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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

OTB HOLDING, LLC, ET AL.,

Debtor.

Chapter 11
Case No. 25-52415-sms

AUDREY M. LARSEN, an individual; and
RYAN LARSEN, an individual,

Plaintiffs,

**MOTION FOR RELIEF FROM STAY
TO ALLOW AUDREY LARSEN TO
PROCEED WITH CIVIL LITIGATION
AGAINST QTB ACQUISITION LLC**

v.

ON THE BORDER MEXICAN GRILL AND
CANTINA, an unregistered fictitious entity
operating in Nevada; OTB ACQUISITION,
LLC, a foreign limited liability company;
QUEENRICH PARTNERS, LLC, a Nevada
limited liability company; THE
WASSERSTROM COMPANY, d/b/a
WASSERSTROM RESTAURANT SUPPLY,
an Ohio corporation; LIBBEY GLASS, LLC,
a Delaware limited liability company; DOES
Employees & Managers, I through X,
inclusive; and ROE CORPORATIONS IV
through X, inclusive,

Defendants.

COME NOW, Non-Debtor Plaintiffs AUDREY LARSEN (“**Ms. Larsen**”), and her
husband, and also Plaintiff, Ryan Larsen (hereinafter collectively “**Plaintiffs**”), by and through
their attorney of record, STEVEN T. JAFFE, ESQ., of HALL JAFFE, LLP, and hereby move
this honorable Court for relief from the U.S.C. § 362 automatic stay to: (a) liquidate Ms.
Larsen’s personal injury claims against QTB Acquisition, LLC (the “**Debtor**”) in the Eighth



Judicial District Court, Clark County, Nevada, Case No. A-21-845501-C (the “**Personal Injury Claims**”); and (b) and proceed against the Debtor’s insurance.

This Motion is made and based on the following Memorandum of Points and Authorities, the papers and pleadings on file herein, and any oral argument the Court entertains on this matter.

DATED this 3rd day of November, 2025.

HALL JAFFE, LLP

/s/ Steven T. Jaffe

By: _____

STEVEN T. JAFFE, ESQ.
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

JURISDICTION

This court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

II.

STATEMENT OF FACTS

1. On December 19, 2019, Ms. Larsen was eating at the Debtor’s place of business, On the Border Mexican Grill and Cantina located at 5630 Centennial Center Blvd., Las Vegas, Nevada 89149 (“OTB”), one of the above-captioned debtors and debtors-in-possession. On the date of the incident, Ms. Larsen ordered a drink and the glass was defective and hazardous, causing Ms. Larsen to ingest a broken shard of glass. Ms. Larsen sustained substantial injuries to internal organs, including to her liver, her stomach, and to other life-sustaining systems.

2. Plaintiffs filed suit against debtors in the Eighth Judicial District, in Clark County, Nevada, seeking damages for the injuries she sustained and caused by the debtors. A copy of Plaintiffs' Second Amended Complaint is attached hereto as **Exhibit 1**.

3. Plaintiffs now seek to lift the stay for the purpose of obtaining recovery, solely to the extent allowed within the Debtor's insurance policy.

III.

RELIEF REQUESTED

The Plaintiffs request that an order be entered lifting the automatic stay under § 362 of the Bankruptcy Code, so that Plaintiffs may move forward with liquidating their claims and proceed against the Debtor, and the Debtor's insurance.

IV.

BASIS FOR RELIEF

A. Standards for Relief From Stay

The Bankruptcy Code provides that upon request of a party in interest, the court shall grant relief from the automatic stay for "cause." Although the code does not define the term "cause", the legislative history of § 362 demonstrates that Congress contemplated such stay relief. Congress stated:

"It will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from many duties that may be handled elsewhere."¹

The Ninth Circuit also recognizes stay relief for pending litigation.²

The burden of proof for modifying an automatic stay is a shifting one.³ Initially, the creditor must establish a prima facie case that cause exists for relief under § 362(d)(1).⁴ Once the creditor has established a prima facie case, the burden shifts to the debtor to show that

¹ S.Rep. No. 989, 95th Cong., 2d Sess. (1978).

² See, e.g., In re Tucson Estates, Inc., 912 F.2d 1162, 1166 (9th Cir. 1990) ("Where a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause may exist for lifting the stay as to the state court trial. ")

³ In re Plumberex Specialty Prod., Inc., 311 B.R. 551, 557 (Bankr. C.D. Cal. 2004).

⁴ Id. at 557

1 relief from stay is unwarranted.⁵ In determining whether to grant relief from a § 362 stay, the
2 court must balance the potential prejudice to the Debtor, the bankruptcy estate, and the other
3 creditors against the hardship to the moving party if relief is not granted.⁶ There are several
4 factors which courts commonly consider when determining whether to lift a § 362 automatic
5 stay in order to permit pending litigation to continue in another forum. The holdings in *In re*
6 *Johnson* and *In re Curtis* contain lists of factors many courts routinely rely on in determining
7 whether to grant relief from a stay.⁷

8 Some of the common factors include:

- 9 i. Whether insurance coverage is available to defend the debtor, or whether defense of the
10 suit will impose a financial burden on the bankruptcy estate.⁸
- 11 ii. Whether judicial economy favors the action to proceed in the court in which it
12 commenced.⁹
- 13 iii. Whether the state court litigation has progressed to trial-readiness, with the likelihood
14 that investment of resources in trial preparation would be wasted if trial were deferred.¹⁰
- 15 iv. Whether the state court litigation involves other parties in which the Bankruptcy Court
16 lacks jurisdiction and whether full relief may be accord to all non-debtor parties without
17 the debtor's presence.¹¹
- 18 v. Whether the creditor has probability of success on the merits.
- 19 vi. Whether litigation in another forum would prejudice the interests of other creditors, the
20 creditors' committee and other interested parties.
- 21 vii. Whether the interests of the parties would be better served by the resolution of the
22 threshold bankruptcy-law issues in the Bankruptcy Court, before the court and parties

23 ⁵ *Id.*

24 ⁶ *In re Blan*, 237 B.R. 737, 739 (B.A.P. 8th Cir. 1999).

