig M. Regens</b> Crowe & Dunlevy Braniff Building, Suite 100 324 N. Robinson Ave Oklahoma City, OK 73102-8273	<b>JAHCO Oklahoma Properties I, LLC</b>
<b>Laurel D. Roglen</b> Ballard Spahr LLP 919 N. Market Street, 11th Floor Wilmington, DE 19801	<b>ARC NCCHRNC001, LLC</b> <b>ARC SWWMGPA001, LLC</b> <b>Acadia Realty Trust</b> <b>Beltline/Airport Freeway, Ltd.</b> <b>RD Management LLC</b> <b>Rivertown Crossings Mall, LLC</b> <b>Willow Bend Market, Ltd.</b>
<b>Steven Yachik</b> Kelly Drye & Warren LLP 3 World Trade Center 175 Greenwich Street New York, NY 10007	<b>Kite Realty Group</b> <b>Realty Income Corporation</b> <b>Regency Centers, L.P.</b>
<b>Nahal Zarnighian</b> Ballard Spahr LLP Suite 1400 2029 Century Park East Los Angeles, CA 90067-2915	<b>ARC NCCHRNC001, LLC</b> <b>ARC SWWMGPA001, LLC</b> <b>Acadia Realty Trust</b> <b>Beltline/Airport Freeway, Ltd.</b> <b>RD Management LLC</b> <b>Rivertown Crossings Mall, LLC</b> <b>Willow Bend Market, Ltd.</b>

This 28<sup>th</sup> day of April 2025.

/s/ Ian M. Falcone

Ian M. Falcone  
Attorney for the Movants  
Georgia Bar No. 254470

THE FALCONE LAW FIRM, P.C.  
363 Lawrence Street  
Marietta, Georgia 30060  
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[imf@falconefirm.com](mailto:imf@falconefirm.com)

EXHIBIT A  
Plaintiff's Original Petition

CAUSE NO. DC-24-05031

<b>KRISTINA FERRELL, Individually</b>	§	<b>IN THE DISTRICT COURT</b>
<b>and as a Representative of the Estate of</b>	§	
<b>JOHNATHON FERRELL, and J.D.</b>	§	
<b>FERRELL,</b>	§	
<b>Plaintiffs,</b>	§	
	§	
<b>vs.</b>	§	
	§	
<b>OTB ACQUISITION, LLC D/B/A ON</b>	§	<b>DALLAS COUNTY, TEXAS</b>
<b>THE BORDER MEXICAN GRILL,</b>	§	
<b>OTB HOLDING LLC, MADISON</b>	§	
<b>LEARN, HUNTER HENDERSON and</b>	§	
<b>PATRICK GRADY</b>	§	
<b>Defendants</b>	§	<b>298th</b>
	§	<b>_____ JUDICIAL DISTRICT</b>

**PLAINTIFFS’ ORIGINAL PETITION**

Plaintiffs KRISTINA FERRELL, individually, and on behalf of the Estate of JOHNATHON FERRELL and J.D. FERRELL file this Original Petition, complaining of Defendants OTB ACQUISITION, LLC D/B/A ON THE BORDER MEXICAN GRILL, OTB HOLDING LLC, MADISON LEARN, HUNTER HENDERSON (collectively referred to herein as “OTB Defendants”), and PATRICK GRADY and for cause of action, state the following:

**DISCOVERY CONTROL PLAN**

1. Pursuant to Rules 190.1 and 190.3 of the Texas Rules of Civil Procedure, Plaintiffs state that discovery in this cause is intended to be conducted under **Level 3**.

**JURY DEMAND**

2. Pursuant to Rules 216 and 217 of the Texas Rules of Civil Procedure, Plaintiffs request a jury trial of this matter. Accordingly, Plaintiffs tendered the proper jury fee with the filing of Plaintiffs’ Original Petition.



