

SALTZ, MONGELUZZI, BARRETT & BENDESKY, P.C.
BY: ROBERT J. MONGELUZZI/ANDREW R. DUFFY/
JEFFREY P. GOODMAN
IDENTIFICATION NO.: 36283/77121/309433
52ND FLOOR
1650 MARKET STREET
PHILADELPHIA, PA 19103
(215) 496-8282

ATTORNEYS FOR
PLAINTIFFS



EDWARD W. DIDONATO
235 Bradford Circle
Blue Bell, PA 19422

Plaintiff

v.

GERALD V. UNG
10919 Hunter Gate Way
Reston, VA 20194

And

**EULOGY BELGIAN TAVERN, a.k.a.
and/or d.b.a. EBT Businesses and Beneluxx
Inc.**
136 Chestnut Street
Philadelphia, PA 19106

And

**EBT BUSINESSES, a.k.a. and/or d.b.a.
Eulogy Belgian Tavern and/or Beneluxx,
Benneluxx Holdings, Inc., Eulogy Beneluxx,
Inc., Beneluxx Tasting Room, Belgian
Tavern, EBT Businesses, Eulogy Belgium
Tavern**
211 South Street, Suite 306
Philadelphia, PA 19147

And

**KHYBER PASS PUB, a.k.a. and/or d.b.a.
Dalgear Ltd., and/or Fishmouth, Inc.,**
56 South Second Street
Philadelphia, PA 19106

**PHILADELPHIA COUNTY
COURT OF COMMON PLEAS
LAW DIVISION**

DECEMBER TERM, 2011

NO.

JURY TRIAL DEMANDED

And

**LUCY'S HAT SHOP, LLC, a.k.a. and/or
d.b.a. Lucy's Hat Shop Restaurant and
Lucy's Hat Box Restaurant
15 South 20th Street
Philadelphia, PA 19103**

And

**PARADIGM RESTAURANT & BAR, a.k.a.
and d.b.a. Paradigm Restaurant & Bar
Management Company, Inc., 239 Chestnut
Street, Inc., Paradigm, Paradigm
Restaurant, Paradigm Restaurant and
Lounge, Paradigm Restaurant & Lounge
One Mellon Bank Center, Suite 2000
Pittsburgh, PA 15219**

And

**PUBLIC HOUSE INVESTMENTS, LLC,
a.k.a. and d.b.a. FIELD HOUSE, a.k.a.
FIELD HOUSE SPORTS BAR,
1819 J.F.K. Boulevard, Suite 480
Philadelphia, PA 19103**

Defendants

COMPLAINT-CIVIL ACTION

"NOTICE

"You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgement may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

"YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA BAR ASSOCIATION
LAWYER REFERRAL and INFORMATION SERVICE
One Reading Center
Philadelphia, Pennsylvania 19107
(215) 238-1701"

"AVISO

"Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

"LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE, SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

ASOCIACION DE LICENCIADOS DE FILADELPHIA
SERVICIO DE REFERENCIA E INFORMACION LEGAL
One Reading Center
Philadelphia, Pennsylvania 19107
Telefono: (215) 238-1701"

1. Plaintiff, Edward DiDonato, is an adult citizen of the Commonwealth of Pennsylvania residing at the above captioned address.
2. Defendant, Gerald V. Ung, is an adult citizen of the Commonwealth of Virginia residing at the above captioned address.
3. Defendant, Eulogy Belgian Tavern (“Eulogy Tavern”), is a corporation or other business entity organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principle place of business located at the above captioned address.
4. At all times relevant hereto, Defendant, Eulogy Tavern, carried on substantial business activities within the County of Philadelphia and Commonwealth of Pennsylvania.
5. At all times relevant hereto, Defendant, Eulogy Tavern, was acting by and through its agents, servants, workers and employees, all of whom were acting within the course and scope of their employment, for and on behalf of Defendant, Eulogy Tavern.
6. Defendant, EBT BUSINESSES, a.k.a. and/or d.b.a. Eulogy Belgian Tavern and/or Beneluxx, Benneluxx Holdings, Inc., Eulogy Beneluxx, Inc., Beneluxx Tasting Room, Belgian Tavern, EBT Businesses, Eulogy Belgium Tavern (“EBT”) is a corporation or other business entity organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principle place of business located at the above captioned address.
7. At all times relevant hereto, Defendant, EBT, carried on substantial business activities within the County of Philadelphia and Commonwealth of Pennsylvania.

