

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

KITZIE NICANOR, individually
and as Parent and Natural Guardian
of IVEN AYALA, a minor,

GENERAL JURISDICTION DIVISION

CASE NO.:

Plaintiffs,

-vs-

DERICK KUILAN, an Individual,
2K CLEVELANDER, LLC, d/b/a
CLEVELANDER SOUTH BEACH, a
Foreign Limited Liability Company, and
2K SOUTH BEACH HOTEL, LLC, d/b/a
CLEVELANDER SOUTH BEACH, a
Foreign Limited Liability Company,

Defendants.

_____ /

COMPLAINT FOR CATASTROPHIC DAMAGES

COMES NOW the Plaintiff, KITZIE NICANOR, individually and as Parent and Natural Guardian of IVEN AYALA, a minor, by and through undersigned counsel, and sues the Defendants, DERICK KUILAN, an individual, 2K CLEVELANDER, LLC, d/b/a CLEVELANDER SOUTH BEACH, a Foreign Limited Liability Company, and 2K SOUTH BEACH HOTEL, LLC, d/b/a CLEVELANDER SOUTH BEACH, a Foreign Limited Liability Company, and alleges:

1. This is an action for damages in excess of Fifteen Thousand (\$15,000.00) Dollars.
2. At all times material hereto, Plaintiff, KITZIE NICANOR, was and is a resident of King County, Washington.

3. At all times material hereto, Plaintiff, KITZIE NICANOR, was and is the natural parent and legal guardian of IVEN AYALA, a minor (DOB 7/11/10), who resides with his mother, KITZIE NICANOR, in King County, Washington.

4. At all times material hereto, Defendant, 2K CLEVELANDER, LLC, d/b/a CLEVELANDER SOUTH BEACH (hereinafter "2K CLEVELANDER"), is a Foreign Limited Liability Company authorized to and in fact doing business in Miami-Dade County, Florida.

5. At all times material hereto, Defendant, 2K SOUTH BEACH HOTEL, LLC, d/b/a CLEVELANDER SOUTH BEACH (hereinafter "2K SOUTH BEACH"), is a Foreign Limited Liability Company authorized to and in fact doing business in Miami-Dade County, Florida.

6. At all times material hereto, Defendants, 2K CLEVELANDER and 2K SOUTH BEACH, had actual or constructive knowledge that Defendant, DERICK KUILAN, was an on-duty police officer and that DERICK KUILAN would operate an ATV within the course and scope of his employment.

7. At all times material hereto, Defendants, 2K CLEVELANDER and 2K SOUTH BEACH, were responsible for the negligent acts and/or omissions of their employees, representatives or agents.

8. At all times material hereto, Defendant, DERICK KUILAN, was and is a resident of Miami-Dade County, Florida.

9. At all times material hereto, Defendant, DERICK KUILAN, was a police officer employed by the Miami Beach Police Department.

10. On or about July 3, 2011, Defendant, DERICK KUILAN, was at the Clevelander South Beach, just prior to the subject incident, while he was on-duty and working within the course and scope of his employment on the date of the subject incident.

11. At all times material hereto, the Miami Beach Police Department and/or City of Miami Beach, was the owner of the subject all-terrain vehicle (hereinafter "ATV") which was involved in this crash.

12. At all times material hereto, the above ATV was being driven by Defendant DERICK KUILAN, with the permission, consent and authorization of the Miami Beach Police Department and/or City of Miami Beach.

13. At all times material hereto, the Plaintiff, KITZIE NICANOR, was lawfully on the beach on the date of the subject incident.

14. On or about July 3, 2011, Defendant, DERICK KUILAN, was operating the subject ATV, when it was dark out, on the beach at the intersection of Ocean Drive at or near Fourth Street, Miami-Dade County, Florida when he negligently operated and/or maintained said ATV causing it to run over Plaintiff, who was a pedestrian on the beach.

15. At all times material hereto, Plaintiff had no notice, warning and/or reasonable time to avoid the approaching ATV being driven by Defendant, DERICK KUILAN.

16. As a direct, proximate and foreseeable result of the crash and the negligence of the Defendants, Plaintiff sustained serious injury, including a severe traumatic brain injury.

COUNT I
NEGLIGENCE OF DERICK KUILAN

Plaintiff, KITZIE NICANOR, re-alleges and re-avers paragraphs (1) through (16) as if fully set forth herein and further alleges:

17. At all times material hereto, Defendant, DERICK KUILAN, owed a duty to use reasonable care in the operation, use, maintenance, or driving of the ATV, as well as his conduct, such that his acts and/or omissions would not pose an unreasonable risk of harm/injury to the public.

18. At all times material hereto, Defendant, DERICK KUILAN, breached the above duty of care by:

- a. Failing to operate the ATV in a careful and prudent manner;
- b. Failing to utilize the available and operational headlights;
- c. Failing to warn the Plaintiff of the approaching ATV;
- d. Failing to brake, slow or stop the ATV;
- e. Failing to keep a proper braking distance;
- f. Failing to keep a proper lookout;
- g. Failing to avoid striking the Plaintiff with the ATV;
- h. Operating the ATV while intoxicated, impaired or under the influence of alcohol;
- i. Operating the ATV at a high and unsafe speed for the area traveled;
- j. Operating the ATV with an unauthorized passenger;
- k. Failing to comply with Miami Beach Police Department policies and procedures for police conduct and safe operation of an ATV; and/or
- l. Failing to comply with state and local laws, ordinances, rules, and regulations.

