

CAUSE NO.

**JERALDIN OSPINA, an individual,
 JERALDIN OSPINA, as next friend of
 AH, a minor, and ANTHONY RAMOS,
 an individual,**

Plaintiffs,

v.

**ALONNIEA FANTASIA FORD, an
 individual,
 JACK IN THE BOX, INC., a corporation,
 and A3H FOODS GENERAL PARTNER,
 LLC., a limited liability company.**

Defendants.

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IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

Plaintiffs Jeraldin Ospina, Jeraldin Ospina as next friend of AH, a minor, and Anthony Ramos allege as follows:

I.

DISCOVERY CONTROL PLAN LEVEL 3

1. Under Texas Rule of Civil Procedure 190.4, plaintiffs declare that discovery in this lawsuit is intended to be conducted under Level 3. Plaintiffs affirmatively plead this suit is not governed by the expedited actions process in Texas Rule of Civil Procedure 169 because plaintiffs seek monetary relief over \$1,000,000.00.

II.

NATURE OF THE CASE

2. This is a cause of action in which plaintiffs seek to recover damages as a result of an incident at Jack In the Box in Houston, Texas that occurred on March 3, 2021.

III.
THE PARTIES

3. At all times material hereto, plaintiff, Jeraldin Ospina was a resident of Miami-Dade County, Florida. The last three digits of her social security number are 230. The last three digits of her driver's license are 88-1.

4. At all times material hereto, plaintiff, AH, a minor, is an individual and a citizen of Miami-Dade County, Florida.

5. At all times material hereto, plaintiff, Anthony Ramos was a resident of Miami-Dade County, Florida. The last three digits of his social security number are 611. The last three digits of his driver's license are 56-0.

6. Upon information and belief and at all times material hereto, defendant Alonniea Fantasia Ford was a resident of Harris County, Texas. She may be served at 533 Coke, #26, Houston, Texas 77020.

7. Upon information and belief and at all times material hereto, defendant Jack In The Box, Inc. is a corporation authorized and doing business in the State of Texas with a registered address of 9330 Balboa Avenue, San Diego, California 92123. Defendant Jack In The Box, Inc. may be served with process by serving its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company at 211 E. 7th Street, Suite 620, Austin, Texas 78701-3136.

8. Upon information and belief and at all times material hereto, defendant A3H Foods General Partner, LLC. is a limited liability company doing business in the State of Texas with a registered address of 2008 Champions Forest Drive, Suite 500, Spring, Texas 77379-8696.

Defendant A3H Foods General Partner, LLC. may be served with process by serving its registered agent Mark Holmes at 2008 Champions Forest Drive, Suite 500, Spring, Texas 77379-8696.

9. At all times material hereto, defendant Alonniea Fantasia Ford was acting within the course of her employment with defendants Jack In The Box, Inc. and A3H Foods General Partner, LLC.

IV. JURISDICTION AND VENUE

10. This Court has jurisdiction over this matter because the damages are within the jurisdictional limits of this Court.

11. This Court has personal jurisdiction over the defendants Alonniea Fantasia Ford because the defendant is a resident of Harris County, Texas.

12. This Court has personal jurisdiction over the defendant Jack In The Box, Inc. because the defendant has established minimum contacts with the forum state, and the exercise of jurisdiction comports with traditional notions of fair play and substantial justice. In addition, the defendant committed a tort in this state. *Tex. Civ. Prac. & Rem. Code §17.042(2)*.

13. This Court has personal jurisdiction over the defendant A3H Foods General Partner, LLC. because the defendant conducts business in the State of Texas. In addition, the defendant committed a tort in this state.

14. Venue is proper in the District Court for the County of Harris, Texas under Texas Civil Practice and Remedies Code §15.002(a)(1) because Harris County is the county in which all or substantial part of the events or omissions giving rise to the claims in this Petition occurred.

V.

INCIDENT FACTS

15. On March 3, 2021, plaintiff Anthony Ramos had gone to George Bush Intercontinental Airport to pick up his wife Jeraldin Ospina and her daughter AH who at the time was 6 years old.

16. Plaintiff Anthony Ramos was currently in Houston, Texas to work on restoring electricity after Hurricane Harvey hit the city. He was going to pick up his family who was coming to meet him in Houston.

17. At around 11:30 p.m., plaintiffs decided to get something to eat and went to the drive thru of Jack In The Box restaurant located at 15819 John F. Kennedy Boulevard, Houston, Texas 77035.

