

**MATTHEWS, CARLTON, STEIN,
SHIELS, PEARCE, DUNN & KNOTT, L.L.P.**

**CROSSPOINT ATRIUM
8131 LBJ FREEWAY, SUITE 700
DALLAS, TEXAS 75251**

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(972) 234-1750 FAX**

NO. OF PAGES: 17 (INCLUDING THIS COVER PAGE)

FAX TO NO. 972/450-2837

**TO: JOHN BAUMGARDNER, P.E.
DIRECTOR OF PUBLIC WORKS**

FROM: PAUL K. PEARCE, JR.

SPECIAL MESSAGE:

**PERSON TO CONTACT IF THERE ARE QUESTIONS
REGARDING THIS TRANSMISSION: Karrie Beasley**

TELEPHONE NO. (972) 234-3400

OUR FILE NO. 1730/54462

DATE: January 18, 1999

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U.S. POSTAL SERVICE.**

**MATTHEWS, CARLTON, STEIN,
SHIELS, PEARCE, DUNN & KNOTT, L.L.P.**

ATTORNEYS AND COUNSELORS

JERRY L. CARLTON
GREGORY M. CLIFT
ROBERT J. DAVIS
ROGGE DUNN
ROBERT L. EDEN
JENNIFER L. GABEL
DANIEL A. KNOTT
DEMIAN S. LARSON

8131 LBJ FREEWAY, SUITE 700
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TOM D. MATTHEWS (1910-1988)
TOM D. MATTHEWS, JR.
ASHLEY B. McCLAIN
D. RAY MURPHY
PAUL K. PEARCE, JR.
THOMAS A. SHIELS
KENNETH R. STEIN

January 18, 1999

VIA FACSIMILE # 972/450-2837

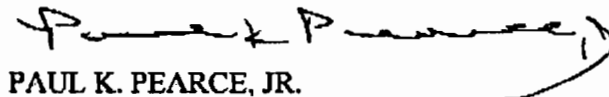
Mr. John Baumgardner, P.E.
Director of Public Works
P.O. Box 9010
16801 Westgrove Drive
Addison, Texas 75001-9010

**Re: Cause No. 98-9944-E; Paul Dorsey and Angelic Verkaik vs. Broadway Grill, Inc.,
d/b/a Broadway Grill, Tony S. Augustus, and the Town of Addison
TML Claim No. 9900052677
Our File No. 1730/54462**

Dear Mr. Baumgardner:

Per our telephone conversation, please review the attached. After your review, please contact me as promptly as possible since our responses need to be filed today.

Sincerely,


PAUL K. PEARCE, JR.

PKP/klb

T:\233\1\1730\54462\LTR\BAUMGARD.1

CAUSE NO. 98-9944-E

**PAUL DORSEY and
ANGELIC VERKAIK**

vs.

**BROADWAY GRILL, INC.,
d/b/a BROADWAY GRILL,
TONY S. AUGUSTUS, and
THE TOWN OF ADDISON**

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IN THE COUNTY COURT

AT LAW NO. 5

DALLAS COUNTY, TEXAS

**DEFENDANT THE TOWN OF ADDISON'S OBJECTIONS AND RESPONSES TO
PAUL DORSEY'S FIRST SET OF INTERROGATORIES**

TO: **Paul Dorsey**, by and through his attorney of record, John B. Schorsch, Jr.,
MASTROGIOVANNI, SCHORSCH, MERSKY & ZAGAR, P.C., 2323 Bryan Street, Suite 2350,
Dallas, Texas, 75201.

COMES NOW, **The Town of Addison**, Defendant in the above-styled and numbered cause,
pursuant to Rule 168 of the Tex.R.Civ.P., and makes the following Objections and Responses to
Paul Dorsey's First Set of Interrogatories.

Respectfully submitted,

By:

PAUL K. PEARCE, JR.
State Bar No. 15683600
**MATTHEWS, CARLTON, STEIN,
SHIELS, PEARCE, DUNN & KNOTT, L.L.P.**
8131 LBJ Freeway, Suite 700
Dallas, Texas 75251
972/234-3400 (office)
972/234-1750 (telecopier)

**ATTORNEY FOR DEFENDANT
THE TOWN OF ADDISON**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been served upon all counsel of record, in accordance with the Texas Rules of Civil Procedure, on this the ____ day of _____, 1999.

PAUL K. PEARCE, JR.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify the person responding to these Interrogatories on behalf of Defendant.

RESPONSE:

This Defendant objects to Interrogatory No. 1 to the extent that it seeks disclosure of the residential address and phone number of the individuals responding to these Interrogatories. This Defendant would show that such information is irrelevant to any issue in this case and is not reasonably calculated to lead to the discovery of admissible evidence. Further, this Defendant objects to providing such information for the reason that it unduly invades the privacy interests of the individuals. Alternatively, this Defendant moves for a Protective Order pursuant Rule 166b(5) of the Texas Rules of Civil Procedure. Subject to the foregoing and without waiving same.

