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Attorneys for Plaintiff, Vladimir Diaz

2019 DEC -9 A 11:46

VLADIMIR DIAZ,

Plaintiff,

v.

HERBERT J. REYNOSO, THE CITY OF
ENGLEWOOD, NEW JERSEY, a
Municipal Corporation of the State of New
Jersey, County of Bergen, its Officials,
Employees and/or agents; ANTHONY
GALLO, Individually and as a Police
Officer of the City of Englewood;
LOTHAIRS PORTER, Individually and as a
Police Officer of the City of Englewood;
AWJ, INC. d/b/a EL TANGO ARGENTINA
GRILL, JOHN DOE, JOHN DOES (1-3),
and ABC CORP (1-3),

Defendants.

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY: LAW DIVISION
DOCKET NO. BER-L-

Civil Action

SUMMONS

ADMINISTRATION
2019 DEC -9 P 1:57

From the State of New Jersey
To the Defendant(s) Named Above: City of Englewood

The plaintiffs, named above, have filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the [Clerk of the Superior Court] Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call

will not protect your rights; you must file and serve a written answer or motion (with fee of \$135.00 and completed Case Information State) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

Dated: December 4, 2019

/Michele M. Smith

Michele M. Smith, Clerk

Name and address of Defendant to be Served:

CITY CLERK

City of Englewood

2-10 North Van Brunt Street

Englewood, New Jersey 07631

ATLANTIC COUNTY: Deputy Clerk of the Superior Court Civil Division, Direct Filing Atlantic County Civil Court Bldg. First Floor 1201 Bacharach Boulevard Atlantic City, NJ 08401 (609) 345-3444 LAWYER REFERRAL (609) 345-3444 LEGAL SERVICES (609) 348-4200	CUMBERLAND COUNTY: Deputy Clerk of the Superior Court Civil Case Management Office Cumberland County Courthouse Broad & Fayette Streets P.O. Box 615 Bridgeton, NJ 08302 (856) 451-8000 LAWYER REFERRAL (856) 692-6207 LEGAL SERVICES (856) 451-0003	MERCER COUNTY: Deputy Clerk of the Superior Court Local Filing Office, Courthouse 175 South Broad Street, P.O. Box 8068 Trenton, NJ 08650 (609) 278-7986 LAWYER REFERRAL (609) 585-6200 LEGAL SERVICES (609) 695-6249	SALEM COUNTY: Deputy Clerk of the Superior Court Salem County Courthouse 92 Market Street P.O. Box 18 Salem, NJ 08079 (856) 935-7510 LAWYER REFERRAL (856) 935-5628 LEGAL SERVICES (856) 451-0003
BERGEN COUNTY: Deputy Clerk of the Superior Court Case Processing Section, Room 119 Bergen County Justice Center 10 Main Street Hackensack, NJ 07601 (201) 646-2800 LAWYER REFERRAL (201) 488-0044 LEGAL SERVICES (201) 487-2166	ESSEX COUNTY: Deputy Clerk of the Superior Court 50 West Market Street, Room 131 Newark, NJ 07102 (973) 693-5700 LAWYER REFERRAL (973) 622-6207 LEGAL SERVICES (973) 624-4500	MIDDLESEX COUNTY: Deputy Clerk of the Superior Court Middlesex Administration Building, 3rd Floor 1 Kennedy Square, P.O. Box 2633 New Brunswick, NJ 08903-2633 (732) 981-3200 LAWYER REFERRAL (732) 828-0053 LEGAL SERVICES (732) 249-7600	SOMERSET COUNTY: Deputy Clerk of the Superior Court Civil Division Office New Courthouse, 3rd Floor P.O. Box 3000 Somerville, NJ 08876 (908) 231-7000 LAWYER REFERRAL (908) 685-2323 LEGAL SERVICES (908) 231-0840
BURLINGTON COUNTY: Deputy Clerk of the Superior Court Central Processing Office Attn: Judicial Intake Burlington County Court Facility First Floor 49 Rancocas Road Mount Holly, NJ 08060 (609) 518-2500 LAWYER REFERRAL (609) 261-4862 LEGAL SERVICES (609) 261-1088	GLOUCESTER COUNTY: Deputy Clerk of the Superior Court Civil Case Management Office Attn: Intake First Floor, Court House 1 North Broad Street, P.O. Box 129 Woodbury, NJ 08096 (856) 853-3200 LAWYER REFERRAL (856) 848-4589 LEGAL SERVICES (856) 848-5360	MONMOUTH COUNTY: Deputy Clerk of the Superior Court Monmouth County Courthouse 71 Monument Park P.O. Box 1269 Freehold, NJ 07728-1269 (732) 677-4210 LAWYER REFERRAL (732) 431-5544 LEGAL SERVICES (732) 866-0020	SUSSEX COUNTY: Deputy Clerk of the Superior Court Sussex County Judicial Center 43-47 High Street Newton, NJ 07860 (973) 579-0675 LAWYER REFERRAL (973) 267-5882 LEGAL SERVICES (973) 383-7400
CAMDEN COUNTY: Deputy Clerk of the Superior Court Civil Processing Office First Floor, Hall of Records 101 South Fifth Street Camden, NJ 08103 (856) 225-5000 LAWYER REFERRAL (856) 964-4520 LEGAL SERVICES (856) 964-2010	HUDSON COUNTY: Deputy Clerk of the Superior Court Civil Records Dept. Brennan Courthouse, First Floor 583 Newark Avenue Jersey City, NJ 07306 (201) 795-6000 LAWYER REFERRAL (201) 798-2727 LEGAL SERVICES (201) 792-6363	MORRIS COUNTY: Deputy Clerk of the Superior Court Civil Division 30 Schuyler Place, P.O. Box 910 Morristown, NJ 07960-0910 (973) 656-4110 LAWYER REFERRAL (973) 267-5882 LEGAL SERVICES (973) 283-6911	UNION COUNTY: Deputy Clerk of the Superior Court Union County Courthouse 2 Broad Street, First Floor Elizabeth, NJ 07207-6073 (908) 659-4100 LAWYERS REFERRAL (908) 353-4715 LEGAL SERVICES (908) 354-4340
CAPE MAY COUNTY: Deputy Clerk of the Superior Court Cape May County Courthouse 9 North Main Street Box DN-209 Cape May Court House, NJ 08210 (609) 465-1000 LAWYER REFERRAL (609) 463-0313 LEGAL SERVICES (609) 465-3001	HUNTERDON COUNTY: Deputy Clerk of the Superior Court Civil Division 65 Park Avenue Flemington, NJ 08822 (908) 788-1589 LAWYER REFERRAL (908) 735-2611 LEGAL SERVICES (908) 782-7979	OCEAN COUNTY: Deputy Clerk of the Superior Court Courthouse, Room 119 118 Washington Street Toms River, NJ 08754 (732) 244-2121 LAWYER REFERRAL (732) 240-3666 LEGAL SERVICES (732) 341-2727	WARREN COUNTY: Deputy Clerk of the Superior Court Civil Division Office Warren County Courthouse 413 Second Street Belvidere, NJ 07823-1500 (908) 475-6161 LAWYER REFERRAL (973) 267-5882 LEGAL SERVICES (908) 475-2010
		PASSAIC COUNTY: Deputy Clerk of the Superior Court Civil Division Passaic County Court House 77 Hamilton Street Paterson, NJ 07505 (973) 247-8000 LAWYER REFERRAL (973) 278-9223 LEGAL SERVICES (973) 345-7171	