18. Upon arrival, plaintiff Anthony Ramos ordered combo #2 and paid \$12.99 for the order. Upon receipt of his food by defendant Alonniea Fantasia Ford, plaintiff checked to verify that his order was complete. The order was not complete. Plaintiffs were missing the “curly fries”. Plaintiffs communicated the missing item to defendant Alonniea Fantasia Ford. Defendant Alonniea Fantasia Ford refused to fulfill the order that plaintiffs had paid for already.

19. Plaintiffs requested to speak to the manager of the store. The manager did not come to try to resolve the situation. Defendant Alonniea Fantasia Ford began cursing at plaintiffs and yelling at them to “get the f*** outta here!!”. Plaintiffs started arguing with defendant Alonniea Fantasia Ford. At some point during the argument, defendant Alonniea Fantasia Ford threw ketchup, ice, and other items at plaintiffs inside their car.

20. Alonniea Fantasia Ford then pulled out a gun causing plaintiffs to pull forward out of the drive thru window area and defendant Alonniea Fantasia Ford then shot at plaintiffs' car. Plaintiff AH was in the back seat of the car. She was 6 years old at the time of the incident. Also, plaintiff Jeraldin Ospina was pregnant at the time of this incident.

21. Plaintiffs were able to get away from the Jack In The Box location shaken. At that time, they contacted 9-1-1 who dispatched officers to the scene.

22. After the police officers arrived, defendant Alonniea Fantasia Ford called Kevin Theriot so he could come and retrieve the gun used to shoot at plaintiffs' car. Both Alonniea Fantasia Ford and Kevin Theriot were arrested at the scene. Alonniea Fantasia Ford was charged with aggravated assault with a deadly weapon. Kevin Theriot was charged with carrying a weapon.

23. Plaintiffs returned home to Florida after this incident. The incident shook the family up so much that plaintiff Anthony Ramos quit his contract job in the Houston area and returned to Florida as well.

24. At the time of the incident, defendant Alonniea Fantasia Ford was an employee and acting within the course of her employment with defendants Jack In The Box, Inc. and A3H Foods General Partner, LLC.

25. Plaintiffs suffered serious injuries and damages because of this accident.

VI.

FIRST CAUSE OF ACTION

(Negligence against defendant Alonniea Fantasia Ford)

26. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1

through 25, inclusive.

27. Defendant owed a duty of ordinary care to plaintiffs.

28. Defendant owed a duty to exercise reasonable care to protect the patrons from harm.

29. Defendant Alonniea Fantasia Ford owed a duty of care to not brandish a weapon and put the safety of customers of the restaurant in jeopardy.

30. Defendant Alonniea Fantasia Ford owed a duty of care to not shoot a weapon and put the safety of customers of the restaurant in jeopardy.

31. Defendant owed a duty to exercise reasonable care in the handling of complaints and situations regarding its customers.

32. Defendant's conduct was a breach of duty to use ordinary care.

33. The breach of these duties and negligence by defendant directly and proximately caused damages to plaintiffs, including but not limited to: property damage, past medical expenses, future medical expenses, physical pain, mental pain, anguish and suffering, quality of life, lost earnings and earning capacity.

VII.

SECOND CAUSE OF ACTION

(Negligence against defendants Jack In The Box, Inc. and A3H Foods General Partner, LLC.)

34. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 33, inclusive.

35. Defendants owed plaintiffs a duty of ordinary care to ensure the safety of plaintiffs while at their premises and while conducting business at their premises.

36. Plaintiffs as patrons of defendants had a reasonable expectation that defendants were employing competent personnel and providing quality customer care without being assaulted, placed in danger, or placed in imminent threat by a weapon.

37. Defendants Jack In The Box, Inc. and A3H Foods General Partner, LLC also owed the following duties to plaintiffs:

- a. Conduct background checks and proper investigations of its employees so that they only employ individuals that can provide a safe environment to customers.
- b. Have comprehensive codes of conduct and employee manuals that prohibit the carrying and bringing weapons to its restaurants so that they do not represent any danger to the patrons.
- c. Have competent supervisors that will assure that all of the restaurant's employees are complying with safety measures.
- d. Have competent supervisors that will ensure no employee is carrying a weapon that can represent danger or unsafe situations with the restaurant's customers.
- e. Have competent supervisors and employees that work diligently in ensuring that complaints and situations involving customers get tended to in safe ways.
- f. Provide security training and supervise their employees regarding the carrying of weapons that can put the safety of the restaurant's patrons in danger.

38. Defendants breached these duties owed to plaintiffs by employing an incompetent defendant who had a criminal background, not conducting proper background checks and not adequately training and supervising her considering the nature of the business that they own.