25 ⁷ (referenced in) *In re Johnson*, 115 B.R. 634, 636 (Bankr. D. Minn. 1989); *In re Curtis*, 40 B.R. 795, 799
26 (Bankr. D. Utah. 1984); *In re Santa Clara Cnty. Fair Ass'n, Inc.*, 180 B.R. 564, 566 (B.A.P. 9th Cir. 1995); *In*
re Holtkamp, 669 F.2d 505, 508-09 (7th Cir. 1982); *In re Am. W. Airlines*, 148 B.R. 920, 923 (Bankr. D.
Ariz. 1993); *In re Blan*, 237 B.R. 737, 739 (B.A.P. 8th Cir. 1999); *In re Kemble*, 776 F.2d 802, 807 (9th Cir.
1985).

27 ⁸ *In re Holtkamp*, 669 F.2d 505, 508-09 (7th Cir. 1982).

28 ⁹ *In re Santa Clara Cnty. Fair Ass'n, Inc.*, 180 B.R. 564, 566 (B.A.P. 9th Cir. 1995).

¹⁰ *In re Am. W. Airlines*, 148 B.R. 920, 923 (Bankr. D. Ariz. 1993).

¹¹ *In re Namazi*, 106 B.R. 93, 94-95 (Bankr.E.D.Va. 1989).

1 address the issue of forum where the claim against the debtor is to be fixed and
2 liquidated.

3 Not all factors will be relevant in every situation, and some may weigh more heavily on the
4 court's decision than others.

5 **B. Factors Mandating Relief**

6 Applying the relevant Curtis and Johnson factors here, this Court should lift the 362
7 automatic stay to allow the Plaintiffs to liquidate their claims, and proceed against the Debtor
8 Defendant and its insurance.

9 **i. The Debtor Defendant's insurance carrier has fully assumed the defense for**
10 **the litigation**

11 In Holtkamp, the court held that the civil action would not jeopardize the bankrupt
12 estate if the state litigation were to proceed, because the insurance company had assumed full
13 financial responsibility for defending the litigation.¹²

14 Here, Debtor Defendant's insurance company has assumed full financial responsibility
15 for defending the Personal Injury Claims. Therefore, neither the Debtor, nor its bankruptcy
16 estate, will waste any resources defending the Personal Injury Claims. Since the
17 Debtor Defendant's insurance company has assumed full responsibility for defending the
18 Personal Injury Claims, relief from the stay is warranted here.

19
20 **ii. Judicial economy favors the action proceeding in the state court in which it**
was commence.

21 Judicial economy is one of the most important factors courts assess when determining
22 whether to grant relief from a stay.¹³ The legislative history indicates that judicial economic
23 considerations are of the utmost importance in determining whether to lift a stay. Congress
24 noted that it is often more appropriate to leave the parties to their chosen forum and to relieve
25 the bankruptcy court from many duties that may be handled elsewhere.¹⁴ Moreover, the court
26

27 ¹² In re Holtkamp at 508-509.

28 ¹³ In re Santa Clara Cnty. Fair Ass'n, Inc. at 566.

¹⁴ S.Rep. No. 989, 95th Cong., 2d Sess. (1978).

1 in In re Todd Shipyards Corp. held that personal injury tort claims must be tried in a forum
2 other than the bankruptcy court.¹⁵

3 Here, it is more efficient for the state court to decide the validity and value of the
4 Plaintiffs' Personal Injury Claims. The Bankruptcy Court's time and expertise are not required
5 to hear the Personal Injury Claims. It would be a waste of the Bankruptcy Court's judicial
6 resources to attempt to estimate the value and priority of the Plaintiffs' claims. By lifting the
7 stay, the state court will more efficiently be able to determine the validity and value of the
8 Plaintiffs' Personal Injury Claims.

9 Moreover, the court in In re America West Airlines held that judicial economy favored
10 allowing a state action to proceed in state court because the plaintiff in that case was located in
11 Nevada, the debtor was present in Nevada, and the witnesses more than likely resided in
12 Nevada.¹⁶

13 Similarly here, it is efficient for the state court to determine the Plaintiffs' Personal
14 Injury Claims. The Plaintiffs filed their claims in Nevada long before the Debtor filed its
15 Chapter 11 petition. The Plaintiffs' claims are state law claims, both parties reside in Nevada,
16 the basis for the claims occurred in Nevada, the state courts are familiar with the case, the case
17 has been pending for close to four years, discovery is almost complete, and the trial date has
18 been set. Therefore, judicial economy favors allowing the Plaintiffs to pursue Personal Injury
19 Claims in state court.