**RULE 47 STATEMENT OF MONETARY RELIEF SOUGHT**

3. Plaintiffs prefer to have the jury determine the fair amount of compensation for Plaintiffs' damages, and Plaintiffs place the decision regarding the amount of compensation to be awarded in the jury's hands. Rule 47 of the Texas Rule of Civil Procedure, however, *requires* Plaintiffs to provide a statement regarding the amount of monetary relief sought. Accordingly, Plaintiffs state that monetary relief of over \$1,000,000.00 in amount to be determined by the jury, is being sought.

**REQUIRED INITIAL DISCLOSURES DUE 30 DAYS AFTER ANSWER**

4. Please be advised that amended Texas Rule of Civil Procedure 194 now requires each Defendant automatically to serve required initial disclosures upon Plaintiffs within thirty days of filing an answer to this Petition, without any discovery request being served by Plaintiffs. Rule 194 now requires the following to be disclosed in each party's required initial disclosures:
- (1) the correct names of the parties to the lawsuit;
  - (2) the name, address, and telephone number of any potential parties;
  - (3) the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial);
  - (4) the amount and any method of calculating economic damages;
  - (5) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;
  - (6) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the responding party has in its possession, custody, or control, and may use to support its claims or defenses, unless the use would be solely for impeachment.

- (7) any indemnity and insuring agreements described in rule 192.3(f);
- (8) any settlement agreements described in Rule 192.3(g);
- (9) any witness statements described in Rule 192.3(h);
- (10) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records or bills;
- (11) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party; and
- (12) the name, address, and telephone number of any person who may be designated as a responsible third party.

#### **REQUEST FOR DEPOSITIONS**

5. Plaintiffs request dates from Defendants for the depositions of: 1) Defendants' agent and/or employee with the most knowledge concerning Defendants' policies and procedures for sale or service of alcohol to customers and patrons, 2) Defendants' agent and/or employee with the most knowledge concerning Defendants' sale or service of any alcohol to Grady, on or about the date(s) of the incident made the basis of this suit, 3) Hunter Henderson, 4) Madison Learn, 5) Patrick Grady, 6) any and all employees or agents of Defendants who sold or served any alcohol to Grady, on about the date(s) of the incident made the basis of this suit, 7) Defendants' highest ranking manager on duty at the 219-0219- West McKinney On the Border location, on or about the date(s) of the incident made the basis of this suit, when any alcohol was sold to Grady by any agent of employee of Defendants, and 8) the manager of the 219-0219- West McKinney on the Border location, on or about the date(s) of the incident made the basis of this suit.

**PARTIES**

6. Plaintiff KRISTINA FERRELL is the widow of Johnathon Ferrell and resides in Collin County, in the State of Texas. She files this suit, individually, and on behalf of the Estate of Johnathon Ferrell. The last three digits of Kristina Ferrell's Texas Driver's License Number are 995, the last three digits of her social security number are 958.
7. Plaintiff J.D. FERRELL is the father of Johnathon Ferrell and resides in Delta County, Texas. He files this suit individually. The last three digits of J.D. Ferrell's Driver's License Number are 526, the last three digits of his social security number are 766.
8. Defendant OTB ACQUISITIONS, LLC d/b/a On the Border Mexican Grill is a Delaware Limited Liability Company, doing Business in Collin County, in the State of Texas with its principal office located in Dallas County. It may be served with process by serving its registered agent(s):

Karl F. Jaeger  
2201 West Royal Ln, Ste. 240  
Irving, Tx 75063

Ward R. Whitworth  
2201 West Royal Ln, Ste. 240  
Irving, Tx 75063

Michael A. Klump  
2201 West Royal Ln, Ste. 240  
Irving, Tx 75063

Darin Harper  
2201 West Royal Ln, Ste. 240  
Irving, Tx 75063

9. Defendant OTB HOLDING LLC, is a Delaware Limited Liability Company, doing business in the State of Texas with its principal office located in Dallas County. It may be served with process by serving its registered(s):

