

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT

SARAH MARTIN, as the Widow and Personal
Representative of the Estate of Jeremy Martin, and on
behalf of the children of Jeremy Martin,

Plaintiffs,

vs.

TAI CHAN, DUBLIN'S STREET PUB, PINE WOLF II,
LLC, WEDGE COMMUNICATIONS, LLC, ROBERT
VILLALOBOS, XYZ CORPORATION, and JOHN
DOES 1-10,

Defendants.

**WRONGFUL DEATH AND
DRAM SHOP LIABILITY**

D-1329-CV-2017-02190

COMPLAINT FOR PERSONAL INJURIES

COME NOW the Plaintiffs, Sarah Martin, on behalf of herself, the Estate of
Jeremy Martin, and the children of Jeremy Martin, by and through her attorney of record,
David Foster Law Firm, P.C. and states the following:

1. On or about October 28, 2014, Jeremy Martin was killed after being shot
five (5) times in the back by Tai Chan.
2. At the time of Jeremy Martin's death, he and Sarah Martin were residents
of the City of Santa Fe, County of Santa Fe, State of New Mexico.
3. Sarah Martin is currently a resident of Sandoval County, State of New
Mexico.
4. Upon information and belief, at the time of the actions alleged in the
Complaint, Defendant Tai Chan ("Chan") was a resident of the County of Santa Fe, State
of New Mexico.

5. Upon information and belief, Defendant Dublin's Street Pub ("Dublin's) is a restaurant/bar establishment with a physical address of 1745 East University Ave, Las Cruces, NM 88001.

6. Upon information and belief, Dublin's is owned/controlled/operated by Pine Wolf II, LLC. The registered agent for Pine Wolf II, LLC is Robert L. Villalobos.

7. Upon information and belief, Mr. Robert Villalobos owns Liquor Control license # 50669, and has licensed said Liquor Control License to Wedge Communications, LLC.

8. Upon information and belief, Dublin's sells/dispenses alcohol pursuant to Liquor Control license # 50669.

9. Defendant XYZ Corporation is any other (unknown) business entity or structure that owns, operates, or manages Dublin's or the Liquor Control License under which Dublin's has the authority to sell/dispense alcohol.

10. Defendants John Doe 1-10 are the unknown person(s) or entities who own, operate, or manage Dublin's, Pine Wolf II, LLC, Wedge Communications, LLC and/or XYZ Corporation, or who are employees, agents, managers, principals, or officers of Dublin's, Pine Wolf II, LLC, Wedge Communications, LLC, and/or XYZ Corporation.

11. The true names and structure, whether individual, corporate, partnership, association or otherwise, of XYZ Corporation and John Does 1-10 are unknown to Plaintiffs, who therefore brings suit against XYZ Corporation and John Does 1-10 by such fictitious names. Plaintiffs will amend the caption and complaint to show the true names and capacities of each party when the same have been ascertained. Each of the Defendants, however, are legally responsible in some manner, whether negligently, in

warranty, *per se*, strictly, or otherwise, for the death of Jeremy Martin.

12. Plaintiff Sarah Martin, as the surviving spouse of Jeremy Martin, is appointed as the personal representative of the Estate of Jeremy Martin by counsel, as well as through the Order issued in D-101-CV-2017-02842 for the purposes of the Wrongful Death Act §41-2-3, NMSA (1978).

13. The acts complained of herein occurred in Las Cruces, New Mexico.

14. Jurisdiction and venue are proper in the District Court of Sandoval County, New Mexico, pursuant to NMSA 1978, Section 38-3-1 (1998), as Sarah Martin currently resides in Sandoval County.

STATEMENT OF FACTS

15. Sarah and Jeremy Martin are the parents of four (4) children.

16. On or about October 27th-28th, 2014, Jeremy Martin was employed by the Santa Fe County Sheriff's Office ("SCSO") as a certified, law enforcement officer.

17. On or about October 27th-28th, 2014, Defendant Tai Chan was an employee of the SCSO as a certified law enforcement officer and trained in Special Weapons and Tactics ("SWAT").

18. On the evening of October 27th-28th, 2014, Jeremy Martin and Chan were in Las Cruces, New Mexico in connection with their employment with the SCSO.

19. On the evening of October 27th-28th, 2014, Jeremy Martin and Chan had booked a room at the Hotel Encanto in Las Cruces, New Mexico.

20. During the evening of October 27, 2014, Jeremy Martin and Chan consumed alcohol for several hours at Dublin's.

21. Upon information and belief, while Jeremy Martin and Chan were

consuming alcohol at Dublin's, the staff of Dublin's had to intervene between Jeremy Martin and Chan and were aware of the presence of Jeremy Martin and Chan due to their behavior on the premises.