20
21 **iii. There is a significant likelihood that the resources that both parties have
22 used to prepare for trial will be wasted if this case is prevented from
proceeding.**

23 The court in In re America West Airlines held that the passage of time will cause the
24 aging of evidence as well as the fading of memories concerning the facts of the dispute.¹⁷
25 Here, the parties have almost completed three years of extensive discovery and trial is
26 scheduled for September 8, 2025.

27 ¹⁵ In re Todd Shipyards Corp., 92 B.R. 600, 604 (Bankr. D.N.J. 1988).

28 ¹⁶ In re Am. W. Airlines at 923.

¹⁷ Id. at 923.

1 **iv. The state court litigation involves parties over which the Bankruptcy Court**
2 **lacks jurisdiction, and full relief will not be afforded to the debtor**
3 **parties if the Debtor is not present.**

4 The court in In re Namazi held that relief from stay is appropriate if the debtor is so
5 intertwined with the factual issues in the civil litigation, that severing the debtor from the
6 proceeding would overly handicap the movant's ability to develop her case.¹⁸

7 Here, the Bankruptcy Court does not have jurisdiction over the Plaintiffs nor Debtor
8 Defendant. However, removing the Debtor from the Plaintiffs' Personal Injury Claims would
9 severely handicap the Plaintiffs because the Debtor is the focal point of the Plaintiffs' Personal
10 Injury Claims. The Debtor is the critical connection that will allow the Plaintiffs to receive
11 relief from the Debtor Defendant. The Plaintiffs are seeking relief for the years of extreme
12 pain and enormous medical bills from which Ms. Larsen has suffered due in large part to the
13 Debtor's negligence. The Debtor's presence in the Plaintiffs' case is necessary in order for the
14 Plaintiffs to prove the Defendant's liability. If the stay is not lifted, this Court will effectively
15 be barring the Plaintiffs from seeking relief from the Debtor Defendant and its insurance. The
16 Plaintiffs should not be denied the opportunity to collect against the Debtor Defendant nor its
17 insurance for the injuries Ms. Larsen sustained due to the Defendants' negligence.

18 **v. The Plaintiff has a high probability of success on the merits of her Personal**
19 **Injury Claims.**

20 It is undisputed that the Plaintiffs were a negligent free patron who the Debtor injured
21 when it served Ms. Larsen alcohol in a broken glass, which breaks it hid with salt on the rim,
22 making Ms. Larsen an unsuspecting patron. When she placed her mouth in the rim, she
23 ingested glass shards which resulted in her sustaining numerous cuts, as well as a growth on
24 her liver from the infection. It further resulted in Ms. Larsen undergoing a gastrectomy, for
25 the complete removal of her stomach.

26 ¹⁸ In re Namazi at 94-95; *see also*, In re Fiedler, 34 B.R. 602, 604 (Bankr. D. Colo. 1983) ("Where the pending
27 state court litigation involves numerous other parties over which this Court's jurisdiction is questionable,
28 where full relief may not be accorded without the presence of all the parties, and where the state court
proceedings have progressed to the point where the parties are prepared for trial, cause for relief from the
stay exists.").

1 The Debtor is undoubtedly at fault for Ms. Larsen's injuries. Therefore, the Plaintiffs
2 have a high probability of success on the merits of Plaintiffs' Personal Injury Claims.

3 **vi. Allowing litigation over the Personal Injury Claims to proceed in state court**
4 **will not prejudice the Debtor's other creditors or other interested parties.**

5 "The automatic stay was never intended to preclude a determination of tort liability and
6 the attendant damages. It was merely intended to prevent a prejudicial dissipation of the
7 debtor's assets."¹⁹

8 Here, the Plaintiffs merely wants to establish liability for Plaintiffs' Personal Injury
9 Claims, and the attendant damages. The Debtor's assets will not be diminished in the state
10 court litigation because neither the Debtor, nor the bankruptcy estate, are financing the
11 Debtor's defense. The Debtor Defendant's insurance assumed complete responsibility for
12 defending the claims against all of the Defendants. Furthermore, the enforcement of any state
13 court judgment against the Debtor would be limited to insurance coverage and non-estate
14 assets. Therefore, allowing the Plaintiffs to proceed with Plaintiffs' Personal Injury Claims in
15 state court will not prejudice the Debtor's other creditors, because the bankruptcy estate will
16 not be diminished as a result of the state court litigation.

17 **vii. The interests of the parties would not be better served by the resolution of**
18 **the bankruptcy law issues in Bankruptcy Court prior to the state court**
addressing the Personal Injury Claims.

19 The court in In re America West Airlines held that a it was pre-mature for the
20 Bankruptcy Court to address a threshold bankruptcy-law issue prior to a Nevada state court
21 determining whether or not a claim exists, and the damages therein, if any.²⁰

22 Here, it logically follows that the Bankruptcy Court should grant the Plaintiffs relief
23 from the stay, and allow a Nevada state court to determine whether a claim exists, and the
24 damages related thereto. Depending on the outcome of the state litigation regarding the
25 Personal Injury Claims, the Bankruptcy Court may never be required to deal with the Personal
26 Injury Claims. The parties to the litigation, the bankruptcy estate, and the Bankruptcy Court
27

28 ¹⁹ In re Bock Laundry Machine Co. at 567.

²⁰ In re Am. W. Airlines at 923.