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ENGLEWOOD, NEW JERSEY, a
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AWJ, INC. d/b/a EL TANGO ARGENTINA
GRILL, JOHN DOE, JOHN DOES (1-3),
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Defendants.

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY LAW DIVISION
DOCKET NO. BER-L-

Civil Action

**COMPLAINT AND
JURY DEMAND**

The Plaintiff, Vladimir Diaz, a resident of the city of Lawrence, Massachusetts by way of
Complaint against the Defendants says:

THE PARTIES

1. Vladimir Diaz is a 38-year-old male who resides at 119 Saratoga Street, Apt 1 in
Lawrence, Massachusetts 01841.
2. Mr. Diaz was the victim of a motor vehicle assault which occurred on September
23, 2018. His vehicle was struck by a motor vehicle driven by Herbert I. Reynoso and he sustained
severe and permanent damages.

3. Mr. Diaz is a citizen of the Dominican Republic where he practiced as a licensed attorney and maintained a high-ranking position in the government prior to moving to the United States. At the time of the motor vehicle assault at issue, Mr. Diaz was gainfully employed and saving funds for law school in the United States and intended to become a licensed attorney in the State of New Jersey.

4. Herbert J. Reynoso ("Reynoso") is an individual who previously resided at 12-10 Lexington Street in Fair Lawn, New Jersey, 07410 and currently, resides in the Bergen County Jail located at 160 South River Street in Hackensack, New Jersey, 07601 following his plea to, and sentencing for, assault by auto while under the influence of alcohol.

5. John Doe is an individual who Reynoso contacted between the hours of 1:53 AM and 2:12 AM on September 23, 2018. John Doe represented to Defendant Englewood Police Officers that he would drive a visibly intoxicated Reynoso home after officers observed Reynoso drunk driving and decided not to arrest him. Instead, Doe waited for the officers to leave and drove Reynoso back to his vehicle which directly and proximately led to the motor vehicle assault at issue. The identity of John Doe will be revealed through discovery.