Carmen Moran
Director of Development Services
Town Hall
5300 Beltline Road
Addison, Texas
(972) 450-7018

John Baumgardner, P.E.
Director of Public Works
P.O. Box 9010
16801 Westgrove Drive
Addison, Texas 75001-9010
(972) 450-2886

Captain Ronald C. Davis
Town of Addison Police Department
4799 Airport Parkway
Addison, Texas
(972) 450-7100

INTERROGATORY NO. 2:

Identify every document reviewed by you in responding to these Interrogatories.

RESPONSE:

This Defendant objects to Interrogatory No. 2 to the extent that it is vague, overly broad, unduly burdensome and seeks production of information exempted from discovery by virtue of Texas Rules of Civil Procedure 166b(3)(a)(b)(c)(d), as well as the attorney/client privilege. Subject to the foregoing and without waiving same, see the documents attached hereto as Exhibits, as well as those produced in response to this Plaintiff's Request for Production.

INTERROGATORY NO. 3:

Identify each person who is believed by Defendant to possess knowledge of any facts relevant to any claim or defense being asserted by any party to this litigation and describe or summarize the relevant facts of which each such individual is believed to be knowledgeable.

RESPONSE:

This Defendant objects to Interrogatory No. 3 to the extent that it seeks disclosure of the residential address and phone number of its employees. This Defendant would show that such information is irrelevant to any issue in this case and is not reasonably calculated to lead to the discovery of admissible evidence. Further, this Defendant objects to providing such information for the reason that it unduly invades the privacy interests of the individuals. Alternatively, this Defendant moves for a Protective Order pursuant Rule 166b(5) of the Texas Rules of Civil Procedure. This Defendant further objects to this Interrogatory to the extent that is vague, overly broad, unduly burdensome and seeks disclosure of information exempted from discovery by virtue of Texas Rules of Civil Procedure 166b(3)(a)(b)(c)(d), as well as the attorney/client privilege. Subject to the foregoing and without waiving same.

- | | |
|--|--|
| 1. Stephen Becnel
18250 Marsh Lane #1303
Dallas, Texas 75287 | 18250 Marsh Lane #1305
Dallas, Texas 75287 |
| 2. Pamela Hallisey
(witness to accident)
18081 Midway Rd. #225
Dallas, Texas 75287 | 5. Donald Allison Tittle
2821 Carlisle #204
Dallas, TX 75204 |
| 3. Rob Norman Neville
(witness to accident)
3817 Portsmouth Circle
Plano, Texas 75023 | 6. Attorneys that Donald Allison Tittle
allegedly contacted: |
| 4. Thomas D. Reynolds
(witness to accident) | a. Michael G. Brown
Figari & Davenport
4800 Nations Bank Plaza
901 Main Street
Dallas, Texas |

- b. Martin Le Noir
Law Offices of Martin Le Noir
3300 Oak Lawn, Suite 600
Dallas, Texas 75219-4269
- c. Joe Shearin
Law Offices of Joe Shearin
1845 Woodall Rogers Freeway
Suite 1200
Dallas, Texas
- d. Jim Rolfe
Law Offices of Jim Rolfe
2821 Routh Street
Dallas, Texas 75201
- e. County Judge Vickers Cunningham,
County Court at Law #8
Frank Crowley Courthouse, 4th Floor
133 N. Industrial
Dallas, TX
7. Mr. David Martin
U-Haul Center of Plano
4101 Plano Parkway
Plano, Texas 75093
8. Ms. Susan Kalette
Plano Police Department
909 14th Street
Plano, TX
9. Mr. Richard Taylor
Dallas Police Department
911 Division
1500 Marilla
Dallas, TX 75201
10. Steven Patrick Hiss
3817 Portsmouth Circle
Plano, Texas 75023
11. Roger Hiss
7147 Burch Hollow Lane
West Chester, OH 45069
12. Michelle Christine Hiss
13. Investigator Steve Rooney
Addison Police Department
4799 Airport Parkway
Addison, TX 75001
14. Officer S.D. Hobbs
Addison Police Department
4799 Airport Parkway
Addison, TX 75009
(972) 450-7100
15. Officer R.G. Snyder
Addison Police Department
4799 Airport Parkway
Addison, TX 75009
(972) 450-7100
16. Officer L.C. Taylor
Addison Police Department
4799 Airport Parkway
Addison, TX 75009
(972) 450-7100
17. Officer Jeff Wade
Addison Police Department
4799 Airport Parkway
Addison, TX 75009
(972) 450-7100
18. Officer S.S. Smith
Addison Police Department
4799 Airport Parkway
Addison, TX 75009
(972) 450-7100
19. Officer S.J. Rooney
Addison Police Department
4799 Airport Parkway
Addison, TX 75009
(972) 450-7100