8. At all times relevant hereto, Defendant, EBT, was acting by and through its agents, servants, workers and employees, all of whom were acting within the course and scope of their employment, for and on behalf of Defendant, EBT.

9. Defendant, Eulogy Tavern and/or EBT, is the owner of the Eulogy Belgian Tavern located at 136 Chestnut Street, Philadelphia, Pennsylvania.

10. At all times relevant hereto, Eulogy Tavern and/or EBT was a bar/restaurant that sold and/or dispensed alcoholic beverages.

11. At all times relevant hereto, Defendant, Eulogy Tavern and/or EBT, was the owner of a liquor license, purchased with the approval of the Pennsylvania Liquor Control Board ("PLCB"), and sold and/or dispensed alcoholic beverages under regulations imposed by the PLCB and the Pennsylvania Statutes Title 47 Chapter 1 Liquor Code.

12. Defendant, Khyber Pass Pub ("Khyber"), is a corporation or other business entity organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principle place of business located at the above captioned address.

13. Defendant, Khyber, is the owner of the Khyber Pass Pub, 56 South Second Street, Philadelphia, Pennsylvania.

14. At all times relevant hereto, Defendant, Khyber, carried on substantial business activities within the County of Philadelphia and Commonwealth of Pennsylvania.

15. At all times relevant hereto, Defendant, Khyber, was acting by and through its agents, servants, workers and employees, all of whom were acting within the course and scope of their employment, for and on behalf of Defendant, Khyber.

16. At all times relevant hereto, Khyber, was a bar/restaurant that sold and/or dispensed alcoholic beverages.

17. At all times relevant hereto, Defendant, Khyber, was the owner of a liquor license, purchased with the approval of the Pennsylvania Liquor Control Board ("PLCB"), and sold and/or dispensed alcoholic beverages under regulations imposed by the PLCB and the Pennsylvania Statutes Title 47 Chapter 1 Liquor Code.

18. Defendant, Lucy's Hat Shop ("Lucy's"), is a limited liability company or other business entity organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principle place of business located at the above captioned address.

19. Defendant, Lucy's, is the owner of Lucy's Hat Shop, located at 247 Market Street, Philadelphia, Pennsylvania.

20. At all times relevant hereto, Defendant, Lucy's, carried on substantial business activities within the County of Philadelphia and Commonwealth of Pennsylvania.

21. At all times relevant hereto, Defendant, Lucy's, was acting by and through its agents, servants, workers and employees, all of whom were acting within the course and scope of their employment, for and on behalf of Defendant, Lucy's.

22. At all times relevant hereto, Lucy's was a bar/restaurant that sold and/or dispensed alcoholic beverages.

23. At all times relevant hereto, Defendant, Lucy's was the owner of a liquor license, purchased with the approval of the Pennsylvania Liquor Control Board ("PLCB"), and sold and/or dispensed alcoholic beverages under regulations imposed by the PLCB and the Pennsylvania Statutes Title 47 Chapter 1 Liquor Code.

24. Defendant, Paradigm Restaurant and Bar ("Paradigm Bar"), is a corporation or other business entity organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principle place of business located at the above captioned address.

25. Defendant, Paradigm Bar, is the owner of Paradigm Restaurant and Bar located at 239 Chestnut Street, Philadelphia, Pennsylvania.

26. At all times relevant hereto, Defendant, Paradigm Bar, carried on substantial business activities within the County of Philadelphia and Commonwealth of Pennsylvania.

27. At all times relevant hereto, Defendant, Paradigm Bar, was acting by and through its agents, servants, workers and employees, all of whom were acting within the course and scope of their employment, for and on behalf of Defendant, Paradigm Bar.