1 would all be better served if the state court was allowed to efficiently address the Personal
2 Injury Claims prior to the Bankruptcy Court deciding the bankruptcy-law issues.

3
4 **VI.**

5 **CONCLUSION**

6 Accordingly, the stay should be lifted to allow the Plaintiffs to continue pursuing the
7 Personal Injury Claims in state court. The bankruptcy estate will not be diminished because
8 the Debtor Defendant's insurance has assumed full financial responsibility for defending the
9 litigation. Neither the bankruptcy estate nor any other creditors will be prejudiced by a
10 judgment from the state court proceedings, because Plaintiff may only enforce a judgment
11 against the Debtor or the bankruptcy estate through the Chapter 11 claims process.
12 Furthermore, the parties have been litigating this case for almost four years now and a firm
13 trial date has been set; therefore, It is more efficient for the state court to decide the Personal
14 Injury Claims. Moreover, as the Bankruptcy Court's expertise is not required to resolve these
15 issues, the Bankruptcy Court's resources would be better served by allowing the civil action to
16 go forward in state court. Lastly, the Debtor Defendant has continuously delayed the litigation
17 process, and the Debtor did not file its petition until almost four years after Ms. Larsen filed
18 her initial complaint. Therefore, the Debtor should not be allowed to prevent Ms. Larsen from
19 seeking relief from the Debtor Defendant and its insurance for her growing damages.

20 ...

21 ...

22 ...

1 Based upon the foregoing, Plaintiffs respectfully request that the Court grant the
2 foregoing Motion in its entirety, and that Plaintiffs be permitted to liquidate their claims
3 against On the Border Mexican Grill and Cantina, an unregistered fictitious entity operating in
4 Nevada, and OTB Acquisition, LLC, and its insurance company.

5 DATED this 3rd day of November, 2025.

6 **HALL JAFFE, LLP**

7 */s/ Steven T. Jaffe*
8 By: _____
9 STEVEN T. JAFFE, ESQ.
10 Nevada Bar No. 007035
11 7425 Peak Drive
12 Las Vegas, Nevada 89128
13 *Attorneys for Plaintiffs Audrey M.*
14 *Larsen and Ryan Larsen*

15 **CERTIFICATE OF SERVICE**

16 I, Marianne Sylva, hereby certify under penalty of perjury that I am, and at all times
17 hereinafter mentioned, was more than 18 years of age, and that on the 3rd day of November,
18 2025, I served a copy of the **MOTION FOR RELIEF FROM STAY TO ALLOW**
19 **AUDREY LARSEN TO PROCEED WITH CIVIL LITIGATION AGAINST QTB**
20 **ACQUISITION LLC**, which was filed in this bankruptcy matter on the 23rd day of October,
21 2025, on all persons listed in the courts e-service list.

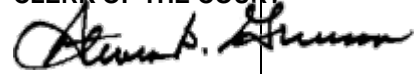
22 I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
23 AND CORRECT.

24 Dated this 3rd day of November, 2025.

25 */s/ Marianne Sylva*
26 7425 Peak Drive
27 Las Vegas, NV 89129
28 (702) 316-4111

EXHIBIT “1”

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Steven D. Grierson
CLERK OF THE COURT



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16 **DISTRICT COURT**
17 **CLARK COUNTY, NEVADA**

18 AUDREY M. LARSEN, an individual; and
19 RYAN LARSEN, an individual,

20 Plaintiffs,

21 v.

22 ON THE BORDER MEXICAN GRILL AND
23 CANTINA, an unregistered fictitious entity
24 operating in Nevada; OTB ACQUISITION,
25 LLC, a foreign limited liability company;
26 QUEENRICH PARTNERS, LLC, a Nevada
27 limited liability company; THE
28 WASSERSTROM COMPANY, d/b/a
WASSERSTROM RESTAURANT SUPPLY,
an Ohio corporation; LIBBEY GLASS, LLC,
a Delaware limited liability company; DOES
Employees & Managers, I through X,
inclusive; and ROE CORPORATIONS IV
through X, inclusive,

Defendants.

Case No.: A-21-845501-C
Dept. No.: 19

SECOND AMENDED COMPLAINT

COME NOW, Plaintiffs Audrey M. Larsen and Ryan Larsen, by and through
their attorneys of record, STEVEN T. JAFFE, ESQ., and TAYLOR R. ANDERSON, ESQ., of
the law firm HALL JAFFE & CLAYTON, LLP, and hereby files their Second Amended
Complaint against each of the Defendants, and alleges as follows:

PARTIES AND JURISDICTION

1. At times relevant herein, Plaintiffs AUDREY M. LARSEN and RYAN LARSEN were residents of Clark County, State of Nevada, and now reside in Arizona.

2. Upon information and belief, Defendant, ON THE BORDER MEXICAN GRILL AND CANTINA is the unregistered fictitious firm name for a restaurant located in Clark County, Nevada, at 5630 Centennial Center Blvd, Las Vegas, NV 89149.

3. Upon information and belief, Defendant, ON THE BORDER MEXICAN GRILL AND CANTINA is owned and operated by Defendant, OTB Acquisition, LLC, which is registered with the Nevada Secretary of State as a foreign limited liability company.

4. Upon information and belief, Defendant, QUEENRICH PARTNERS, LLC a Nevada Limited Liability Company is the Franchisee of OTB Acquisition, LLC.