Karl F. Jaeger  
2201 West Royal Ln, Ste. 240  
Irving, Tx 75063

Ward R. Whitworth  
2201 West Royal Ln, Ste. 240  
Irving, Tx 75063

Michael A. Klump  
2201 West Royal Ln, Ste. 240  
Irving, Tx 75063

Darin Harper  
2201 West Royal Ln, Ste. 240  
Irving, Tx 75063

10. Defendant MADISON LEARN is an individual residing in the State of Texas in Collin County. She may be served with process at her place of residence, 12592 Belmeade Dr, Frisco, Texas 75035, or wherever she may be found.
11. Defendant HUNTER HENDERSON, is an individual residing in the State of Texas in Collin County. He may be served with process at his place of residence, 13260 Barbarosa Dr. Frisco, Texas 75035, or wherever he may be found.
12. Defendant PATRICK GRADY, is an individual residing in the State of Texas in Grayson County. He may be served with process at his place of residence 211 E Canyon Grove Rd, Apt 422, Knollwood, Texas 75092, or wherever he may be found.

#### **VENUE AND JURISDICTION**

13. Venue is proper in this Court by virtue of sections 15.001 et. seq. of the Texas Civil Practice

& Remedies Code because the cause of action which is the basis of this case arose in whole or in part in this county, and/or one or more Defendants' residence or principal office is in this county. This Court has jurisdiction because Plaintiffs' damages are within the jurisdictional limits of this Court.

### **FACTS**

14. Plaintiffs' claims arise out of a horrific motor vehicle crash following the OTB Defendants sale, service or provision of alcohol to Defendant Patrick Grady on or about July 28, 2022, when Defendant Grady was obviously intoxicated to the extent he presented a clear danger to himself and others.
15. Defendant Grady departed Defendant On the Border's establishment in an obviously intoxicated state and began traveling east bound on University Dr. At the same time, Johnathon Ferrell and Kristina Ferrell were stopped at a red light at the intersection of Stonebridge Road and University Dr, pointed north bound. Defendant Grady veered right off of University Dr., then traveled over the center median of Stonebridge Rd, striking the Ferrells' vehicle. Mr. Ferrell sustained catastrophic, serious, life-threatening injuries which ultimately resulted in his death. Prior to his death, Mr. Ferrell experienced extreme mental anguish and physical suffering.
16. OTB Defendants are licensed providers of alcoholic beverages in the State of Texas. On or about July 28, 2022, OTB Defendants and their agents sold, served, or provided alcoholic beverages to Defendant Grady, even though it was, or should have been apparent to OTB Defendants that Defendant Grady was intoxicated to the extent that he presented a clear danger to himself and to others. As a result, Defendant Grady became intoxicated

greatly beyond the legal limit of intoxication in the State of Texas, and he was involved in a foreseeable, horrific motor vehicle crash after leaving OTB Defendants' establishment.

17. OTB Defendants' actions and inactions proximately caused Defendant Grady's intoxication, and proximately caused Plaintiffs' injuries and damages.

**CAUSES OF ACTION- OTB ACQUISITIONS, LLC D/B/A ON THE BORDER  
MEXICAN GRILL and OTB HOLDING LLC:**

**Dram Shop Act**

18. Plaintiffs bring suit against Defendant OTB Acquisitions, LLC, and OTB Holding LLC pursuant to Section 2.02(b) of the Texas Alcoholic Beverage Code. OTB Acquisitions, LLC and its employees were "providers," as defined by Section 2.01(1) of the Texas Alcoholic Beverage Code. OTB Acquisitions, LLC and its employees sold, served, or provided alcoholic beverages to Patrick Anthony Grady, an adult recipient. At the time the provision occurred, it was apparent to OTB Acquisitions, LLC and its employees that Patrick Grady was obviously intoxicated to the extent that he presented a clear danger to himself and others. The intoxication of Patrick Grady was a proximate cause of the incident made the basis of this case and Plaintiffs' injuries.

**Vicarious Liability**

19. The individuals that provided alcohol to Patrick Grady when he was obviously intoxicated to the extent that he presented a clear danger to himself and to others were acting within the course and scope of their employment with OTB Acquisitions and OTB Holding LLC. These individuals include, but are not limited to, the managers, assistant managers, bar managers, floor managers, bartenders, bar-backs, waiters, and waitresses. Because said employees were acting within the course and scope of their employment with OTB

Acquisitions, LLC and OTB Holding LLC, Defendants are vicariously liable for their actions and omissions under the common law or provisions of the Dram Shop Act.