28. At all times relevant hereto, Paradigm Bar was a bar/restaurant that sold and/or dispensed alcoholic beverages.

29. At all times relevant hereto, Paradigm Bar was the owner of a liquor license, purchased with the approval of the Pennsylvania Liquor Control Board (“PLCB”), and sold and/or dispensed alcohol under regulations imposed by the PLCB and the Pennsylvania Statutes Title 47 Chapter 1 Liquor Code.

30. Defendant, Public House Investments, LLC (“Field House”), is a limited liability company or other business entity organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principle place of business located at the above captioned address.

31. Defendant, Field House, is the owner of Field House, a bar/restaurant located at 1150 Filbert Street, Philadelphia, Pennsylvania.

32. At all times relevant hereto, Defendant, Field House, was acting by and through its agents, servants, workers and employees, all of whom were acting within the course and scope of their employment, for and on behalf of Defendant, Field House.

33. At all times relevant hereto, Defendant, Field House, carried on substantial business activities within the County of Philadelphia and Commonwealth of Pennsylvania.

34. At all times relevant hereto, Field House was a bar/restaurant that sold and/or dispensed alcoholic beverages.

35. At all times relevant hereto, Field House was the owner of a liquor license, purchased with the approval of the Pennsylvania Liquor Control Board (“PLCB”), and sold and/or dispensed alcohol under regulations imposed by the PLCB and the Pennsylvania Statutes Title 47 Chapter 1 Liquor Code.

36. On or about January 17, 2010, Plaintiff Edward DiDonato was walking at 4th and Market Streets in Philadelphia at 2:29 a.m. when he was assaulted and shot several times by Defendant Gerald V. Ung.

37. Plaintiff Edward DiDonato was unarmed.

38. Defendant Gerald V. Ung was lawfully on the premises of Defendants Eulogy Tavern and Khyber consuming alcoholic beverages served to him by defendants' employees who were acting within the scope of their authority on the evening of January 16, 2010 into the early morning of January 17, 2010, immediately prior to the shooting Plaintiff.

39. While on the premises of Defendants Eulogy Tavern and Khyber, Defendant Gerald V. Ung was in a visibly intoxicated condition.

40. Defendants Eulogy Tavern and Khyber, by and through their agents, servants, workers and employees, willfully and unlawfully served and continued to serve alcoholic beverages to Defendant Ung when he was in a visibly intoxicated condition, in direct violation of the Pennsylvania Dram Shop Act, 44 P.S. 4-493 *et. seq.*, when they knew, or had reason to know, that defendant, Gerald V. Ung, constituted a risk of harm to others by virtue of being intoxicated.

41. The negligent sale of alcoholic beverages by Defendants Eulogy Tavern and Khyber to Defendant Gerald V. Ung was a direct and proximate cause of Plaintiff's injuries.

42. Thomas Kelly and Andrew DiLoretto were lawfully on the premises of Defendants Eulogy Tavern, Lucy's, Paradigm Bar and Field House consuming alcoholic beverages served to them by defendant's employees who were acting within the scope of their

authority on the evening of January 16, 2010 into the early morning of January 17, 2010, immediately prior to the assault inflicted on Plaintiff and were in a visibly intoxicated condition at the time.

43. Defendants Eulogy Tavern, Lucy's, Paradigm Bar and Field House, by and through their agents, servants, workers and employees, willfully and unlawfully served and continued to serve alcoholic beverages to Thomas Kelly and Andrew DiLoretto when they were in a visibly intoxicated condition, in direct violation of the Pennsylvania Dram Shop Act, 47 P.S. §§4-490 *et seq.* when they knew, or had reason to know, that Thomas Kelly and Andrew DiLoretto constituted a risk of harm to others by virtue of being intoxicated.

44. The negligent sale of alcoholic beverages by Defendants Eulogy Tavern, Lucy's, Paradigm Bar and Field House, to Thomas Kelly and Andrew DiLoretto was a direct and proximate cause of Plaintiff's injuries.