5. Collectively, Defendants ON THE BORDER MEXICAN GRILL AND CANTINA, OTB ACQUISITION, LLC, QUEENRICH PARTNERS, LLC, are hereinafter collectively referred to as (“OTB”).

6. Upon information and belief, Defendant THE WASSERSTROM COMPANY, d/b/a WASSERSTROM RESTAURANT SUPPLY is an Ohio corporation.

7. Upon information and belief, Defendant LIBBEY GLASS, LLC is a Delaware limited liability company.

8. At all times pertinent herein, Defendants were agents, servants, employees or joint venturers of every other Defendant, and at all times mentioned herein were acting within the scope and course of said agency, employment, or joint venture, with knowledge and permission and consent of all other named Defendants.

9. The true names and capacities of Defendants named herein as DOES I through X, and ROE BUSINESS ENTITIES I through X, whether individual, corporate, associate, or otherwise, are presently unknown to Plaintiff, who, therefore, sues said defendants so designated herein is responsible in some manner for the events and occurrences referred to herein alleged, and Plaintiff will request leave of Court to amend this Complaint to insert the

1 true names and capacities of DOES I through X, and ROE BUSINESS ENTITIES I through
2 X, when the same have been ascertained and to join such defendants in this action. Such
3 DOES, as fictitiously pleaded, include, but are not limited to individuals who owned, operated,
4 managed, directed, were employees of OTB, or acted negligently, willfully, intentionally,
5 recklessly, vicariously, or otherwise caused, directed, allowed or set in motion the injurious
6 events set forth herein. Such DOES, as fictitiously pleaded, include, but are not limited to
7 individuals who designed, manufactured, created, assembled, distributed, brokered, leased,
8 created, failed to warn about, or otherwise sold the product set forth herein, or directly,
9 indirectly, or in some manner contributed to placing within the stream or commerce the
10 product at issue herein. Such ROES, as fictitiously pleaded, include, but are not limited to
11 entities or businesses which as relates OTB owned entirely or possessed an ownership interest
12 in such entities or businesses, operated, managed, directed, or acted negligently, willfully,
13 intentionally, recklessly, vicariously, or otherwise caused, directed, allowed or set in motion
14 the injurious events set forth herein. Such ROES, as fictitiously pleaded, include, but are not
15 limited to entities or businesses which designed, manufactured, created, assembled,
16 distributed, brokered, leased, created, failed to warn about, or otherwise sold the product set
17 forth herein, or directly, indirectly, or in some manner contributed to placing within the stream
18 or commerce the product at issue herein. Such DOES and ROES shall also include
19 independent contractors and supervisors responsible for business operations related to the
20 actions set forth herein or otherwise deemed related to the events leading up to the injurious
21 events set forth and at issue herein.

22 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

23 10. On December 19, 2019, Plaintiff AUDREY M. LARSEN (“Mrs. Larsen”) was
24 eating at the Defendants’ place of business, ON THE BORDER MEXICAN GRILL AND
25 CANTINA, located at 5630 Centennial Center Blvd, Las Vegas, NV 89149.

26 11. On the date of the incident, Mrs. Larsen ordered a drink from the Defendants.
27
28

1 12. At said time and place, DOES Defendants I through X, and ROE BUSINESS
2 ENTITIES I through X, while in the course and scope of their employment at Defendants'
3 place of business, served Mrs. Larsen a drink from a glass owned, controlled, cleaned,
4 handled, and/or maintained by the Defendants.

5 13. The glass was defective and hazardous, causing Mr. Larsen to ingest broken
6 shard of glass, which condition was hidden from her, without warning.

7 14. Upon information and belief, the subject glass was manufactured, designed,
8 fabricated, assembled, distributed, sold, or otherwise put into the stream of commerce by
9 Defendants THE WASSERSTROM COMPANY, d/b/a WASSERSTROM RESTAURANT
10 SUPPLY and/or LIBBEY GLASS, LLC.

11 15. DEFENDANTS knew or should have known that the glass was defective at the
12 time it served this drink to Mrs. Larsen.

13 16. Despite seeking prompt treatment, this incident proximately caused Mrs. Larsen
14 to sustain injuries that were severe, life-threatening, and inoperable conditions and emotional
15 distress; which require painful, permanent, ongoing, and aggressive inpatient and outpatient
16 treatment; which caused her pain, suffering, disability, lost wages, lost earning capacity, loss
17 of enjoyment of life, and loss of household services; and which will, in the future, cause her
18 pain, suffering, disability, lost wages, lost earning capacity, loss of enjoyment of life, loss of
19 household services, emotional distress, and painful, permanent, ongoing, and aggressive
20 inpatient and outpatient treatment.

21 17. Mrs. Larsen will be forced to live the remainder of her life with this life-
22 threatening condition, as well as the related pain and disfigurement, as well as the emotional
23 distress related thereto.

24 ///

27 ///

FIRST CLAIM FOR RELIEF

NEGLIGENCE
(Against All Defendants)

18. Plaintiffs re-allege and incorporate by reference the allegations contained in all the preceding paragraphs of this Complaint as though fully set forth herein.

19. Defendants, at all times mentioned herein, had a duty to maintain their restaurants, as well as any utensils, dishes, plates, glassware, foods, and beverages served therein, in a reasonably safe condition for the general public, and in a condition to prevent injury, and breached their duties as herein alleged.