6. Defendant, the City of Englewood, New Jersey, is a municipal corporation, under the laws of the State of New Jersey with offices located at 2-10 North Van Brunt Street in Englewood New Jersey, 07631. Its officials, employees and/or agents of the City of Englewood were engaged in and/or delegated the operation, maintenance, supervision of the entity commonly known as the Englewood Police Department, Bergen County, New Jersey.

7. Defendant, Anthony Gallo is named as a police officer of the City of Englewood, acting under color of law, and/or individually, at all material times to this Complaint.

8. Defendant, Lothairs Porter is named as a police officer of the City of Englewood, acting under color of law, and/or individually, at all material times to this Complaint.

9. All Officers, named and unnamed, were at all times relevant to this Complaint duly appointed and acting officers of the Police Department of the City of Englewood, Bergen County, New Jersey, acting under color of law, to wit: under color of the statutes, ordinances, regulations, policies, customs, and usage of the State of New Jersey, and County of Bergen and/or the City of Englewood.

10. AWJ, Inc. d/b/a El Tango Argentina Grill is a New Jersey Corporation with a principal business address at 22 North Van Brunt Street in Englewood, NJ, 07631.

11. El Tango Argentina Grill is an Argentinian Restaurant located at 22 North Van Brunt Street in Englewood, NJ, 07631.

12. John Does (1-3) is an individual, or are individuals, whose willful, reckless, and/or negligent actions directly and proximately caused or contributed to Mr. Diaz's injuries, and whose identity/identities will be revealed through discovery.

13. ABC Corp. (1-3) is an entity or are entities whose, willful, reckless, and/or negligent actions by the entity(es) and/or their agents/employees directly and proximately caused or contributed to Mr. Diaz's injuries and, the identity/identities of these entities will be revealed through discovery.

FACTS COMMON TO ALL COUNTS

14. This matter is a claim for damages stemming from the severe and permanent mental and physical injuries and anguish sustained by Mr. Diaz following a September 23, 2018 motor vehicle assault wherein Defendant Reynoso collided into Mr. Diaz's vehicle while extremely intoxicated after drinking copious amounts of alcohol at El Tango Argentina Grill. Less than half

an hour prior to the assault by auto, an extremely intoxicated Mr. Reynoso was pulled over by Englewood Police Officers Anthony Gallo and Lothairs Porter who, in recklessly executing their ministerial functions, had actual knowledge that he was driving while intoxicated but only gave him a citation for driving the wrong way down the street. Officers Gallo and Porter did not arrest Reynoso for drunk driving or impound his vehicle, but released him to John Doe, who, moments later, drove Reynoso back to his vehicle. Reynoso then began operating his vehicle and struck the vehicle which Mr. Diaz was operating, nearly killing Mr. Diaz.

15. At the time of the auto assault at issue, Mr. Diaz was the operator of a red 2006 Jeep Grand Cherokee with the consent of the owner, his father Julio C. Diaz, and was traveling westbound along Highway Route 4 in the borough of Paramus, county of Bergen, in the state of New Jersey.

16. At the time of the auto assault at issue, Reynoso was the owner/operator of a gray 2011 Audi A4 and was traveling westbound along Highway Route 4, in the same direction as Mr. Diaz, in the borough of Paramus, county of Bergen, in the state of New Jersey.

17. On the evening of September 22, 2018, Reynoso visited El Tango Argentina Grill where he was sold and consumed excessive amounts of alcohol.

18. During the plea hearing wherein Reynoso pled guilty to assault by auto, Reynoso testified that he consumed at least two Long Island ice teas (a cocktail made with rum, tequila, vodka, gin and triple sec), a shot of tequila, and two beers without ordering or consuming any food at El Tango Argentina Grill.

19. Upon information and belief, Reynoso was sold substantially more alcohol by El Tango Argentina Grill than he testified to during his plea hearing.

20. Upon information and belief, El Tango Argentina Grill sold Reynoso numerous alcoholic beverages until he became visibly intoxicated and then continued to serve him alcohol.

21. El Tango Argentina Grill served Reynoso alcohol until he achieved a blood-alcohol concentration ("BAC") of approximately 0.270-2.80%.

22. The average person shows signs of visible intoxication with a BAC between 0.10% and 0.15%. A BAC of above 0.25% typically presents with severe impairment of motor functions, slurred speech, difficulty walking and standing, and blackouts.

23. On September 23, 2018 at approximately 1:30 AM to 1:45 AM, Reynoso left El Tango Argentina Grill and drove away in his vehicle.

24. Despite his clear visible and extreme intoxication, El Tango Argentina Grill permitted Reynoso to drive away in his vehicle.