20. Officer M.A. Raines
Addison Police Department
4799 Airport Parkway
Addison, TX 75009
(972) 450-7100

21. Robin D. Jones
Street Superintendent
Town of Addison
16801 Westgrove Drive
Addison, TX 75001-9010
(971) 450-2849

22. Angelic Verkaik c/o
Mr. Jeff Stark
KELLER & STARK
1410 Avenue G
Plano, Texas 75074

23. Paul Dorsey c/o
Mr. John B. Schorsch, Jr.
MASTROGIOVANNI, SCHORSCH,
MERSKY & ZAGAR, P.C.
2323 Bryan Street, Suite 2350
Dallas, Texas 75201

See also the Answer to Interrogatory No. 1. Further, this Defendant incorporates by reference all persons named or mentioned in all documents produced by this Defendant, as well as all persons identified as having relevant knowledge by any party to this litigation.

INTERROGATORY NO. 4:

Identify each person you may call to testify as an expert witness at trial of this case, including damage witnesses who are experts, and state the following:

- a. the subject matter about which the expert is expected to testify;
- b. the mental impressions and opinions held by the expert; and
- c. the facts known to the expert (regardless of when the factual information was acquired) which relate to or form the basis of the mental impressions and opinions held by the expert.

RESPONSE:

This Defendant objects to Interrogatory No. 4, and Subsections b and c only to the extent that they are vague, overly broad and unduly burdensome. Subject to the foregoing and without waiving same, no decision has been made concerning expert witnesses at this time.

INTERROGATORY NO. 5:

Identify each expert used for consultations who is not expected to be called as a witness at trial, but whose opinions or impressions have been reviewed by or have contributed to the opinions of a testifying expert, and state the following:

- a. the mental impressions and opinions held by the expert;
- b. a description of all documents or tangible things containing such expert's impressions and opinions; and
- c. the facts known to the expert (regardless of when the factual information was acquired) which relate to or form the basis of the mental impressions and opinions held by the testifying expert.

RESPONSE:

This Defendant objects to Interrogatory No. 5 to the extent that it is vague. Further, this Defendant objects to Interrogatory No.5, Subsections b. and c. to the extent that they are vague, overly broad and unduly burdensome. Subject to the foregoing and without waiving same, none at this time.

INTERROGATORY NO. 6:

Since you have contended that the conduct alleged in Section VII of Plaintiffs' Original Petition does not constitute a governmental function(s), as that term is defined in Section 101.0215, Tex. Civ. Prac. & Rem. Code, please identify each and every fact which supports this contention.

RESPONSE:

This Defendant objects to Interrogatory No. 6 to the extent that it is vague, overly broad, unduly burdensome, and seeks production of information exempted from discovery by virtue of Texas Rules of Civil Procedure 166b(3)(a)(b)(c)(d), as well as the attorney/client privilege. Subject to the foregoing and without waiving same, see Paragraph III of The Town of Addison's Original Answer which has been filed in this case. Paragraph III of the Answer specifically provides that The Town of Addison "would show that at all times in question, it was engaged in the performance of a governmental function."

INTERROGATORY NO. 7:

Identify every accident involving a pedestrian and a motor vehicle from January 1, 1993 to the present, which has occurred on the block of Addison Road between Broadway Road and Arapaho Road.

RESPONSE:

This Defendant objects to Interrogatory No. 7, to the extent that it is vague, overly broad and unduly burdensome. Subject to the foregoing and without waiving same, since January 1, 1996, none other than the accident in question and the accident described in the attached Exhibit "A".

INTERROGATORY NO. 8:

Identify every complaint or report, of any type, you have received from January 1, 1993 to the present regarding pedestrian traffic on Addison Road at the location of the Broadway Grill.

RESPONSE:

This Defendant objects to Interrogatory No. 8 to the extent that it is vague, overly broad and unduly burdensome. Subject to the foregoing and without waiving same, no complaints. See also the Answer to Interrogatory No. 7.

INTERROGATORY NO. 9:

Identify every complaint or report, of any type, you have received from January 1, 1993 to the present regarding the absence of a pedestrian cross walk, a STOP sign, a yield sign, streetlights, hazard lights or hazard signs or any other device or signal to warn, assist or protect pedestrian traffic on Addison Road at the location of the Broadway Grill.

RESPONSE:

This Defendant objects to Interrogatory No. 9, to the extent that it is vague, overly broad and unduly burdensome. Subject to the foregoing and without waiving same, none. However, in 1998, there was a change made in the street lighting in the area. See also the attached Exhibits "A" and "B".

INTERROGATORY NO. 10:

State with specificity why you have not installed or erected street lights, hazard lights or signs, a pedestrian cross walk, a STOP sign, a yield sign or any other device or signal to warn, assist or protect pedestrian traffic on Addison Road at the location of the Broadway Grill.