20. The injuries caused to Mrs. Larsen resulting therefrom were caused solely and proximately by the negligence of Defendants and without any negligence of Plaintiffs contributing thereto.

21. The negligence of Defendants consisted in negligently and carelessly maintaining glassware commonly used by guests in an unreasonably unsafe condition, and by allowing an unsafe glass to be served to Defendants, thereby creating a hazardous condition to Mrs. Larsen and other guests.

22. Defendants had, or reasonably should have had, actual or constructive knowledge and notice of the said dangerous condition of the glass, and that Defendants in the exercise of their duty of care should have had such knowledge and notice, yet failed to warn Plaintiffs of the danger and failed to take reasonable actions to protect the Plaintiffs when they discovered the danger. Defendants' failure to warn Plaintiffs of the danger which was unknown to Plaintiffs and was not reasonably discoverable by Plaintiffs, yet was known to Defendants, was a breach of Defendants' duty to Plaintiffs.

23. As a result of Defendants' negligence described above, Mrs. Larsen sustained serious injuries.

24. Mrs. Larsen will be forced to live the remainder of her life with this life-threatening condition, physical pain and suffering, severe emotional distress, and permanent

1 disfigurement, causing damages in an amount in excess of fifteen thousand dollars
2 (\$15,000.00).

3 25. As a result of these injuries, Mrs. Larsen has been required to engage the
4 services of physicians and other persons to care and treat her, all causing her damage in a sum
5 in excess of fifteen thousand dollars (\$15,000.00), and will continue to incur future medical
6 expenses, in excess of fifteen thousand dollars (\$15,000.00)

7 26. These injuries required Plaintiffs to obtain the services of an attorney to
8 prosecute this action, and Plaintiffs are entitled to an award of attorney's fees and costs of suit
9 incurred herein.

10 **SECOND CLAIM FOR RELIEF**

11 ***NEGLIGENT HIRING/TRAINING/SUPERVISION/RETENTION***
12 **(Against OTB)**

13 27. Plaintiffs re-allege and incorporate by reference the allegations contained in all
14 the preceding paragraphs of this Complaint as though fully set forth herein.

15 28. Defendants, OTB, had a duty to exercise ordinary and reasonable care in hiring
16 and maintaining agents, servants, employees or joint venturers that were qualified and suitable
17 to perform the duties of providing food and beverage service in a reasonably safe manner and
18 to thereafter provide such employees with proper supervision and training so that the
19 employees do not cause harm to the public during the course and scope of employment.

20 29. Defendants, OTB, breached this duty by failing to adequately hire, train,
21 supervise and/or retain DOES Defendants I through X, resulting in the negligent operation of
22 the restaurant which caused the subject incident to occur.

23 30. The negligence, carelessness, and recklessness of Defendants, in their hiring,
24 training, supervising, and retention of DOES Defendants I through X, were the actual and
25 proximate cause of Plaintiffs' injuries and damages.

26 31. As a direct and proximate cause of the aforementioned negligent acts of
27 Defendants, Plaintiff has suffered general and special damages in an amount in excess of
28 fifteen thousand dollars (\$15,000.00).

32. As a further direct and proximate result of the negligence, carelessness, and recklessness of Defendants, and each of them, Plaintiffs incurred, and will incur in the future, significant medical expenses in an amount to be proven at the time of trial, and in excess of fifteen thousand dollars (\$15,000.00).

33. As a further direct and proximate result of the negligence, carelessness, and recklessness of Defendants, and each of them, Plaintiffs have suffered and continue to suffer a significant deterioration in their enjoyment of life and lifestyle, additionally, this deterioration has significantly affected Plaintiff's ability to work, resulting in past and future lost wages and diminished earning capacity in excess of fifteen thousand dollars (\$15,000.00).

34. These injuries required Plaintiffs to obtain the services of an attorney to prosecute this action, and Plaintiffs are entitled to an award of attorney's fees and costs of suit incurred herein.

THIRD CLAIM FOR RELIEF

RES IPSA LOQUITUR

(Against Defendants ON THE BORDER MEXICAN GRILL AND CANTINA; OTB ACQUISITION, LLC; and QUEENRICH PARTNERS, LLC)

35. Plaintiffs re-allege and incorporate by reference the allegations contained in all the preceding paragraphs of this Complaint as though fully set forth herein.

36. Plaintiffs allege that the facts giving rise to this case give an inference to *res ipsa loquitor*, such that Defendants were in exclusive control of the glass causing harm, and the incident herein does not ordinarily occur in the absence of negligence.

37. The condition of the glass at issue is the type of condition that ordinarily does not occur except in the absence of negligence, in this matter resulting from the conduct of OTB.

38. As a further direct and proximate result of the negligence, carelessness, and recklessness of Defendants, and each of them, Plaintiffs incurred, and will incur in the future, significant medical expenses in an amount to be proven at the time of trial, and in excess of fifteen thousand dollars (\$15,000.00).

1 39. As a further direct and proximate result of the negligence, carelessness, and
2 recklessness of Defendants, and each of them, Plaintiffs have suffered and continue to suffer a
3 significant deterioration in their enjoyment of life and lifestyle, additionally, this deterioration
4 has significantly affected Plaintiff's ability to work in her capacity as a nurse, resulting in past
5 and future lost wages and diminished earning capacity in excess of fifteen thousand dollars
6 (\$15,000.00).