25. At approximately 1:53 AM, Englewood Police Officers Gallo and Porter observed Reynoso driving his vehicle down the wrong way of the road.

26. Englewood Police Officers Gallo and Porter pulled over Reynoso at the intersection of Grand Ave and East Englewood Avenue in Englewood New Jersey.

27. The intersection of Grand Avenue and East Englewood Avenue is approximately a four-minute drive from El Tango Argentina Grill.

28. Upon information and belief, at the time Officers Gallo and Porter pulled over Reynoso he had a BAC of approximately .280% but not less than .244%.

29. Under New Jersey law, a person is deemed legally intoxicated and unable to operate a motor vehicle when their BAC is at or above .08%.

30. Upon information and belief, at the time Officers Gallo and Porter pulled over Reynoso, he was visibly intoxicated.

31. Upon information and belief, at the time Officer Gallo and Porter pulled over Reynoso, there was an open container of alcohol in his vehicle.

32. Upon information and belief, Officers Gallo and Porter observed, recognized, and had actual knowledge that Mr. Reynoso was visibly intoxicated and was operating his vehicle while intoxicated.

33. Upon information and belief, Officers Gallo and Porter observed or should have observed that there was an open container of alcohol in his vehicle.

34. Upon information and belief, Officers Gallo and Porter should have but failed to perform field sobriety tests and administer an alcotest to Reynoso.

35. Upon information and belief, Officers Gallo and Porter should have, but did not, arrest Reynoso for driving while intoxicated despite the fact that he had a BAC of over .244%.

36. Instead, upon information and belief, Officers Gallo and Porter, upon observing an extremely and visibly intoxicated Reynoso driving down the wrong way of the street, having actual knowledge that he was driving while intoxicated, declined to arrest him for driving under the influence and permitted Reynoso to call Defendant John Doe to pick him up at his location supposedly to drive him home.

37. Officers Gallo and Porter did not execute their ministerial functions or were reckless in executing their ministerial duties by failing to arrest Reynoso and permitted Reynoso to call his friend and pick him up.

38. Officers Gallo and Porter did not impound Reynoso's vehicle or otherwise remove his keys from his possession. Instead, Officers Gallo and Porter permitted Reynoso to maintain possession of his keys which allowed him access to the vehicle later that evening.

39. Officers Gallo and Porter should have impounded Reynoso's motor vehicle or otherwise prevented him from continuing to operate his motor vehicle while he was severely intoxicated.

40. At approximately 2:12 AM, Officers Gallo and Porter issued a citation to Reynoso for "vehicle traveling the wrong way" and permitted Reynoso to keep his keys to his vehicle despite the fact that he was visibly intoxicated and had a BAC of approximately .260% but not less than .244%.

41. Upon information and belief, after Officers Gallo and Porter released Reynoso, John Doe waited for the officers to leave and dropped Reynoso off at his vehicle.

42. Upon information and belief, John Doe was also present and consuming alcohol at El Tango Argentina Grill prior to the time Reynoso contacted John Doe.

43. Upon information and belief, shortly after 2:12 AM, Reynoso, still extremely intoxicated, resumed operation of his motor vehicle.

44. Upon information and belief, Officers Gallo and Porter failed to comply with or failed to enforce John's law (N.J.S.A. 39:4-50.23) prior to releasing Reynoso to John Doe.

45. Upon information and belief, less than half an hour later, a severely intoxicated Reynoso was recklessly driving down Highway Route 4 West at an extreme, rapid, and dangerous speed and struck the rear of the vehicle driven by Mr. Diaz while attempting to pass into the middle lane. Reynoso's strike forced Mr. Diaz's vehicle off of the highway and caused Mr. Diaz to strike a utility pole causing severe and permanent injuries including multiple fractures and traumatic brain injuries.

46. Upon information and belief, after striking Mr. Diaz's vehicle, Reynoso lost control of his vehicle, struck a light pole and concrete stanchion, and overturned his vehicle.

47. At approximately 2:40 AM, Paramus Police Officer Anthony Liggo arrived at the scene of the accident.

48. Upon information and belief, Mr. Diaz and Reynoso were transported to Hackensack Hospital via EMS.

49. Upon information and belief, at Hackensack Hospital, Reynoso's blood was drawn at approximately 5:30 AM, over three hours after the accident at issue.

50. On October 15, 2018, a toxicology analysis from the New Jersey State Office of Forensic Sciences was performed on Reynoso's blood which revealed that Reynoso had a BAC rating of 0.244% on September 23, 2018.

51. At Hackensack Hospital, Mr. Diaz was diagnosed with an intracranial bleed, temporal bone fracture, sphenoid sinus fracture, skull fracture with cerebral contusion, acute respiratory failure, acute pain due to trauma, and a number of other injuries including but not limited to facial lacerations and a traumatic brain injury.