**CAUSE OF ACTION – HUNTER HENDERSON**  
**DRAM SHOP**

20. Plaintiffs bring suit against Defendant Hunter Henderson pursuant to Section 2.02(b) of the Texas Alcoholic Beverage Code. Hunter Henderson was a “provider,” as defined by Section 2.01(1) of the Texas Alcoholic Beverage Code. On the Border Defendants and its employees, including but not limited to Hunter Henderson, sold, served, or provided alcoholic beverages to Patrick Grady, an adult recipient.
21. At the time the provision occurred, it was apparent to On the Border Defendants, Hunter Henderson, and its employees that Patrick Grady was obviously intoxicated to the extent that he presented a clear danger to himself and others.
22. The intoxication of Patrick Grady was a proximate cause of the incident made the basis of this case and Plaintiffs’ injuries.

**CAUSE OF ACTION – MADISON LEARN**  
**DRAM SHOP**

23. Plaintiffs bring suit against Defendant Madison Learn pursuant to Section 2.02(b) of the Texas Alcoholic Beverage Code. Madison Learn was a “provider,” as defined by Section 2.01(1) of the Texas Alcoholic Beverage Code. On the Border Defendants and its employees, including but not limited to Madison Learn, sold, served, or provided alcoholic beverages to Patrick Grady, an adult recipient.
24. At the time the provision occurred, it was apparent to On the Border Defendants, Madison Learn, and its employees that Patrick Grady was obviously intoxicated to the extent that he presented a clear danger to himself and others.

25. The intoxication of Patrick Grady was a proximate cause of the incident made the basis of this case and Plaintiffs' injuries.

**CAUSE OF ACTION – PATRICK GRADY**  
**NEGLIGENCE**

26. At all times relevant to this incident, Defendant Grady had a duty to act as a reasonable and prudent driver would have acted under the same or similar circumstances. He breached this duty by, among other acts and/or omission:

- a. Failing to keep a proper lookout;
- b. Failing to maintain control of his vehicle;
- c. Failing to operate his vehicle at a safe speed;
- d. Failing to take proper evasive action;
- e. Failing to adjust his driving appropriately to the conditions he was facing;
- f. Failing to timely apply his brakes;
- g. Failing to take appropriate evasive action;
- h. Failing to obey the traffic control signal;
- i. Driving while under the influence of alcohol;
- j. Driving inattentively;
- l. Violating local and state traffic laws and ordinances; and
- m. Other acts of negligence.

**NEGLIGENCE PER SE**

27. Defendant Grady's conduct amounts to violations of governmental regulations and/or statutes, specifically, Texas Penal Code § 49.04 and constitutes negligence per se. Plaintiffs are members of the class of persons said regulations and/or statutes were intended to protect.



**PERSONAL INJURIES AND DAMAGES**  
**SURVIVAL DAMAGES FOR JOHNATHON FERRELL**

28. As a result of Defendants' actions, Johnathon Ferrell, deceased, sustained severe personal injuries, mental anguish and physical pain prior to his death. His estate is entitled to recover for his damages, including but not limited to, damages for mental anguish, physical injuries, pain, and necessary funeral bills and expenses, for which damages are sought under the Texas Survival Statute, codified in Chapter 71 of the Texas Civil Practice & Remedies Code.