7 40. These injuries required Plaintiffs to obtain the services of an attorney to
8 prosecute this action, and Plaintiffs are entitled to an award of attorney's fees and costs of suit
9 incurred herein.

10 **FOURTH CLAIM FOR RELIEF**

11 ***RESPONDEAT SUPERIOR/VICARIOUS LIABILITY***
12 **(Against OTB)**

13 41. Plaintiffs re-allege and incorporate by reference the allegations contained in all
14 the preceding paragraphs of this Complaint as though fully set forth herein.

15 42. Defendants acted negligently in their service of a drink to Mrs. Larsen
16 containing glass shards and failed to warn Plaintiffs of the dangerous conditions.

17 43. Under the theory of *Respondeat Superior*, OTB is vicariously liable for the
18 conduct of its employees and such DOES I through X, for their conduct as set forth herein.
19 PLAINTIFFS further shall seek leave of Court to substitute as DOES pleaded herein, the
20 individuals whose conduct, while in the course and scope of their employment with OTB,
21 proximately caused this incident at issue herein, which proximately caused PLAINTIFFS'
22 damages.

23 44. As a direct and proximate cause of the aforementioned negligence, carelessness,
24 and recklessness of Defendants, Plaintiff has suffered general and special damages in an
25 amount in excess of fifteen thousand dollars (\$15,000.00).

26 45. As a further direct and proximate result of the negligence, carelessness, and
27 recklessness of Defendants, and each of them, Plaintiffs incurred, and will incur in the future,
28

1 significant medical expenses in an amount to be proven at the time of trial, and in excess of
2 fifteen thousand dollars (\$15,000.00).

3 46. As a further direct and proximate result of the negligence, carelessness, and
4 recklessness of Defendants, and each of them, Plaintiffs have suffered and continue to suffer a
5 significant deterioration in their enjoyment of life and lifestyle, additionally, this deterioration
6 has significantly affected Plaintiff's ability to work in her capacity as a nurse, resulting in past
7 and future lost wages and diminished earning capacity in excess of fifteen thousand dollars
8 (\$15,000.00).

9 47. These injuries required Plaintiffs to obtain the services of an attorney to
10 prosecute this action, and Plaintiffs are entitled to an award of attorney's fees and costs of suit
11 incurred herein.

12 **FIFTH CLAIM FOR RELIEF**

13 ***STRICT PRODUCT LIABILITY***
14 **(Against All Defendants)**

15 48. Plaintiffs re-allege and incorporate by reference the allegations contained in all
16 the preceding paragraphs of this Complaint as though fully set forth herein.

17 49. Upon information and belief, Defendants THE WASSERSTROM COMPANY,
18 d/b/a WASSERSTROM RESTAURANT SUPPLY and/or LIBBEY GLASS, LLC, and DOES
19 and ROES Defendants designed, manufactured, distributed, marketed, promoted, brokered,
20 failed to warn, failed to properly warrant, breached the warranty, sold, and/or placed within the
21 stream of commerce the glass that caused the injury in this matter due to its dangerous and/or
22 defective design and conditions, which defects existed at the time they left such Defendants'
23 control (hereinafter "PRODUCT Defendants"). Plaintiff Mrs. Larsen was the end user of this
24 glass.

25 50. The glass was defective, creating a dangerous condition at the time that it was
26 put into the stream of commerce by the PRODUCT Defendants, whether said defect was
27 attributed to design, manufacturing, and/or a failure to provide adequate warning, creating an
28

1 unreasonably dangerous product. Said defect and condition also constitutes a breach of
2 warranty of merchantability and fitness for intended use.

3 51. Said dangerous and defective condition existed when the product left the
4 Defendants' possession, and the product was used in a manner which was reasonably
5 foreseeable and intended by said PRODUCT Defendants.

6 52. Said dangerous and defective condition, was the actual and proximate cause of
7 Plaintiffs' injuries.

8 53. In the event that said PRODUCT Defendants assert that the product was altered,
9 misused, abused, modified, subject to a superseding intervening act, that a failure to warn was
10 not provided, or that the incident alleged herein resulted from actions of OTB, then
11 PLAINTIFFS assert and plead that said conduct imputes against OTB that OTB was negligent,
12 breaching a duty owed to PLAINTIFFS, and the proximate cause of the injuries asserted
13 herein.

14 54. As a further direct and proximate result of the dangerous and defective
15 condition, Plaintiffs incurred, and will incur in the future, significant medical expenses in an
16 amount to be proven at the time of trial, and in excess of fifteen thousand dollars (\$15,000.00).

17 55. As a further direct and proximate result of the negligence, carelessness, and
18 recklessness of Defendants, and each of them, Plaintiffs have suffered and continue to suffer a
19 significant deterioration in their enjoyment of life and lifestyle, additionally, this deterioration
20 has significantly affected Plaintiff's ability to work, resulting in past and future lost wages and
21 diminished earning capacity in excess of fifteen thousand dollars (\$15,000.00).

22 56. These injuries required Plaintiffs to obtain the services of an attorney to
23 prosecute this action, and Plaintiffs are entitled to an award of attorney's fees and costs of suit
24 incurred herein.