52. Due to the severity of the trauma and multiple fractures, Mr. Diaz was intubated for airway protection, received multiple surgeries, and placed in a medically induced coma for seventeen (17) days and remained in Hackensack Hospital until October 24, 2018.

53. During his stay in the hospital, Mr. Diaz experienced severe pain, suffered numerous complications during his treatment and underwent extremely painful rehabilitation.

54. After Mr. Diaz was released from Hackensack Hospital, Mr. Diaz continued to receive substantial medical and rehabilitation treatment. Mr. Diaz required additional medical care for complications resulting from the assault including but not limited to, permanent hearing loss in his left ear.

55. Subsequently in late 2018 and/or early January 2019, Mr. Diaz was admitted to the emergency room in Boston, Massachusetts due to complications related to his injuries, including but not limited to a severe infection, and was hospitalized for an additional nine (9) days. Mr. Diaz will require substantial additional medical treatment moving forward, additional rehabilitation, and multiple surgeries.

56. To date, Mr. Diaz has suffered permanent body injuries, severe physical pain, mental anguish, decreased mental capacity, severe and substantial emotional distress and loss of the capacity for the enjoyment of life.

57. As a result of these serious and permanent injuries, reduced mental facilities, and substantial medical costs, Mr. Diaz is and will remain unable to resume a career as an attorney and will suffer a severe reduction in income and anticipated income.

58. To date, Mr. Diaz has incurred substantial medical costs of over \$700,000 and will continue to incur substantial medical costs moving forward.

59. After the motor vehicle accident, Reynoso was charged assault by auto, aggravated assault, reckless driving, improper passing, failure to possess driver's license, open container, driving while intoxicated and traffic on unmarked lanes.

60. On March 28, 2019, Reynoso pled guilty to one felony count of assault by auto and driving while intoxicated in excess of BAC of .10%.

61. On May 24, 2019, Reynoso was sentenced to 364 days in Bergen County Jail, one-year probation, twenty-two-month license suspension, and fines.

FIRST COUNT

NEGLIGENCE

62. Plaintiff, Vladimir Diaz repeats and incorporates Paragraphs 1-61 herein by reference as though fully set forth.

63. The motor vehicle assault on September 23, 2018 was caused by the recklessness, carelessness, and negligence of Reynoso, for that among other acts and omissions:

- a. Operated his motor vehicle while severely intoxicated with a BAC of at least .244%;
- b. Operated his motor vehicle at a high, dangerous, and excessive rate of speed;
- c. Failed to observe due care and precaution and to maintain proper and adequate control of the motor vehicle;
- d. Recklessly operated or failed to exercise reasonable care of the motor vehicle including but not limited to failing to reduce speed, observe traffic laws, change or merge lanes safely and keep a proper lookout for other vehicles;
- e. In any and all other respects not known to Plaintiff but which may become known before or at the time of trial.

64. As a direct and proximate result of the willful intoxication, recklessness, negligence, and carelessness of Reynoso, and the willful conduct, recklessness, and negligence of John Doe, the plaintiff, Mr. Diaz:

- a. Suffered permanent disfigurement, painful and permanent bodily injuries, great physical pain and suffering, mental anguish, severe and substantial emotional distress, reduced mental facilities, loss of earnings, loss of the capacity for the enjoyment of life;

- b. Was, is, and will be required to undergo continuing and future medical treatment and to incur medical costs and expenses to alleviate mental and physical injuries, pain and suffering;
- c. Was, is, and will be precluded from engaging in normal activities and pursuits, including a loss of future earnings.

65. Mr. Diaz's losses are and will be due to the willful acts, recklessness, carelessness, and negligence of Defendants Reynoso and John Doe, without any negligence or want of due care on the part of Mr. Diaz contributing to the harm done.

WHEREFORE, Plaintiff Vladimir Diaz demands judgment against the Defendants, Herbert Reynoso and John Doe, jointly and severally for damages, interest, costs of suit, attorney fees, punitive damages and such other and further relief as the Court deems just and reasonable.

SECOND COUNT

NEW JERSEY STATE TORT CLAIMS

N.J.S.A. 59:1-1 et seq.

66. Plaintiff Vladimir Diaz and individually, repeats and incorporates Paragraphs 1-65 herein by reference as though fully set forth.

67. All Defendants and employees, consisting of the City of Englewood, Officer Anthony Gallo, and Officer Lotharis Porter, have received timely Notice of Tort Claim Action pursuant to N.J.S.A. 59:1-1 et seq. Six (6) months have elapsed since the giving of Notice and the filing of this suit.

68. The threshold as set forth in N.J.S.A. 59:9-2(d) has been met as to all municipal parties. Mr. Diaz has pled sufficient evidence of aggravating circumstances that demonstrate that

injuries were permanent and substantial, and were of a level sufficient to cross the threshold of the New Jersey Tort Claims Act.