22. Upon information and belief, after the staff of Dublin's intervened between Jeremy Martin and Chan, Dublin's continued to provide alcohol to Jeremy Martin and Chan.

23. Upon information and belief, Dublin's served Chan beverages containing vodka and Red Bull energy drink, as well as additional alcoholic beverages.

24. Upon information and belief, Dublin's knew, or should have known, that it should not have provided Chan, or any else, with a combination of Red Bull and alcohol, or the additional alcoholic beverages.

25. Upon information and belief, Red Bull has a warning on the can to not mix Red Bull with alcohol.

26. Upon information and belief, after several hours at Dublin's Jeremy Martin and Chan returned to the Hotel Encanto, where Jeremy Martin dressed for bed.

27. After Jeremy Martin and Chan returned to the Hotel Encanto, Chan shot Jeremy Martin five (5) times in the back as he was running away and killed him.

28. Upon information and belief, Chan has asserted that at the time he killed Jeremy Martin, his blood alcohol level was more than twice the legal limit of the State of New Mexico with respect to Driving while ability impaired by drugs or alcohol.

29. Upon information and belief, Chan has admitted, under oath, to shooting Jeremy Martin five (5) times in the back.

30. As a result of Chan's and the other Defendants' actions, Sarah Martin and

Jeremy Martin's children suffered personal injuries and damages for which the Defendants are liable.

31. Sarah Martin and the children still suffer pain from the injury, and will likely do so for the remainder of their lives.

COUNT I – WRONGFUL DEATH – NEGLIGENCE - DEFENDANT CHAN

32. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation contained in Paragraphs 1 through 31.

33. Chan owed Jeremy Martin the duty to not kill him.

34. Chan breached this duty.

35. Chan caused the death of Jeremy Martin by shooting him five (5) times in the back.

36. As a direct and proximate result of Chan's acts, Jeremy Martin, Sarah Martin, and their children suffered damages, in an amount to be determined at trial.

37. All injuries suffered by Jeremy Martin were due to the negligent acts and/or omissions of Chan, without any contributing negligence on the part of Jeremy Martin or Plaintiffs.

**COUNT II – WRONGFUL DEATH – NEGLIGENCE PER SE- DEFENDANT
CHAN**

38. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation contained in Paragraphs 1 through 37.

39. NMSA Section 30-7-4 prohibits, in pertinent part:

- a. discharging a firearm into any building or vehicle or so as to knowingly endanger a person or his property;
- b. carrying a firearm while under the influence of an intoxicant or narcotic; or
- c. endangering the safety of another by handling or using a firearm or

other deadly weapon in a negligent manner.

40. Chan has previously set forth evidence before a judge and jury that at the time he killed Jeremy Martin by shooting him five (5) times in the back, his blood alcohol concentration (“BAC”)¹ was more than .16.

41. Chan killed Jeremy Martin with a firearm.

42. When Chan killed Jeremy Martin, he did so in violation of NMSA 30-7-4.

43. The provisions of NMSA 30-7-4 prescribe certain actions, and define a standard of conduct.

44. Chan violated the statute, Jeremy Martin was in the class of persons sought to be protected by the statute, and the injury to Jeremy Martin was of the type the legislature, through the statute, sought to prevent.

45. Chan’s violation of NMSA Section 30-7-4 constitutes negligence per se.

46. As a direct and proximate result of Chan’s violation of the statute, Jeremy Martin, Sarah Martin, and their children suffered damages, in an amount to be determined at trial.

47. All injuries suffered by Jeremy Martin were due to the negligent acts and/or omissions of Chan, without any contributing negligence on the part of Jeremy Martin or Plaintiffs.

COUNT III – INTENTIONAL KILLING - DEFENDANT CHAN

48. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation contained in Paragraphs 1 through 47.

49. Chan violated NMSA 30-2-1 and/or 30-2-3, in that he either killed Jeremy

¹ Blood Alcohol Concentration (BAC) levels represent the percent of blood that is concentrated with alcohol.

Martin, without lawful justification, by any act greatly dangerous to the life of Jeremy Martin; by performing an act which he knew that by his actions created a strong probability of death or great bodily harm to Jeremy Martin; by acting upon a sudden quarrel or in the heat of passion, he killed Jeremy Martin; or by committing an unlawful act not amounting to a felony, or by committing a lawful act which might produce death in an unlawful manner or without due caution and circumspection.

50. Chan acted in a manner that violated either NMSA 30-2-1 or 30-2-3.

51. Chan killed Jeremy Martin without justification.

52. As a direct and proximate result of Chan's violation of NMSA 30-2-1 or 30-2-3, Jeremy Martin, Sarah Martin, and their children suffered damages, in an amount to be determined at trial.