45. As a result of the conduct of defendants, Plaintiff suffered serious and debilitating injuries to his abdomen, left hand, left clavicle and back, with dramatic weakness in his left leg and acute denervation in an L4-L5 distribution and in the lumbar paraspinal muscles, severe neurological impairment, inability to control his bowels, depression and severe neurologic injuries.

(a) As a direct and proximate result of the conduct of defendants, plaintiff has in the past required, continues to require, and may in the future require, medical treatment and care, including multiple surgeries, and has in the past, continues presently, and may in the future incur the cost of medicines, medical care, hospitalizations, treatment, future operations, testing, and rehabilitation and attempt to alleviate and/or cure his condition.

(b) As a direct and proximate result the conduct of defendants, plaintiff has in the past, and continues to suffer pain, scarring, loss of independence, mental anguish, humiliation, embarrassment, fear, loss of well-being, inability to enjoy the normal pleasures of life, and restrictions on his ability to engage in normal activities and pleasures of life, and other intangible losses.

(c) As a direct approximate result of the conduct of the defendants, plaintiff has been prevented and will be prevented in the future from performing his usual duties, activities, occupations and avocations and has suffered a loss of earnings and a loss of earning capacity.

COUNT I - NEGLIGENCE

EDWARD DIDONATO v. EULOGY BELGIAN TAVERN and KHYBER PASS PUB

46. Plaintiff incorporates all previous paragraphs of this Complaint the same as if set forth hereinafter.

47. Defendants, Eulogy Tavern and Khyber, by and through the acts and omissions of their agents, servants, workers and employees, in serving alcoholic beverages to the visibly intoxicated Defendant Gerald V. Ung in the course and scope of their employment, violated the statutes of the Commonwealth of Pennsylvania and was careless, negligent and reckless in numerous respects including, without limitation:

(a) Selling and continuing to sell and serve alcoholic beverages to Defendant, Gerald V. Ung, when he was visibly intoxicated;

(b) Failing to detect that Defendant, Gerald V. Ung, was in a visibly intoxicated and inebriated condition as a result of their continual serving of alcoholic beverages to him;

(c) Selling and continuing to sell and serve alcoholic beverages to Defendant Gerald V. Ung, when defendant knew or had reason to know that the imbibing of multiple alcoholic beverages by an individual constitutes a risk of harm and renders him/her dangerous to himself and others by virtue of his being in an intoxicated condition;

(d) Violating the statutes and laws of the Commonwealth of Pennsylvania, including, but not limited to, The Pennsylvania Dram Shop Act, 47 P.S. §4-493, "Unlawful Acts relative to liquor, malt and brewed beverages and licensees," which, in §4-493(1) expressly renders unlawful "Furnishing Liquor or Malt or Brewed Beverages to Certain Persons" including "any person visibly intoxicated;" and which, in §4-497, "Liability of licensees," expressly recognizes licensees' legal liability to third persons who were damaged off the premises by customers of the licensee who were sold alcoholic beverages when those customers were visibly intoxicated;

(e) Failing to establish, monitor, and administer training, programs and operating procedures designed to identify and assist visibly intoxicated patrons such as those model programs set forth in Pennsylvania Statute 47 P.S. §4-471.1, "Responsible alcohol management" recommending training not less than fifty percent of the alcohol service personnel as well as managers/owners of licensed establishments to properly serve alcoholic beverages;

(f) Failing to establish, monitor, and administer training, programs and operating procedures such as those model programs set forth in Pennsylvania Statute 47 P.S. §4-471.1, "Responsible alcohol management" whose purpose is to train alcohol service personnel as well as managers/owners of licensed establishments to prevent service to visibly intoxicated persons,

(g) Failing to establish, monitor, and administer training, programs and operating procedures such as those model programs set forth in Pennsylvania Statute 47 P.S. §4-471.1, "Responsible alcohol management" whose purpose is to train managers/owners of licensed establishments to monitor employees to assure that the establishment does not serve visibly intoxicated persons;

(h) Failing to establish, monitor, and administer training, programs and operating procedures such as those model programs set forth in Pennsylvania Statute 47 P.S. §4-471.1, "Responsible alcohol management" to develop an appropriate alcohol service policy;