RESPONSE:

This Defendant objects to Interrogatory No. 10 to the extent that it is vague, overly broad and unduly burdensome. Further, this Defendant objects to said Interrogatory to the extent that it seeks disclosure of information exempted from discovery by Texas Rules of Civil Procedure 166b(3)(a)(b)(c)(d), as well as the attorney/client privilege. Subject to the foregoing and without waiving same, the signage, street markings, and traffic signals at the location are sufficient to warn, assist and protect pedestrian traffic. Further, there is a protected pedestrian crossing at the intersection of Addison Road, Broadway and Lindberg.

INTERROGATORY NO. 11:

Identify every complaint or report, of any type, you have received from January 1, 1993 to the present regarding the design of the Pathway at the Broadway Grill.

RESPONSE:

This Defendant objects to Interrogatory No. 11 to the extent that it is vague and overly broad. Subject to the foregoing and without waiving same, none.

INTERROGATORY NO. 12:

Identify every occasion from January 1, 1993 to the present on which the Broadway Grill has been cited, reprimanded, penalized or otherwise warned by you or the County of Dallas for exceeding its maximum occupancy limitation.

RESPONSE:

This Defendant objects to Interrogatory No. 12 to the extent that it is vague and overly broad. Subject to the foregoing and without waiving same, see the attached Exhibit "C".

INTERROGATORY NO. 13:

Identify every complaint or report, of any type, you have received from January 1, 1993 to the present regarding allegations that the Broadway Grill exceeds or has exceeded its maximum occupancy limitation.

RESPONSE:

This Defendant objects to Interrogatory No. 13 to the extent that it is vague and overly broad. Subject to the foregoing and without waiving same, see the attached Exhibit "C".

INTERROGATORY NO. 14:

For every document responsive to Plaintiff Paul Dorsey's First Request for Production which you are withholding under an alleged claim of privilege, state the following:

- a. a general description of the document;
- b. the identity of the person(s) who created the document;
- c. the date or approximate date on which the document was created; and
- d. the identity of all person(s) who have seen or otherwise reviewed the contents of the document.

RESPONSE:

All responsive documents are being produced with the exception of the defense attorney's file which has been generated since this case was filed against The Town of Addison. This Defendant contends that the information contained in its attorney's file is not subject to disclosure by virtue of Texas Rules of Civil Procedure 166b(3)(a)(b)(c)(d), as well as the attorney/client privilege.

INTERROGATORY NO. 15:

Identify each and every inspection you have attended, conducted, or ordered to be conducted of the Broadway Grill for compliance with building, occupancy, safety or any other code for the period January 1, 1993 to the present.

RESPONSE:

This Defendant objects to Interrogatory No. 15 to the extent that it is vague, overly broad and unduly burdensome. Subject to the foregoing and without waiving same, see the attached Exhibit "D".

INTERROGATORY NO. 16:

Please identify each and every ordinance, law, statute, rule or procedure which you maintain directs when, how, if, and to what extent you are to cause the installation or erection of street lights, hazard lights, hazard signs, a pedestrian cross walk, a STOP sign, a YIELD sign or any other device or signal to warn, assist or protect pedestrian traffic on the roads in Addison.

RESPONSE:

This Defendant objects to Interrogatory No. 16 to the extent that it is vague, overly broad and unduly burdensome. Subject to the foregoing and without waiving same, such decisions are made based upon factors such as the location of the roadway or intersection, the terrain of the land; the traffic volume; visibility; sight lines; visual obstructions; and development in the area, among others. After considering such factors, discretion is used in the application of traffic engineering standards to determine what traffic control devices or markings to utilize at a particular location. The Uniform Traffic Control Device manual is used as a general guide when, in the discretion of the traffic engineer, it is appropriate.

INTERROGATORY NO. 17:

Identify each and every City Council, City Commissioner, School Board, zoning, planning or other meeting at which the safety of the Broadway Grill or the pedestrian traffic at the location of the Broadway Grill, was discussed or scheduled to be discussed for the period January 1, 1993 to the present.

RESPONSE:

This Defendant objects to Interrogatory No. 17 to the extent that it is vague, overly broad and unduly burdensome. Subject to the foregoing and without waiving same, see the attached Exhibit "E" ..

INTERROGATORY NO. 18:

Any and all communications you have received from the Kondos law firm, Augustus, or anyone else regarding the Broadway Grill.

RESPONSE:

This Defendant objects to Interrogatory No. 18 to the extent it is vague and overly broad. Subject to the foregoing and without waiving same, see the attached Exhibit "F".

INTERROGATORY NO. 19:

Identify the procedure, if any, for the expungement, removal or destruction of files from the Addison Police Department for the period January 1, 1993 to the present.