69. At all times relevant, Defendants, City of Englewood, its officers, employees or agents were acting within the scope of their agency or employment.

70. Defendants, City of Englewood, its officers, employees and/or agents' actions and omissions constituted recklessness and malfeasance of their duties, which created a dangerous condition and unreasonable risk of harm to the person, resulting in serious injury as described herein to Mr. Diaz.

71. Defendants, City of Englewood, its officers, employees and/or agents' actions and/or omissions were so negligent, careless, reckless and/or palpably unreasonable to react to and/or create a dangerous condition and unreasonable risk of harm to the person, resulting in serious injury as described herein to Mr. Diaz.

72. The named Defendants, the City of Englewood as a Public Entity, had actual or constructive notice of the dangerous condition and had sufficient time prior to the injury to have taken measures to protect against the risk of harm. Said action or failure to take action was palpably unreasonable.

73. Defendants, City of Englewood, its officers, employees and/or agents' actions and/or omissions were so negligent, careless, reckless, and palpably unreasonable that they breached the public interest in protecting the safety of those under its care and protection and had a legal duty to do so.

74. As a direct and proximate result of the aforesaid intentional, negligence, carelessness, recklessness and/or palpably unreasonable actions or ministerial actions of the

Defendants, the City of Englewood, Officer Anthony Gallo and Officer Lothairs Porter, the plaintiff Mr. Diaz has:

- a. Suffered permanent disfigurement, painful and permanent bodily injuries, great physical pain and suffering, mental anguish, severe and substantial emotional distress, reduced mental facilities, loss of earnings, loss of the capacity for the enjoyment of life;
- b. Was, is, and will be required to undergo continuing and future medical treatment and to incur medical costs and expenses to alleviate mental and physical injuries, pain and suffering;
- c. Was, is, and will be precluded from engaging in normal activities and pursuits, including a loss of future earnings.

75. Mr. Diaz's losses are and will be due to the willful acts, recklessness, carelessness, and negligence of Defendants, the City of Englewood, Officer Anthony Gallo and Officer Lothairs Porter, without any negligence or want of due care on the part of Mr. Diaz contributing to the harm done.

WHEREFORE, Plaintiff, Vladimir Diaz demands judgment against the Defendants, the City of Englewood, New Jersey, a municipal corporation of the State of New Jersey, County of Bergen, its officials, employees and/or agents, Anthony Gallo, Individually and as a Police Officer of the City of Englewood, and Lothairs Porter, Individually and as a Police Officer of the City of Englewood, jointly and severally for damages, interest, costs of suit, attorney fees, punitive damages and such other and further relief as the Court deems just and reasonable.

THIRD COUNT

**NEGLIGENT HIRING, SUPERVISION, AND RETENTION
AND THE DOCTRINE OF RESpondeAT SUPERIOR**

76. Plaintiff, Vladimir Diaz and individually, repeats and incorporates Paragraphs 1-75 herein by reference as though fully set forth.

77. At the time of the incident, Defendants were employees, agents and/or servants of the City of Englewood and/or the Police Department of the City of Englewood. These Defendants were acting within the course and scope of their employment at the time of the incident which is the basis of this lawsuit. As such, Defendants are responsible for the conduct of the Defendants under the doctrine of respondeat superior due to the master-servant relationship which existed at the time of the incident and are made, in part, the basis of this lawsuit.

78. Defendants, individually and/or its officers, employees and/or agents did and/or through its agents, servants, employees, so negligently, give poor and/or inadequate instructions and/or formulation of policy, and by said negligence, wrongful act or omission to correct a known improper action, which hazard and unreasonable condition the Defendants had actual or constructive notice and sufficient time prior to September 23, 2018 to have taken measures to protect against said condition, which action or failure to take action was hazardous and unreasonable.

79. Defendants did so negligently, carelessly and recklessly select, hire, or retain incompetent, unskillful, and improper persons for the management and/or operation of the Englewood City Police Department that they knew or should have ascertained that the persons were not properly qualified to undertake the work in such a manner as to prevent a hazardous and unreasonably foreseeable risk of injury which was incurred by the Plaintiff.

80. Defendants, City of Englewood, and its officers, employees and/or agents, Chief(s) of Police and official policymaker(s), individually and/or in their official capacities, so negligently, give poor and/or inadequate instructions and/or formulation of policy, and by said negligence, wrongful act, or omission to correct a known improper action.

81. Defendants, City of Englewood, and its officers, employees and/or agents, Chief(s) of Police and official policymaker(s), individually and/or in their official capacities failure to train and/or give poor and/or inadequate instructions and/or formulation of policy created the abject failure of the responding officers to perform their ministerial functions and/or the deficient and improper points, thereby constituting a deficient policy or practice.