(i) Failing to establish, monitor, and administer training, programs and operating procedures such as those model programs set forth in Pennsylvania Statute 47 P.S. §4-471.1, "Responsible alcohol management" to train alcohol service personnel as well as managers/owners of licensed establishments to know Pennsylvania law relating to the sale and alcoholic beverages and particularly to the prohibitions against serving visibly intoxicated persons;

(j) Having a policy and practice of continuing to serve persons without adequately checking to see whether the person was in fact intoxicated or, exhibited signs of visible intoxication;

(k) Failing to have and enforce policies and practices which include a drink cut-off limit for alcoholic beverages;

(l) Failing to have and enforce policies and practices which include a time limit so that defendant's alcohol service personnel and managers would not sell alcohol and/or serve alcohol after patrons had been drinking alcohol for a defined period of time;

(m) Having a policy and practice to encourage patrons to continue drinking alcohol after they became visibly intoxicated;

(n) Allowing Defendant Gerald V. Ung to exit defendant's facility after he became both intoxicated and visibly intoxicated;

(o) Failing to have a policy or practice of helping intoxicated and visibly intoxicated persons sober up before exiting their facility;

(p) Failing to have a policy or practice of helping intoxicated and visibly intoxicated persons reach their homes in safety by providing direct transportation or by other means;

(q) Tacitly approving alcohol service personnel and other employees violating Pennsylvania law by selling and serving alcohol, liquor, malt and brewed beverages to patrons until they became intoxicated and, continuing thereafter to serve them alcohol while visibly intoxicated;

(r) Failing to have or enforce any policy or practice of disciplinary standards for their employees regarding the sale of alcoholic beverages; and

(s) Failing to have or enforce any policy or practice of proactively and effectively monitoring their employees engaged in the serving of alcoholic beverages.

48. By reason of the carelessness, negligence, recklessness and statutory violations of Defendants, Eulogy Tavern and Khyber, by and through their separate and respective agents, servants, workers and employees, as aforesaid, Plaintiff, Edward DiDonato, was caused to sustain serious, debilitating, permanent and life-altering injuries as more fully described in the preceding paragraphs of this Complaint.

WHEREFORE, Plaintiff, Edward DiDonato, claims of Defendants, Eulogy Tavern and Khyber, sums in excess of Fifty Thousand Dollars (\$50,000.00) in damages, including punitive damages, exclusive of interest and costs, pursuant to Pa.R.C.P. §238 and attorneys fees, and brings this action to recover the same.

COUNT II - NEGLIGENCE

**EDWARD DIDONATO v. EULOGY BELGIAN TAVERN, LUCY'S HAT SHOP, LLC,
PARADIGM RESTAURANT & BAR, and PUBLIC HOUSE INVESTMENTS, LLC**

49. Plaintiff incorporates herein by reference paragraphs 1 through 45 of this Complaint the same as if set forth hereinafter.

50. Defendants, Eulogy Tavern, Lucy's, Paradigm Bar and Field House, by and through the acts and omissions of their agents, servants, workers and employees, in serving alcoholic beverages to the visibly intoxicated Thomas Kelly and Andrew DiLoretto in the course and scope of their employment, violated the statutes of the Commonwealth of Pennsylvania and was careless, negligent and reckless in numerous respects including, without limitation:

(a) Selling and continuing to sell and serve alcoholic beverages to Thomas Kelly and Andrew DiLoretto, when they were visibly intoxicated;

(b) Failing to detect that Thomas Kelly and Andrew DiLoretto were in a visibly intoxicated and inebriated condition as a result of their continual serving of alcoholic beverages to them;

(c) Selling and continuing to sell and serve alcoholic beverages to Thomas Kelly and Andrew DiLoretto, when defendants knew or had reason to know that the imbibing of

multiple alcoholic beverages by an individual constitutes a risk of harm and renders him/her dangerous to himself and others by virtue of his being in an intoxicated condition;