RESPONSE:

This Defendant objects to Interrogatory No. 19 to the extent that it is vague and overly broad. Subject to the foregoing and without waiving same, see the attached Exhibit "G".

INTERROGATORY NO. 20:

For each and every admission contained in the Plaintiffs First Requests for Admission to you for which you have given a response other than an unequivocal admission, identify each and every fact which supports each qualified admission or denial.

RESPONSE:

This Defendant objects to Interrogatory No. 20 to the extent that it is overly broad, unduly burdensome and seeks disclosure of information exempted from discovery by virtue of Texas Rules of Civil Procedure 166b(3)(a)(b)(c)(d), as well as the attorney/client privilege.

VERIFICATION

STATE OF TEXAS §

§

COUNTY OF DALLAS §

BEFORE ME, the undersigned authority in said County and State on this day personally appeared CARMEN MORAN, known to me to be the person whose name is subscribed to the foregoing instrument, and who, after being duly sworn, on oath acknowledged to me that she has read the above and foregoing answers to Interrogatory Nos. 1, 2, 3, 4, 5, 6, 8, 11, 12, 13, 14, 15, 17, 18, and 20, and that said answers and responses are, to her knowledge and belief, true and correct.

**CARMEN MORAN
DIRECTOR OF DEVELOPMENT SERVICES
TOWN OF ADDISON**

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ___ day of _____,

1999.

Notary Public, in and for
Said County and State

My Commission Expires:

VERIFICATION

STATE OF TEXAS §

§

COUNTY OF DALLAS §

BEFORE ME, the undersigned authority in said County and State on this day personally appeared JOHN BAUMGARDNER, known to me to be the person whose name is subscribed to the foregoing instrument, and who, after being duly sworn, on oath acknowledged to me that he has read the above and foregoing answers to Interrogatory Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 16, and 20, and that said answers and responses are, to his knowledge and belief, true and correct.

**JOHN BAUMGARDNER, P.E.
DIRECTOR OF PUBLIC WORKS
TOWN OF ADDISON**

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ___ day of _____,

1999.

Notary Public, in and for
Said County and State

My Commission Expires:

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority in said County and State on this day personally appeared **RONALD C. DAVIS, Captain, Town of Addison Police Department**, known to me to be the person whose name is subscribed to the foregoing instrument, and who, after being duly sworn, on oath acknowledged to me that he has read the above and foregoing answers to Interrogatory Nos. 1, 2, 3, 4, 5, 6, 7, 8, 14, 18, 19 and 20, and that said answers and responses are, to his knowledge and belief, true and correct.

**RONALD C. DAVIS, CAPTAIN
TOWN OF ADDISON POLICE DEPARTMENT**

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the ___ day of _____,
1999.


Notary Public, in and for
Said County and State

My Commission Expires:

VERIFICATION

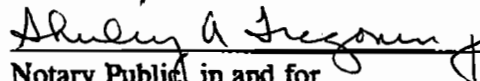
STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority in said County and State on this day personally appeared JOHN BAUMGARTNER, known to me to be the person whose name is subscribed to the foregoing instrument, and who, after being duly sworn, on oath acknowledged to me that he has read the above and foregoing answers to Interrogatory Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 16, and 20, and that said answers and responses are, to his knowledge and belief, true and correct.



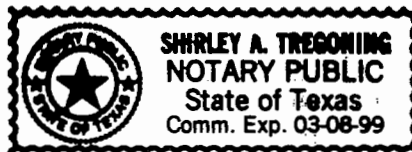
JOHN BAUMGARTNER, P.E.
DIRECTOR OF PUBLIC WORKS
TOWN OF ADDISON

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 18 day of January,
1999.

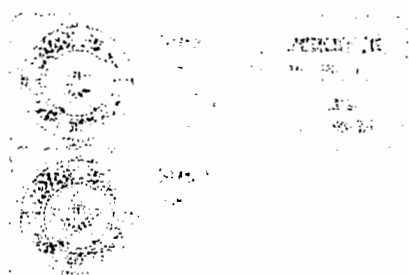


Notary Public in and for
Said County and State

My Commission Expires:
3/8/99



**DEFENDANT THE TOWN OF ADDISON'S OBJECTIONS AND RESPONSES TO
PAUL DORSEY'S FIRST SET OF INTERROGATORIES
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John
FTI. note
traffic issues

CAUSE NO. 98-9944-E

FILED
98 OCT -9 PM 4:07

PAUL DORSEY and
ANGELIC VERKAIK

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IN THE COUNTY COURT

VS.

AT LAW NO. 5

EARL BULLOCK
COUNTY CLERK
DALLAS COUNTY

BROADWAY GRILL, INC.,
d/b/a BROADWAY GRILL,
TONY S. AUGUSTUS, and
THE TOWN OF ADDISON

DALLAS COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs, Paul Dorsey and Angelic Verkaik, for their causes of action against Defendants Broadway Grill, Inc., d/b/a Broadway Grill, Tony S. Augustus, and The Town of Addison, and states as follows:

I.