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27 ///

SIXTH CLAIM FOR RELIEF

BREACH OF WARRANTY

**(Against Defendants THE WASSERSTROM COMPANY, d/b/a WASSERSTROM
RESTAURANT SUPPLY and/or LIBBEY GLASS, LLC, and DOES and ROES
Defendants)**

57. Plaintiffs re-allege and incorporate by reference the allegations contained in all the preceding paragraphs of this Complaint as though fully set forth herein.

58. Upon information and belief, (hereinafter “PRODUCT Defendants”) manufactured, distributed, sold and marketed the subject bath implements for use in the restaurant industry, and impliedly warranted that the subject glass was safe and fit for the purpose for which they were ordinarily used at OTB.

59. Plaintiffs reasonably relied upon the skill and judgment of PRODUCT Defendants as to whether the subject glass was safe and fit for its intended use at OTB.

60. PRODUCT Defendants are responsible for the design defect, maintenance, distribution, shipping, durability, or product defect that led to the glass being defective and they knew or should have known that this product was defective, and/or that the design was defective as this was not the first similar incident where a glass had broken and thus, PRODUCT defendants knew, or through the exercise of reasonable care and diligence should have known of such dangerous and hazardous conditions; PRODUCT defendants and the thereafter negligently failed to warn Plaintiffs of such conditions or to protect said Plaintiffs therefrom.

61. Contrary to the implied warranty, the glass was not safe and fit for its intended use at OTB. The subject glass was and is unreasonably dangerous and unfit for use because of the foreseeable failure(s), such as those which occurred causing injury to Plaintiffs during the subject incident.

62. Said dangerous and defective condition, was the actual and proximate cause of Plaintiffs’ injuries.

63. As a further direct and proximate result of the dangerous and defective condition, Plaintiffs incurred, and will incur in the future, significant medical expenses in an amount to be proven at the time of trial, and in excess of fifteen thousand dollars (\$15,000.00).

64. As a further direct and proximate result of the negligence, carelessness, and recklessness of Defendants, and each of them, Plaintiffs have suffered and continue to suffer a significant deterioration in their enjoyment of life and lifestyle, additionally, this deterioration has significantly affected Plaintiff's ability to work, resulting in past and future lost wages and diminished earning capacity in excess of fifteen thousand dollars (\$15,000.00).

65. These injuries required Plaintiffs to obtain the services of an attorney to prosecute this action, and Plaintiffs are entitled to an award of attorney's fees and costs of suit incurred herein.

SEVENTH CLAIM FOR RELIEF

LOSS OF CONSORTIUM **(Against All Defendants)**

66. Plaintiffs re-allege and incorporate by reference the allegations contained in all the preceding paragraphs of this Complaint as though fully set forth herein.

67. At all times mentioned herein, Plaintiff RYAN LARSEN was and is the lawful husband of Plaintiff AUDREY LARSEN.

68. Mrs. Larsen no longer works at the same capacity, due to the mental stress and fatigue, reducing her ability for advancement; and, Mrs. Larsen no longer has the strength and endurance to care for her family, clean the home or care for the yard. PLAINTIFFS now need to bring in services for all or some of those purposes.

69. As a direct and proximate result of the actions and omissions of Defendants, Plaintiff, Ryan Larsen has suffered the loss of the service, companionship, society, and consortium of his wife, Audrey Larsen, all to his damages in a sum in excess of fifteen thousand dollars (\$15,000.00).

70. Due to AUDREY LARSEN'S injuries, RYAN LARSEN has been required to perform the services, obligations, and/or chores in which AUDREY LARSEN previously

engaged, in addition to the loss of consortium of his wife, all to his damages in a sum in excess of fifteen thousand dollars (\$15,000.00)

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment of this Court as follows:

1. For general damages of past and future pain and suffering, emotional distress, loss of consortium, and household services in a sum in excess of fifteen thousand dollars (\$15,000.00) and according to proof;
2. For special damages for medical care and treatment, and for future medical care and treatment and incidental expenses therefor, in a sum in excess of Fifteen Thousand Dollars (\$15,000.00) and according to proof;
3. Cost of suit and attorney's fees as provided by law;
4. Interest as provided by law; and
5. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

DATED this 18th day of July, 2022.

HALL JAFFE & CLAYTON, LLP

By: /s/ Taylor R. Anderson, Esq.
STEVEN T. JAFFE, ESQ.
Nevada Bar No. 7035
TAYLOR R. ANDERSON, ESQ.
Nevada Bar No. 15136C
7425 Peak Drive
Las Vegas, Nevada 89128
*Attorneys for Plaintiffs Audrey M.
Larsen and Ryan Larsen*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of **HALL JAFFE & CLAYTON, LLP**, and on this 18th day of July, 2022, I served a copy of the foregoing **SECOND AMENDED COMPLAINT**, as follows:

☐ **U.S. MAIL** — By depositing a true copy thereof in the U.S. Mail, first class postage prepaid and addressed as listed below; and/or

☐ **FACSIMILE** — By facsimile transmission to the facsimile number(s) shown below; and/or

☐ **HAND DELIVERY** — By hand-delivery to the addresses listed below; and/or

☒ **ELECTRONIC SERVICE** — Pursuant to the Court's e-filing system.

Joel D. Odou, Esq.
L. Renee Green, Esq.
WOOD, SMITH, HENNING & BERMAN, LLP
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Las Vegas, NV 89128
Attorneys for Defendants

/s/ Marianne Sylva
An Employee of
HALL JAFFE & CLAYTON, LLP