(d) Violating the statutes and laws of the Commonwealth of Pennsylvania, including, but not limited to, The Pennsylvania Dram Shop Act, 47 P.S. §4-493, "Unlawful Acts relative to liquor, malt and brewed beverages and licensees," which, in §4-493(1) expressly renders unlawful "Furnishing Liquor or Malt or Brewed Beverages to Certain Persons" including "any person visibly intoxicated;" and which, in §4-497, "Liability of licensees," expressly recognizes licensees' legal liability to third persons who were damaged off the premises by customers of the licensee who were sold alcoholic beverages when those customers were visibly intoxicated;

(e) Failing to establish, monitor, and administer training, programs and operating procedures designed to identify and assist visibly intoxicated patrons such as those model programs set forth in Pennsylvania Statute 47 P.S. §4-471.1, "Responsible alcohol management" recommending training not less than fifty percent of the alcohol service personnel as well as managers/owners of licensed establishments to properly serve alcoholic beverages;

(f) Failing to establish, monitor, and administer training, programs and operating procedures such as those model programs set forth in Pennsylvania Statute 47 P.S. §4-471.1, "Responsible alcohol management" whose purpose is to train alcohol service personnel as well as managers/owners of licensed establishments to prevent service to visibly intoxicated persons,

(g) Failing to establish, monitor, and administer training, programs and operating procedures such as those model programs set forth in Pennsylvania Statute 47 P.S. §4-471.1, "Responsible alcohol management" whose purpose is to train managers/owners of

licensed establishments to monitor employees to assure that the establishment does not serve visibly intoxicated persons;

(h) Failing to establish, monitor, and administer training, programs and operating procedures such as those model programs set forth in Pennsylvania Statute 47 P.S. §4-471.1, "Responsible alcohol management" to develop an appropriate alcohol service policy;

(i) Failing to establish, monitor, and administer training, programs and operating procedures such as those model programs set forth in Pennsylvania Statute 47 P.S. §4-471.1, "Responsible alcohol management" to train alcohol service personnel as well as managers/owners of licensed establishments to know Pennsylvania law relating to the sale and alcoholic beverages and particularly to the prohibitions against serving visibly intoxicated persons;

(j) Having a policy and practice of continuing to serve persons without adequately checking to see whether the person was in fact intoxicated or, exhibited signs of visible intoxication;

(k) Failing to have and enforce policies and practices which include a drink cut-off limit for alcoholic beverages;

(l) Failing to have and enforce policies and practices which include a time limit so that defendant's alcohol service personnel and managers would not sell alcohol and/or serve alcohol after patrons had been drinking alcohol for a defined period of time;

(m) Having a policy and practice to encourage patrons to continue drinking alcohol after they became visibly intoxicated;

(n) Allowing Thomas Kelly and Andrew DiLoretto to exit defendants' facilities after they became both intoxicated and visibly intoxicated;

(o) Failing to have a policy or practice of helping intoxicated and visibly intoxicated persons sober up before exiting their facility;

(p) Failing to have a policy or practice of helping intoxicated and visibly intoxicated persons reach their homes in safety by providing direct transportation or by other means;

(q) Tacitly approving alcohol service personnel and other employees violating Pennsylvania law by selling and serving alcohol, liquor, malt and brewed beverages to patrons until they became intoxicated and, continuing thereafter to serve them alcohol while visibly intoxicated;

(r) Failing to have or enforce any policy or practice of disciplinary standards for their employees regarding the sale of alcoholic beverages; and

(s) Failing to have or enforce any policy or practice of proactively and effectively monitoring their employees engaged in the serving of alcoholic beverages.

51. By reason of the carelessness, negligence, recklessness and statutory violations of Defendants, Eulogy Tavern, Lucy's, Paradigm Bar and Field House by and through their separate and respective agents, servants, workers and employees, as aforesaid, Plaintiff, Edward DiDonato, was caused to sustain serious, debilitating, permanent and life-altering injuries as more fully described in the preceding paragraphs of this Complaint.

WHEREFORE, plaintiff, Edward DiDonato, claims of Defendants, Eulogy Tavern, Lucy's, Paradigm Bar and Field House, sums in excess of Fifty Thousand Dollars (\$50,000.00) in damages, including punitive damages, exclusive of interest and costs, pursuant to Pa.R.C.P. §238 and attorneys fees, and brings this action to recover the same.