PARTIES AND SERVICE

Broadway Grill, Inc., d/b/a Broadway Grill can be served by and through its registered agent for services of process Carol C. Kondos, registered agent, at 1595 N. Central Expressway, Richardson, Texas 75080, or any officer of the corporation including but not limited to John T. Auletta or John Peter Kondos at 15375 Addison Road.

The Town of Addison can be served by and through its City Secretary Carmen Moran at its office located at 5300 Beltline Road Suite A, Addison, Texas 75240.

Tony S. Augustus can be served by delivering a copy of this petition and citation to Tony Augustus, at 2521 Skiles Plano, Collin County, Texas, 75075.

PLAINTIFFS' ORIGINAL PETITION

COPY PAGE 1

II.

JURISDICTION AND VENUE

Jurisdiction and Venue are proper in the County Court at Law, Dallas County, Texas. Plaintiffs' causes of action are properly brought in Dallas County, Texas, pursuant to § 15.001 and § 101.102(A) of the Texas Civil Practice and Remedies Code. Plaintiffs' causes of action arose in whole or in part in Dallas County, Texas. At the time of the events alleged in this petition, Plaintiffs Paul B. Dorsey (Dorsey) and Angelic Verkaik (Verkaik) were both injured in Dallas County, Texas. Defendant, Broadway Grill, Inc. d/b/a Broadway Grill (Broadway) is a Texas Corporation doing business in Dallas County, Texas. Defendant Tony S. Augustus owns the real property and improvements where the Broadway Grill conducts its business and where the hazardous conditions exist. That real property and the improvements are located in Dallas County, Texas. The Town of Addison is a governmental unit as that term is defined by Texas Civil Practice and Remedies Code Section 101.102 and is located within Dallas County, Texas.

III.

FACTS COMMON TO ALL CLAIMS

In the late hours of October 11, 1996 and the early morning of October 12, 1996, Plaintiffs Dorsey and Verkaik and a third person, Michael Joseph Gunning were patrons at the Broadway Grill, located at 15375 Addison Road, Dallas, Texas. In the early morning hours of October 12, 1996, Plaintiffs though visibly intoxicated were served alcoholic beverages by agents, representatives and employees of the Broadway Grill. Plaintiffs' intoxication was apparent to Broadway Grill, its agents, representatives and employees. Plaintiffs were directed to and did exit the Broadway Grill through the front door of the premises. The entrance walkway from the front door of the premises leads

directly to Addison Road ("The Pathway"). There is no marked crosswalk across Addison Road at the location where The Pathway intersects with Addison Road. There is no stop light or stop sign at the location where The Pathway intersects with Addison Road. There is no warning, signage, nor any pronounced lighting along The Pathway or at the location at which The Pathway intersects with Addison Road. There is moreover, insufficient parking at the Broadway Grill to allow for on site parking sufficient to meet the facilities regular occupancy, and more specifically the occupancy which existed on October 11, 1996 and October 12, 1996. The insufficient parking forces patrons of the Broadway Grill to use The Pathway and, consequently, to traverse east and west across Addison Road. On information and belief, the Broadway Grill regularly and routinely allowed and encouraged more patrons to enter and stay in the bar than is permitted by its occupancy permit, code restrictions, good practice or its actual parking capacity. On information and belief, these Defendants had been warned and/or were well aware of the dangerous condition(s) which they maintained. These hazards were known to and/or created by Defendants Broadway and Augustus.

In the early morning hours of October 12, 1996, Plaintiffs exited the Broadway Grill. Plaintiffs were intoxicated as a result of the alcohol served to them by employees, agents or servants of the Broadway Grill. Plaintiffs' intoxication during and after being served alcoholic beverages by employees, agent or servants of the Broadway Grill was apparent to the employees, agents and servants of the Broadway Grill. Plaintiffs entered the west side of Addison Road from The Pathway, en route to a parking facility located on the east side of Addison Road. Addison Road is a four-lane thoroughfare which runs north and south.

While crossing from The Pathway on the west side of Addison Road to the parking on the east side of Addison Road, all three individuals (Plaintiffs and Mr. Gunning) were simultaneously struck by a car driving north on Addison Road. Mr. Gunning was killed instantly while both Plaintiffs were critically injured.

IV.

CONDITIONS PRECEDENT

All conditions precedent, pursuant to Texas Civil Practice and Remedies Code Section 101.101 et seq. if any, to filing suit against The Town of Addison have been met, satisfied or otherwise waived.

V.

COUNT ONE

Plaintiffs reassert and incorporate herein the allegations set forth above.