**WRONGFUL DEATH DAMAGES FOR PLAINTIFFS KRISTINA FERRELL AND**  
**ESTATE OF JOHNATHON FERRELL**

29. As a result of Defendants' actions and the death of Johnathon Ferrell, Plaintiff Kristina Ferrell has suffered damages in the past, and will suffer damages in the future, including but not limited to, mental anguish, loss of consortium, grief, bereavement, loss of future financial contributions, loss of services, loss of advice, care and counsel, loss of society and companionship, and medical, funeral and burial expenses, for which damages are sought under the Texas Wrongful Death Act, codified in Chapter 71 of the Texas Civil Practice & Remedies Code. Plaintiffs also brings this action as heirs and for the benefit of all beneficiaries of the Estate of Johnathon Ferrell, deceased, pursuant to Section 71.021 of the Texas Civil Practice and Remedies Code, along with all other damages they may claim at common law.
30. Plaintiff will continue to suffer from these injuries for the rest of Plaintiff's life, and Plaintiff seeks compensation for such future damages.
31. As a result of Defendants' actions, Plaintiff suffered severe economic, and mental injuries. Consequently, Plaintiff seeks the following damages:

1. Past and future pecuniary loss;
  2. Past and future love, affection, solace, comfort, companionship, society, emotional support, and happiness by virtue of the destruction of the spousal relationship; and
  3. Past and future mental anguish grief and sorrow.
32. In all reasonable probability, Plaintiff will continue to suffer from these injuries for the rest of Plaintiffs' life, and Plaintiffs seeks compensation for such future damages.

**BYSTANDER CLAIM DAMAGES-KRISTINA FERRELL**

33. Plaintiff Kristina Ferrell is entitled to bystander damages according to the Texas Supreme Court's opinion in *Freeman v. City of Pasadena* (Tex. 1998). Plaintiff was located at the scene of the wreck, Plaintiff was in the vehicle during the wreck, Plaintiff contemporaneously observed the wreck, Plaintiff was closely related, and Plaintiff suffered severe emotional distress from witnessing the injuries and suffering caused to her husband by the Defendants.
34. Plaintiff will continue to suffer from these injuries for the rest of Plaintiff's life and Plaintiff seeks compensation for such future damages.

**PERSONAL INJURY DAMAGES – KRISTINA FERRELL**

35. As a result of Defendants' actions Plaintiff suffered severe bodily injury, economic, and mental injuries. Consequently, Plaintiff is seeking the following damages:

1. Medical Expenses: Plaintiff have incurred bodily injuries which were caused by the incident in question. Plaintiff has incurred medical expenses in the past and will continue to incur them in the future.

2. Physical Pain: Plaintiff has endured physical pain in the past and will endure pain in

the future.

3. Mental Anguish: Plaintiff has endured mental anguish in the past and will endure mental anguish in the future.

**WRONGFUL DEATH DAMAGES – J.D. FERRELL**

36. As a result of Defendants' actions and the death of Johnathon Ferrell, Plaintiff J.D. Ferrell has suffered damages in the past, and will suffer damages in the future, including but not limited to, mental anguish, loss of consortium, grief, bereavement, loss of services, loss of advice, care and counsel, loss of society and companionship, funeral and burial expenses, for which damages are sought under the Texas Wrongful Death Act, codified in Chapter 71 of the Texas Civil Practice & Remedies Code.
37. Plaintiff will continue to suffer from these injuries for the rest of Plaintiff's life, and Plaintiff seeks compensation for such future damages.
38. As a result of Defendants' actions, Plaintiff suffered severe economic, and mental injuries. Consequently, Plaintiff seeks the following damages:
1. Past and future pecuniary loss;
  2. Past and future love, affection, solace, comfort, companionship, society, emotional support, and happiness by virtue of the destruction of the parental/child relationship; and
  3. Past and future mental anguish grief and sorrow.
39. In all reasonable probability, Plaintiff will continue to suffer from these injuries for the rest of Plaintiff's life, and Plaintiff seeks compensation for such future damages.

**CONDITIONS PRECEDENT**

40. All conditions precedent to Plaintiffs' right to recover the relief sought herein have occurred or have been performed.

**RELIEF SOUGHT**

41. Plaintiffs requests that Defendants be cited to appear and answer, and that this case be tried, after which Plaintiffs recovers:
1. Judgment against Defendants for a sum within the jurisdictional limits of this Court for the damages indicated above;
  2. Pre-judgment and post-judgment interest at the maximum amount allowed by law;
  3. Costs of suit; and
  4. Such other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

**CRAIN BROGDON, L.L.P.**

/s/ Emily S. Price

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