COUNT III – ASSAULT AND BATTERY
EDWARD DIDONATO v. GERALD V. UNG

52. Plaintiff incorporates herein by reference paragraphs 1 through 48 of this Complaint the same as if set forth hereinafter.

53. Defendant, Gerald V. Ung, in shooting the unarmed Plaintiff Edward DiDonato, engaged in intentional, wanton, willful and outrageous conduct, acted with deliberate malice, was grossly and outrageously negligent, acted with reckless disregard of and with deliberate, callous and rockless indifference to the rights, interest, welfare and safety of the plaintiff for the reasons articulated in this Complaint.

54. As a result of Defendant Gerald V. Ung's intentional, wanton, willful and outrageous conduct, Plaintiff Edward DiDonato was caused to suffer an immediate and reasonable apprehension of a harmful or offensive contact with his body and was caused to sustain a harmful and offensive contact to his body.

55. As a result of Defendant Gerald V. Ung's intentional, wanton, willful and outrageous conduct in inflicting the violent assault and gunshot wounds, Plaintiff Edward DiDonato was caused to suffered serious and debilitating injuries to his abdomen, left hand, left clavicle and back, with dramatic weakness in his left leg and acute denervation in an L4-L5 distribution and in the lumbar paraspinal muscles. Plaintiff has undergone and will continue to receive extensive medical treatment for these injuries.

56. Defendant, Gerald V. Ung, intentionally initiated a violent assault and bodily harm on the unarmed Plaintiff, Edward DiDonato, by inflicting serious gunshot wounds, thereby violating the common law of the Commonwealth of Pennsylvania whose courts have adopted the

principles of the Restatement 2d of Torts concerning the offenses of assault and battery, including, without limitation:

§ 13 Battery: Harmful Contact

- (1) An actor is subject to liability to another for battery if:
 - a. he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and
 - b. a harmful contact with the person of the other directly or indirectly results.

§ 15 What Constitutes Bodily Harm

Bodily harm is any physical impairment of the condition of another's body, or physical pain or illness.

§ 18 Battery: Offensive Contact

- (1) An actor is subject to liability to another for battery if:
 - a. he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and
 - b. an offensive contact with the person of the other directly or indirectly results.

§ 21 Assault

- (1) An actor is subject to liability to another for assault if:
 - a. he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and
 - b. the other is thereby put in such imminent apprehension.

57. By reason of the carelessness, negligence, recklessness and/or intentional conduct of Defendant, Gerald Ung, Plaintiff, Edward DiDonato, was caused to sustain serious, debilitating, permanent and life-altering injuries as more fully described in the preceding paragraphs of this Complaint.

58. Defendant, Gerald Ung, intended to cause a harmful contact with the body of plaintiff that directly resulted in harmful contact with the body of plaintiff.

WHEREFORE, plaintiff, Edward DiDonato, claims of defendant, Gerald V. Ung, a sum in excess of Fifty Thousand Dollars (\$50,000.00) in damages, including punitive damages, exclusive of interest and costs, pursuant to Pa.R.C.P. §238 and attorneys fees, and brings this action to recover the same.

COUNT IV – NEGLIGENCE

EDWARD DIDONATO v. GERALD V. UNG

59. Plaintiff incorporates herein by reference paragraphs 1 through 57 of this Complaint the same as if set forth hereinafter.

60. Defendant, Gerald V. Ung, owed a duty to Plaintiff Edward DiDonato and, in shooting the unarmed Plaintiff Edward DiDonato multiple times, breached that duty by acting with excessive and unreasonable force, negligently and without due care for the reasons articulated in this Complaint.