Broadway and Augustus as owners and operators of the business and realty, respectively, owed a duty of ordinary care to Plaintiffs to protect Plaintiffs from unreasonable and foreseeable risks of harm. Instead, one or more of these Defendants facilitated Plaintiffs inebriation and then sent them into a known and obvious hazard of their creation; The Pathway into Addison Road. These Defendants breached their duty of care to Plaintiffs by among other things:

(1) constructing and or maintaining The Pathway which leads directly, in an uninterrupted fashion, from the front door of the Broadway Grill into Addison Road; a busy, four-lane road. The Pathway is not properly lighted. This created an obviously dangerous condition that these Defendants knew, or should have known would be hazardous to all patrons (sober and particularly drunk) exiting and entering its establishment;

(2) failing to provide warnings, signage, crossing guards, or lighting to forewarn and protect the bar's patrons from the known hazards of The Pathway. These Defendants knew, or should have known, its patrons would be placed into this foreseeable risk of harm;

(3) failing to provide sufficient parking which created the necessity for its patrons to park across the street from the Broadway Grill and traverse (east/west or west-east) across Addison Road. These Defendants knew, or should have known, that the overcrowding of its facility would force its patrons to be placed into a known hazardous crossing of Addison Road. These Defendants knew, or should have known, its patrons would be placed into this foreseeable risk of harm;

(4) exceeding the proper capacity limits established by code, licence, permit and reason. The overcrowding of the facility necessitated the need for additional parking across Addison Road. These Defendants knew, or should have known, its patrons would be placed into this foreseeable risk of harm.

(5) failing to respond, correct or forewarn patrons of these known and foreseeable hazards. These Defendants could have altered The Pathway, provided sufficient lighting on The Pathway, barricaded The Pathway at the spot it met Addison Road, posted warning signs on The Pathway or in the bar, provided an alternate pathway to a proper road crossing, hired crossing attendants, not exceeding their parking capacity or other reasonable or necessary measures to warn and/or protect patrons from these known hazards.

Each of these acts and/or omissions, singularly or in combination with others, constituted negligence which led to the accident in the early morning hours of October 12, 1996. But for one or more of these acts and/or omissions, Plaintiffs would not have been injured on October 12, 1996.

As a direct and proximate result of the negligence of these Defendants, Plaintiffs suffered severe physical and mental pain, suffering, and anguish. In all reasonable probability, Plaintiffs shall continue to suffer mental pain, suffering, and anguish far into the future, if not for the rest of their lives.

As a direct and proximate result of the negligence of these Defendants, Plaintiffs have incurred medical expenses, permanent impairment, disability, disfigurement, lost earnings, and loss of past and future earning capacity.

Plaintiffs seek recovery for all real damages, including but not limited to all medical expenses, past and future lost income and earnings, past, present, and future mental anguish, pain and suffering, permanent impairment, disability, disfigurement, past and future lost earning capacity, all having been proximately and directly caused by the negligent acts and/or omissions of these Defendants.

VI.

COUNT TWO

Plaintiffs reassert and incorporate herein the allegations set forth above.

Plaintiffs, pleading in the alternative and without waiving any other claims or relief further assert that as a provider, seller, or server of alcoholic beverages, Defendant Broadway is liable under Section 2.02 of the Texas Alcohol and Beverage Code (The Dram Shop Act) because Plaintiffs were served alcoholic beverages when they were visibly intoxicated and it was apparent to Defendant Broadway that Plaintiffs were intoxicated. Plaintiffs became intoxicated and, nonetheless once visibly intoxicated, Defendant Broadway, through its agents, employees or servants served Plaintiffs additional alcoholic beverages. Plaintiffs were subsequently injured as a direct and proximate result

of Defendant Broadways improper service to them of alcoholic beverages. Defendant Broadway violated §2.02 of the Texas Alcohol and Beverage Code in the following respects:

(1) Defendant Broadway, its agents, employees or servants served and/or sold alcoholic beverages to Plaintiffs when it was apparent that Plaintiffs were intoxicated to such a degree as to present a clear danger to themselves or others;

(2) As a direct and proximate result of their intoxicated state, Plaintiffs found themselves in an unreasonably dangerous situation (The Hazardous Pathway) and directly or proximately suffered severe emotional and physical damages; and

(3) On, information and belief, the required practice and habit of Defendant Broadway was to allow patrons, visibly and apparently intoxicated to be served additional alcoholic beverages.

As a direct and proximate result of these acts and/or omissions of Defendant Broadway which violated The Dram Shop Act, Plaintiffs suffered severe physical and mental pain, suffering, disfigurement and anguish. In all reasonable probability, Plaintiffs shall continue to suffer mental pain, suffering, disfigurement, permanent impairment and disability, and physical pain and anguish far into the future, if not for the rest of their lives.