39. The breach of these duties and negligence of defendants directly and proximately

caused damages to plaintiffs, including but not limited to: property damage, past medical expenses, future medical expenses, physical pain, mental pain, anguish and suffering, quality of life, lost earnings and earning capacity.

VIII.

THIRD CAUSE OF ACTION

(Gross Negligence against defendants Alonniea Fantasia Ford, Jack In The Box, Inc. and A3H Foods General Partner, LLC.)

40. Plaintiffs reallege and incorporate by reference the allegations in Paragraphs 1 through 39, inclusive.)

41. The acts and omissions by defendants, when viewed objectively from the standpoint of defendants at the time of the occurrence, involved an extreme risk, considering the probability, magnitude, and potential harm to others.

42. Defendant Alonniea Fantasia Ford owed plaintiffs a duty to use care in her capacity as an employee, representative and agent of defendants Jack In The Box, Inc. and A3H Foods General Partner, LLC.

43. Defendant Alonniea Fantasia Ford had actual and subjective awareness of the severe and dangerous risk involved when brandishing and shooting a weapon at plaintiffs, but nevertheless the defendant proceeded with conscious indifference to the rights, safety, and welfare of plaintiffs.

44. Gross negligence can be imputed to defendants Jack In The Box, Inc. and A3H Foods General Partner, LLC because the grossly negligent acts were committed by defendants' employee and/or agent and defendants were reckless in hiring and retaining incompetent and unfit employees and/or agents.

45. The grossly negligent conduct of defendants directly and proximately caused damages to plaintiffs, including but not limited to: property damage, past medical expenses, future medical expenses, physical pain, mental pain, anguish and suffering, quality of life, lost earnings and earning capacity.

IX.

FOURTH CAUSE OF ACTION

(Assault and battery against defendant Alonniea Fantasia Ford)

46. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through 45, inclusive.

47. The actions by defendant Alonniea Fantasia Ford described above constitute assault and battery which are actionable under the laws of Texas.

48. Defendant Alonniea Fantasia Ford intentionally and knowingly threatened plaintiffs with imminent bodily injury by shooting a weapon at them.

49. The actions by defendant Alonniea Fantasia Ford caused plaintiffs substantial emotional distress, anxiety, nervousness, and fear.

50. The actions and negligence of defendant directly and proximately caused damages to plaintiffs, including but not limited to: property damage, past medical expenses, future medical expenses, physical pain, mental pain, anguish and suffering, quality of life, lost earnings and earning capacity.

X.

FIFTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress against defendant Alonniea Fantasia Ford)

51. Plaintiffs reallege and incorporate by reference the allegations contained in

paragraphs 1 through 50, inclusive.

52. The actions by defendant Alonniea Fantasia Ford constitute intentional infliction of emotional distress.

53. Defendant Alonniea Fantasia Ford intentionally and recklessly shot a weapon at plaintiffs with clear disregard for their safety. These actions are considered extreme and outrageous.

54. A reasonable person would not expect to use the drive thru of a restaurant and get assaulted, cursed at, and shot with a weapon. A reasonable person would have expected to pull up through the drive thru of a restaurant, order his/her food and leave.

55. The actions of defendant Alonniea Fantasia Ford caused plaintiffs severe and significant emotional and psychological distress, including but not limited to great pain of mind and body.

56. The actions and negligence by defendant Alonniea Fantasia Ford directly and proximately caused damages to plaintiffs, including but not limited to: property damage, past medical expenses, future medical expenses, physical pain, mental pain, anguish and suffering, quality of life, lost earnings and earning capacity.

XI.

SIXTH CAUSE OF ACTION

(Respondeat Superior against defendants Jack In The Box, Inc. and A3H General Partner, LLC.)

57. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 56, inclusive.

58. At all times material hereto, defendant Alonniea Fantasia Ford was employed by defendants. Defendant Alonniea Fantasia Ford was acting within the course of her employment and engagement with defendants.

59. Defendants Jack In The Box, Inc. and A3H General Partner, LLC. are liable for the negligence of their employees, including defendant Alonniea Fantasia Ford, during the course and scope of her employment with them.

60. Defendants' employees, acting within the course and scope of their employment, had a general duty to exercise reasonable care in performing their work. Defendant Alonniea Fantasia Ford, however, failed to exercise reasonable care.

61. Therefore, defendants are liable for plaintiffs' damages under the doctrine of respondeat superior for the acts and omissions committed by its employees, managers, representatives, agents, ostensible agents, and agents by estoppel.