53. All injuries suffered by Jeremy Martin were due to the negligent acts and/or omissions of Chan, without any contributing negligence on the part of Jeremy Martin or Plaintiffs.

COUNT IV – DRAM SHOP LIABILITY – DEFENDANTS DUBLIN'S, PINE WOLF II, LLC, WEDGE COMMUNICATIONS, LLC, XYZ CORPORATION AND/OR JOHN DOES 1-10

54. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation contained in Paragraphs 1 through 53.

55. NMSA 60-7A-16 and 41-11-1 (the "Dram Shop Law") impose liability upon a licensee under the Liquor Control Act (NMSA 60-3A-1).

56. On or about October 27, 2014, Defendants Dublin's, Pine Wolf II, LLC, Wedge Communications, LLC, XYZ Corporation, and/or John Does 1-10 (collectively the "Defendants"), sold or gave certain alcoholic beverages to Chan, Jeremy Martin, and

others with them.

57. Upon information and belief, some of the beverages the employees of Dublin's provided Chan and Jeremy Martin contained Red Bull and alcohol.

58. Upon information and belief, the Defendants are "licensees" under the provisions of the Liquor Control Act.

59. Upon information and belief, it was reasonably apparent to the employees/agents of Dublin's that Chan was intoxicated, and knew from the totality of the circumstances that Chan, who was receiving service of alcoholic beverages by the employees of Dublin's, was intoxicated.

60. The Defendants had a duty to exercise due care in the supervision of the employees of Dublin's and to assure an adequate level of training and supervision over its employees, agents, managers, and officers, and to insure that its employees, agents, managers, and officers were properly trained in the proper service of alcoholic beverages, the recognition of intoxicated patrons, and the provisions of the Dram Shop Law.

61. The Defendants failed to properly supervise, train, or monitor its employees, agents, managers, and officers.

62. Upon information and belief, Defendants acted with gross negligence and the reckless disregard for the safety of either Chan or Jeremy Martin.

63. As a direct and proximate cause of his intoxication as a result of the Defendants' actions, Chan violated New Mexico Statutes, and/or acted negligently towards Jeremy Martin.

64. As a direct and proximate result of the Defendants' actions, Jeremy Martin, Sarah Martin, and their children suffered damages, in an amount to be determined

at trial.

65. All injuries suffered by Jeremy Martin were due to the negligent acts and/or omissions of Chan, without any contributing negligence on the part of Jeremy Martin or Plaintiffs.

COUNT V – PUNITIVE DAMAGES – CHAN AND THE DEFENDANTS

66. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation contained in Paragraphs 1 through 65.

67. Defendants Dublin's, Pine Wolf II, LLC, Wedge Communications, LLC XYZ Corporation, and/or John Doe 1-10 knew or should have known of their liability under the Dram Shop Law, the consequences of serving too much alcohol to Chan and others, as well as the effects of combining alcohol with Red Bull.

68. By serving Chan and others with the combination of alcohol and Red Bull, as well as additional alcohol, the Defendants knew or should have known of the affects that the combination of alcohol and Red Bull would have on a person.

69. Upon information and belief, Defendants were informed by Red Bull, through a warning posted on the can, to not serve a combination of Red Bull and alcohol.

70. The Defendants' failure to take proper precautions when serving either Jeremy Martin or Chan was intentional, reckless, wanton, or with an utter disregard for the rights, safety, and/or consequences to Jeremy Martin, or to the effect such acts would have on Chan.

71. Plaintiffs should be awarded punitive damages in order to deter future action by Chan and the Defendants, and to punish Chan and the Defendants for their failure to properly dispense alcohol in a reasonable and prudent manner and amount.

WHEREFORE, as a direct and proximate result of Chan and the Defendants' conduct and actions, Plaintiffs have suffered personal injuries and damages both temporary and permanent, and therefore prays for judgment against Chan and the Defendants on the foregoing causes of action for damages to be determined by the trier of fact, including but not limited to:

- (i) Actual damages;
- (ii) Compensatory damages;
- (iii) Damages for emotional distress;
- (iv) Damages for loss of consortium;
- (v) Punitive damages in an amount sufficient to punish Chan and the Defendants;
- (vi) Any and all damages allowed by statute;
- (vii) Interest to the extent allowed by law;
- (viii) All loss of Jeremy Martin's care and support to his spouse and children;
- (ix) Reasonable attorney fees and costs, and;
- (x) Any other further relief that the Court deems just and proper.

Dated: Santa Fe, NM
October 20, 2017

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