As a direct and proximate result of the acts and/or omissions of Defendant Broadway which violated The Dram Shop Act, Plaintiffs have incurred medical expenses, lost earnings, and lost past and future earning capacity. But for Defendant Broadways aforementioned acts/omissions in violation of The Dram Shop Act, Plaintiffs would not have been injured.

Therefore, Plaintiffs seek recovery for all real damages including but not limited to medical expenses, past and future lost income and earnings, past, present, and future mental anguish, pain, suffering and disfigurement, permanent impairment and disability, and past and future lost earning capacity all having been proximately and directly caused by the acts and/or omissions of this Defendant.

VII.

COUNT THREE

Pleading further in the alternative and without waiving any other claims or relief, the Plaintiffs allege as follows:

The Town of Addison (Addison) is a government unit as that term is defined by Section 101.001 of the Texas Civil Practice and Remedies Code. Addison is fully aware of the auto accident of October 12, 1998, its location, the surrounding circumstances, and the death and serious injuries which resulted therefrom. Addison is in whole or in part responsible for and liable to Plaintiffs for the injuries sustained by Plaintiffs because it failed to exercise ordinary care in undertaking the following governmental functions: negligent street construction or design; deficient warning signals; the failure to repair or remedy known traffic hazards; maintenance of traffic signals; the failure to utilize signs or street painting to warn of or correct a known hazard or hazards; and the failure to enforce building code(s) and/or inspection. Addison knew or should have known of the dangers created by the east/west ingress and egress to and from The Pathway into Addison Road. Addison knew or should have known of the inherent hazard created by the location and use of The Pathway relative to crossings of Addison Road. The absence of street lights, hazard lights or signs; a pedestrian cross walk; a STOP sign; a yield sign; or even enforcement of the code and license

provisions which serve to restrict the capacity and parking of the Broadway Grill, were all known to Addison to be hazardous to pedestrians and yet were not corrected.

Addison, on information and belief, knew the many dangers which existed for pedestrians at this location. Addison failed to exercise a reasonable degree of care. Addison knew or should have known of these hazards and failed to correct them or warn of their existence.

Each of these acts and/or omissions, singularly or in combination with others, constituted negligence which led to Plaintiffs injuries on October 12, 1996. But for each of these acts and/or omissions, singularly or in combination, Plaintiffs would not have been injured on October 12, 1996.

As a direct and proximate result of Addison's negligence, Plaintiffs suffered severe physical and mental pain, suffering, and anguish. In all reasonable probability, Plaintiffs shall continue to suffer mental pain, suffering, and anguish far into the future, if not for the rest of their lives.

As a direct and proximate result of Addison's negligence, Plaintiffs have incurred medical expenses, permanent impairment, disability, disfigurement, lost earnings, and loss past and future earning capacity.

Therefore, Plaintiffs seek recovery for all real damages including but not limited to medical expenses, past and future lost income and earnings, past, present, and future mental anguish, pain and suffering, permanent impairment, disability and disfigurement, and past and future lost earning capacity. These injuries were all proximately and directly caused by Addison's negligent acts and/or omissions.

IX.

EXEMPLARY DAMAGES

Plaintiffs were injured as a direct and proximate result of the acts and omissions of the Defendants. The Defendants' activities were the cause in fact of the harm suffered by Plaintiffs. Defendants Broadway and Augustus each knowingly and recklessly ignored the hazardous conditions which caused Plaintiffs' injuries. Defendants Broadway and Augustus each had actual awareness of one or more of the negligent acts and/or omissions. Defendants Broadway and Augustus each exhibited a gross neglect and willful disregard for the safety and welfare of these Plaintiffs. The actions of Defendants Broadway and Augustus constituted malice in that their acts and omissions, individually and collectively, when viewed objectively at the time of the injuries, involved an extreme degree of risk, considering the probability and potential magnitude of harm to others. Therefore, Plaintiffs should be awarded exemplary damages, jointly and severely, against both Defendants, Broadway and Augustus, pursuant to Texas Civil Practice and Remedies Code § 41.001 et seq.

X.


PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be duly cited to appear and answer herein and that the court award judgment, jointly and severely, against Defendants for all actual damages, exemplary, and punitive damages all in excess of the minimum jurisdictional limits of the court. Plaintiffs further pray that pre-judgment and post-judgment interest

be assessed against Defendants at the maximum rate, jointly and severely. Finally, Plaintiffs pray for such other and further relief, both special and general, at law and at equity, to which they may show themselves to be justly entitled.

Respectfully submitted,

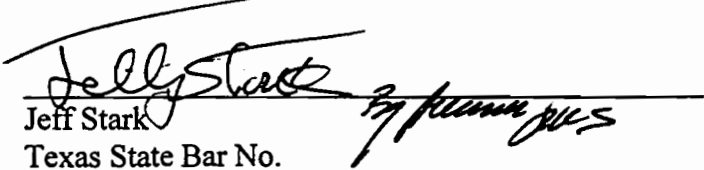
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