XII.

SEVENTH CAUSE OF ACTION

(Negligent Hiring, Retention and Supervision against defendants Jack In The Box, Inc. and A3H Foods General Partner, LLC.)

62. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 61, inclusive.

63. Defendants Jack In The Box, Inc. and A3H Foods General Partner, LLC. are liable for the negligence of its employees, agents, and representatives.

64. Defendants Jack In The Box, Inc. and A3H Foods General Partner, LLC. did not use ordinary care in hiring, supervising, training, and retaining employees, agents and representatives and their supervisors.

65. A background check on defendant Alonniea Fantasia Ford would have revealed

that defendant Alonniea Fantasia Ford had a criminal history involving violence and, therefore, defendants should have taken measures to make sure that the safety of the customers and patrons were ensured.

66. Defendants negligently hired and retained defendant Alonniea Fantasia Ford with clear disregard for the safety of the customers they tend to. In addition to the negligent hiring and retaining of defendant Ford, defendants negligently failed to supervise and properly train defendant Ford to avoid incidents like the one that injured plaintiffs.

67. The breach of duties and negligence by defendants directly and proximately caused damages to plaintiffs, including but not limited to: property damage, past medical expenses, future medical expenses, physical pain, mental pain, anguish and suffering, quality of life, lost earnings and earning capacity.

XIII.

REQUEST FOR DISCLOSURES

68. Under Texas Rule of Civil Procedure 194.2, plaintiffs request that defendants disclose within 30 days after the filing of the answer, the information described in Rule 194.2(b).

XIV.

JURY DEMAND

69. Plaintiffs demand a jury trial and tender the appropriate fee with this petition.

XV.

PRAYER

Plaintiffs pray that defendants are duly cited to appear and answer this petition, and that on final trial of the action, the plaintiffs have judgment of the court:

- a. Damages for past and future physical and mental pain and suffering;

- b. Damages for past and future medical bills;
- c. Lost wages and loss of earning capacity;
- d. Cost of this lawsuit and proved at the time of trial;
- e. Pre and post judgment interest at the maximum legal rate;
- f. Under Rule 47 of the Texas Rules of Civil Procedure, plaintiffs disclose that their prayer seeks monetary judgment relief over \$250,000.00 but not more than \$1,000,000.00;
- g. Such other and further relief, at law or in equity, to which plaintiffs may be justly entitled.

Respectfully Submitted,

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ATTORNEYS FOR PLAINTIFFS

Automated Certificate of eService

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Mark Underwood on behalf of Melissa Munich

Bar No. 24122762

munderwood@underwoodlawoffices.com

Envelope ID: 68196068

Status as of 9/13/2022 12:56 PM CST

Associated Case Party: ospina, jeraldin (as next friend of a h)(a minor)

Name	BarNumber	Email	TimestampSubmitted	Status
Mark FUnderwood		munderwood@underwoodlawoffices.com	9/13/2022 11:07:36 AM	SENT
Cynthia JUnderwood		cunderwood@underwoodlawoffices.com	9/13/2022 11:07:36 AM	SENT
Melissa Munich		mmunich@underwoodlawoffices.com	9/13/2022 11:07:36 AM	SENT
Ana Mendoza		amendoza@underwoodlawoffices.com	9/13/2022 11:07:36 AM	SENT
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Natalie Hall		nhall@underwoodlawoffices.com	9/13/2022 11:07:36 AM	SENT

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Mark Underwood on behalf of Melissa Munich

Bar No. 24122762

munderwood@underwoodlawoffices.com

Envelope ID: 68196068

Status as of 9/13/2022 12:56 PM CST

Associated Case Party: Jeraldine Ospina

Name	BarNumber	Email	TimestampSubmitted	Status
Mark FUnderwood		munderwood@underwoodlawoffices.com	9/13/2022 11:07:36 AM	SENT
Cynthia JUnderwood		cunderwood@underwoodlawoffices.com	9/13/2022 11:07:36 AM	SENT
Melissa Munich		mmunich@underwoodlawoffices.com	9/13/2022 11:07:36 AM	SENT
Ana Mendoza		amendoza@underwoodlawoffices.com	9/13/2022 11:07:36 AM	SENT
Randall L.Kallinen		AttorneyKallinen@aol.com	9/13/2022 11:07:36 AM	SENT
Natalie Hall		nhall@underwoodlawoffices.com	9/13/2022 11:07:36 AM	SENT

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Associated Case Party: Anthony Ramos

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