82. Defendants, City of Englewood, and its officers, employees and/or agents, Chief(s) of Police and official policymaker(s), individually and/or in their official capacities failure to train and/or give poor and/or inadequate instructions and/or formulation of policy created the abject failure of the responding officers to perform their ministerial functions was a substantial factor which directly and proximately led to the permanent injuries sustained by Mr. Diaz. The negligent hiring, supervising and retention of the named and unnamed police officers were the proximate cause of the harm to the Plaintiff as outlined in the foregoing counts.

83. Negligent hiring, supervising and retention of the police officers, named and unnamed, creates liability regardless of whether the acts committed were outside the scope of employment.

WHEREFORE, Plaintiff, Vladimir Diaz demands judgment against the Defendants, the City of Englewood, New Jersey, a municipal corporation of the State of New Jersey, County of Bergen, its officials, employees and/or agents, jointly and severally for damages, interest, costs of

suit, attorney fees, punitive damages and such other and further relief as the Court deems just and reasonable.

FOURTH COUNT

**NEW JERSEY LICENSED ALCOHOLIC BEVERAGE SERVER FAIR LIABILITY
ACT (DRAM SHOP)
N.J.S.A. 2A:22a et. seq.**

84. Plaintiff Vladimir Diaz and individually, repeats and incorporates Paragraphs 1-83 herein by reference as though fully set forth.

85. Upon information and belief, on the evening of September 22, 2018 and early hours of September 23, 2018, Defendant Reynoso was served alcoholic beverages by the AWJ, Inc. d/b/a El Tango Argentina Grill and/or its agents and employees at the tavern known as El Tango Argentina Grill located at 22 North Van Brunt Street in Englewood, NJ, 07631.

86. AWJ, Inc. d/b/a El Tango Argentina Grill's agents and employees may include ABC Corp 1-3.

87. ABC Corp 1-3 may be an additional business that contributed to the accident at issues and would be subject to liability under N.J.S.A. 2A:22a et. seq.

88. AWJ, Inc. d/b/a El Tango Argentina Grill is a licensed alcoholic beverage server within the purview of N.J.S.A. 2A:22A-1 et. seq.

89. Reynoso was served by AWJ, Inc. d/b/a El Tango Argentina Grill and/or its agents and employees at a time when Reynoso was visibly intoxicated.

90. On September 23, 2018, AWJ, Inc. d/b/a El Tango Argentina Grill and/or its agents and employees knew or should have known that Reynoso would soon drive.

91. AWJ, Inc. d/b/a El Tango Argentina Grill served Reynoso alcohol until he had a BAC of .244% or greater.

92. After Reynoso consumed alcohol, he drove away from AWJ, Inc. d/b/a El Tango Argentina Grill in his vehicle.

93. As a direct and proximate cause of AWJ, Inc. d/b/a El Tango Argentina Grill negligent service of alcoholic beverages to a visibly intoxicated person, Reynoso struck Mr. Diaz's vehicle. As a result, Mr. Diaz:

- a. Suffered permanent disfigurement, painful and permanent bodily injuries, great physical pain and suffering, mental anguish, severe and substantial emotional distress, reduced mental facilities, loss of earnings, loss of the capacity for the enjoyment of life;
- b. Was, is, and will be required to undergo continuing and future medical treatment and to incur medical costs and expenses to alleviate mental and physical injuries, pain and suffering;
- c. Was, is, and will be precluded from engaging in normal activities and pursuits, including a loss of future earnings.

94. Mr. Diaz's losses are and will be due to the willful acts, recklessness, carelessness, and negligence of AWJ, Inc. d/b/a El Tango Argentina Grill and/or its agents and employees, without any negligence or want of due care on the part of Mr. Diaz contributing to the harm done.

WHEREFORE, Plaintiff, Vladimir Diaz demands judgment against the Defendants, AWJ, Inc. d/b/a El Tango Argentina Grill and ABC Corp 1-3, jointly and severally for damages, interest, costs of suit, attorney fees, punitive damages and such other and further relief as the Court deems just and reasonable.

FIFTH COUNT

LIABILITY AGAINST JOHN DOES (1-3)

95. Plaintiff, Vladimir Diaz and individually, repeats and incorporates Paragraphs 1-94 herein by reference as though fully set forth.

96. John Doe(s (1-3)) is an individual or are individuals whose willful, reckless, and/or negligent actions caused or contributed to Mr. Diaz's injuries.