61. Defendant Gerald V. Ung was unreasonable, negligent, and breached his duty to exercise due care generally and in the following specific respects:

- (a) Escalating the dispute to the use of deadly force;
- (b) Failing to attempt to retreat from any perceived threat;
- (c) Failing to use appropriate, proportionate, and/or reasonable force;
- (d) Using excessive, disproportionate and unreasonable force;

- (e) Misunderstanding the situation and erroneously perceiving a threat of serious bodily harm;
- (f) Shooting plaintiff when deadly force was neither required nor permitted;
- (g) Shooting plaintiff with several bullets;
- (h) Continuing to shoot plaintiff when could not possibly have been a threat;
- (i) Attempting to kill plaintiff with the use of excessive force;
- (j) Carrying a fire arm while intoxicated;
- (k) Shooting plaintiff while intoxicated;
- (l) Shooting the person who was not the aggressor;
- (m) Failing to attempt to flee the scene before inflicting deadly force;
- (n) Acting unreasonably throughout the altercation;
- (o) Negligently discharging his weapon to the point that it was out of ammunition and continuing to pull the trigger; and
- (p) Failing to exercise reasonable care.

62. As a result of Defendant Gerald V. Ung's unreasonableness, negligence and failure to act with due care, plaintiff Edward DiDonato was caused to suffered serious and debilitating injuries to his abdomen, left hand, left clavicle and back, with dramatic weakness in his left leg and acute denervation in an L4-L5 distribution and in the lumbar paraspinal muscles.

Plaintiff has undergone and will continue to receive extensive medical treatment for these injuries.

WHEREFORE, plaintiff, Edward DiDonato, claims of defendant, Gerald V. Ung, a sum in excess of Fifty Thousand Dollars (\$50,000.00) in damages, including punitive damages, exclusive of interest and costs, pursuant to Pa.R.C.P. §238 and attorneys fees, and brings this action to recover the same.

COUNT V – PUNITIVE DAMAGES

PLAINTIFF v. EULOGY BELGIAN TAVERN, KYBER PASS PUB, LUCY'S HAT SHOP, LLC, PARADIGM RESTAURANT & BAR, and PUBLIC HOUSE INVESTMENTS, LLC

63. Plaintiff incorporates herein by reference all proceeding paragraphs of this complaint as if fully set forth hereinafter.

64. Defendants' conduct rises to the level of outrageous conduct by willfully and recklessly ignoring the signs of visible intoxication on the part of Gerald Ung, Thomas Kelly and Andrew DiLoretto.

65. Defendants acted in a willful, wanton fashion with reckless disregard for the well being and safety of the community and Plaintiff. This and other misconduct constituted outrageous, willful and/or wanton misconduct, and manifested a reckless indifference to the rights of others to support an award of punitive damages.

WHEREFORE, plaintiff, Edward DiDonato, claims of Defendants a sum in excess of Fifty Thousand Dollars (\$ 50,000) in compensatory damages and punitive damages, delay damages pursuant to Pa. R.C.P. 238, interest, allowable costs of suit and brings this action to recover the same.

COUNT VI – PUNITIVE DAMAGES

PLAINTIFF V. GERALD UNG

66. Plaintiff incorporates herein by reference all proceeding paragraphs of this complaint as if fully set forth hereinafter.

67. By viciously and intentionally shooting the unarmed Plaintiff, defendant's conduct rises to the level of outrageous

68. Defendants acted in a willful, wanton fashion with reckless disregard for the well being and safety of the community and Plaintiff. This and other misconduct constituted outrageous, willful and/or wanton misconduct, and manifested a reckless indifference to the rights of others to support an award of punitive damages.

WHEREFORE, plaintiff, Edward DiDonato, claims of defendant, Gerald V. Ung, a sum in excess of Fifty Thousand Dollars (\$50,000.00) in damages, including punitive damages, exclusive of interest and costs, pursuant to Pa.R.C.P. §238 and attorneys fees, and brings this action to recover the same.

SALTZ, MONGELUZZI, BARRETT & BENDESKY, P.C.

BY: /s/ Robert J. Mongeluzzi
ROBERT J. MONGELUZZI
ANDREW R. DUFFY
JEFFREY P. GOODMAN

Attorneys for Plaintiff, Edward DiDonato

VERIFICATION

The averments or denials of fact contained in the foregoing document are true based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are inconsistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. This Verification is made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

DATE: _____