97. As a direct and proximate cause of the John Doe(s) whose willful, reckless, and/or negligent actions Mr. Diaz:

- a. Suffered permanent disfigurement, painful and permanent bodily injuries, great physical pain and suffering, mental anguish, severe and substantial emotional distress, reduced mental facilities, loss of earnings, loss of the capacity for the enjoyment of life;
- b. Was, is, and will be required to undergo continuing and future medical treatment and to incur medical costs and expenses to alleviate mental and physical injuries, pain and suffering;
- c. Was, is, and will be precluded from engaging in normal activities and pursuits, including a loss of future earnings.

98. Mr. Diaz's losses are and will be due to the willful acts, recklessness, carelessness, and negligence of John Does (1-3), without any negligence or want of due care on the part of Mr. Diaz contributing to the harm done.

WHEREFORE, Plaintiff, Vladimir Diaz demands judgment against John Does (1-3), jointly and severally for damages, interest, costs of suit, attorney fees, punitive damages and such other and further relief as the Court deems just and reasonable.

SIXTH COUNT

LIABILITY AGAINST ABC CORP (1-3)

99. Plaintiff, Vladimir Diaz and individually, repeats and incorporates Paragraphs 1-98 herein by reference as though fully set forth.

100. ABC Corp (1-3) are entities whose willful, reckless, and/or negligent actions by the entities and/or their agents/employees caused and contributed to Mr. Diaz's injuries.

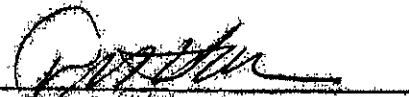
101. As a direct and proximate cause of the willful, reckless, and/or negligent actions of ABC Corp (1-3) and/or their agents/employees, Mr. Diaz:

- a. Suffered permanent disfigurement, painful and permanent bodily injuries, great physical pain and suffering, mental anguish, severe and substantial emotional distress, reduced mental facilities, loss of earnings, loss of the capacity for the enjoyment of life;
- b. Was, is, and will be required to undergo continuing and future medical treatment and to incur medical costs and expenses to alleviate mental and physical injuries, pain and suffering;
- c. Was, is, and will be precluded from engaging in normal activities and pursuits, including a loss of future earnings.

102. Mr. Diaz's losses are and will be due to the willful acts, recklessness, carelessness, and negligence of ABC Corp (1-3) and/or their agents/employees, without any negligence or want of due care on the part of Mr. Diaz contributing to the harm done.

WHEREFORE, Plaintiff, Vladimir Diaz demands judgment against ABC Corp (1-3) and/or their agents/employees, jointly and severally for damages, interest, costs of suit, attorney fees, punitive damages and such other and further relief as the Court deems just and reasonable.

WINNE, BANTA, BASRALIAN & KAHN, P.C.
Attorneys for Plaintiff
Vladimir Diaz

By: 

Dennis G. Harraka

Dated: December 2, 2019

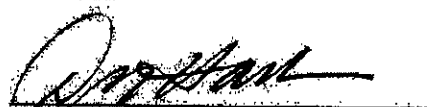
DEMAND FOR JURY TRIAL

Demand is hereby made by Plaintiff for trial by jury in this matter.

CERTIFICATION PURSUANT TO RULE 4:5-1

I certify that the matter in controversy in the within action is not presently the subject of any other action pending in any other court or of a pending arbitration proceeding. I further certify that there is no other party who should be joined in this above action.

WINNE, BANTA, BASRALIAN & KAHN, P.C.
Attorneys for Plaintiff
Vladimir Diaz

By: 

Dennis G. Harraka

Dated: December 2, 2019

CERTIFICATION PURSUANT TO RULE 1:38-7(b)

I certify that confidential personal identifiers have been redacted from documents now submitted to the Court and will be redacted from all documents submitted in the future in accordance R. 1:38-7(b).

DESIGNATION OF TRIAL COUNSEL

Dennis G. Harraka, Esq. is hereby designated as trial counsel in accordance with the Rules of Court.

DESIGNATION OF CO-COUNSEL

George J. Abdy, Esq. (ID# 00499-1973) of the Law Offices of Abdy & Kane located at 97 Lackawanna Ave #301, Totowa, NJ 07512 is hereby designated as co-counsel in accordance with the Rules of Court.

DEMAND FOR DISCOVERY OF INSURANCE COVERAGE

Pursuant to R. 4:10-2(b), the Plaintiff requests discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance person may be liable to satisfy part or all of a judgment which may be entered in this action, or to indemnify or reimburse for payments made to satisfy said judgment.

DEMAND FOR INTERROGATORIES

Pursuant to R. 4:17-2, Plaintiff hereby requests answers to Form C Interrogatories as set forth in Appendix II of the New Jersey Court Rules.

WINNE, BANTA, BASRAIAN & KAHN, P.C.
Attorneys for Plaintiff
Vladimir Diaz

By: 

Dennis G. Harraka

Dated: December 2, 2019