19. At all times material hereto, the acts and/or omissions of the Defendant, DERICK KUILAN, as set forth in paragraph 18(a)-(l), created a foreseeable zone of risk of harm, and Plaintiff, KITZIE NICANOR, fell within that foreseeable zone of risk of harm.

20. As a direct, proximate and foreseeable result of the negligence of Defendant, DERICK KUILAN, the Plaintiff, KITZIE NICANOR, suffered severe traumatic brain injury, surgical orthopedic injuries, bodily injury, and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and aggravation of a previously existing condition, and sustained permanent injuries and/or permanent loss of a bodily function within a reasonable degree of medical probability. These losses are either permanent or continuing and Plaintiff will continue to suffer these losses in the future.

WHEREFORE Plaintiff, KITZIE NICANOR, demands judgment for damages against Defendant, DERICK KUILAN, together with costs and demands trial by jury of all issues herein triable as of right by a jury.

COUNT II
VIOLATION OF FLORIDA STATUTE § 768.125 AGAINST
2K CLEVELANDER, LLC d/b/a CLEVELANDER SOUTH BEACH

Plaintiff, KITZIE NICANOR, re-alleges and re-avers paragraphs (1) through (16) as if fully set forth herein and further alleges:

21. At all times material hereto, Defendant, 2K CLEVELANDER, pursuant to Florida Statute § 768.125, was prohibited from the knowing sale, furnishing or serving of alcoholic beverages to a person habitually addicted to the use of alcoholic beverages.

22. At all times material hereto, Defendant, 2K CLEVELANDER, knew or should have known that Defendant, DERICK KUILAN, was habitually addicted to the use of alcoholic beverages based on the following:

- a. Defendant regularly served a substantial number of alcoholic drinks to DERICK KUILAN while the officer was on-duty and off-duty, in the past and on the date of the subject incident;
- b. Defendant was familiar with DERICK KUILAN's drinking habits as DERICK KUILAN was a regular patron of Defendant's establishment and ordered a substantial amount of alcoholic drinks on a regular basis, in the past and on the date of the subject incident;
- c. Defendant regularly served DERICK KUILAN alcoholic drinks free of charge, in the past and on the date of the subject incident;
- d. Defendant regularly served DERICK KUILAN alcoholic drinks in non-alcoholic beverage containers in order to conceal the consumption of alcohol by DERICK KUILAN, an on-duty, uniformed police officer, in the past and on the date of the subject incident; and/or
- e. Defendant regularly facilitated the consumption of alcohol by DERICK KUILAN by providing a place for the officer to drink freely while he was on-duty and uniformed, including on the date of the subject incident.

23. On or about July 3, 2011, Defendant, 2K CLEVELANDER, violated Florida Statute § 768.125 and knowingly sold, furnished or served alcoholic beverages to Defendant, DERICK KUILAN, an on-duty, uniformed police officer who was habitually addicted to the use of alcoholic beverages.

24. On or about July 3, 2011, Defendant, DERICK KUILAN, was under the influence of the alcoholic beverages sold, furnished or served by the Defendant, 2K CLEVELANDER.

25. As a direct, proximate and foreseeable result of the Defendant's, 2K CLEVELANDER, LLC, d/b/a CLEVELANDER SOUTH BEACH, violation of Florida Statute § 768.125, by and through their employees, representatives or agents, Defendant, DERICK KUILAN, negligently operated and/or maintained the subject ATV causing it to run over the Plaintiff due to his impairment, intoxication and/or influence by the alcoholic beverages sold, furnished or served by the Defendant, 2K CLEVELANDER.

26. As a further direct, proximate and foreseeable result of the conduct of Defendant, 2K CLEVELANDER, LLC, d/b/a CLEVELANDER SOUTH BEACH, in violating Florida Statute § 768.125, the Plaintiff, KITZIE NICANOR, suffered severe traumatic brain injury, surgical orthopedic injuries, bodily injury, and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and aggravation of a previously existing condition, and sustained permanent injuries and/or permanent loss of a bodily function within a reasonable degree of medical probability. These losses are either permanent or continuing and Plaintiff will continue to suffer these losses in the future.

WHEREFORE Plaintiff, KITZIE NICANOR, demands judgment for damages against Defendant, 2K CLEVELANDER, LLC, d/b/a CLEVELANDER SOUTH BEACH, together with costs and demands trial by jury of all issues herein triable as of right by a jury.

COUNT III
VIOLATION OF FLORIDA STATUTE § 768.125 AGAINST
2K SOUTH BEACH HOTEL, LLC d/b/a CLEVELANDER SOUTH BEACH

Plaintiff, KITZIE NICANOR, re-alleges and re-avers paragraphs (1) through (16) as if fully set forth herein and further alleges:

27. At all times material hereto, Defendant, 2K SOUTH BEACH, pursuant to Florida Statute § 768.125, was prohibited from the knowing sale, furnishing or serving of alcoholic beverages to a person habitually addicted to the use of alcoholic beverages.

28. At all times material hereto, Defendant, 2K SOUTH BEACH, knew or should have known that Defendant, DERICK KUILAN, was habitually addicted to the use of alcoholic beverages based on the following:

- a. Defendant regularly served a substantial number of alcoholic drinks to DERICK KUILAN while the officer was on-duty and off-duty, in the past and on the date of the subject incident;
- b. Defendant was familiar with DERICK KUILAN's drinking habits as DERICK KUILAN was a regular patron of Defendant's establishment and ordered a substantial amount of alcoholic drinks on a regular basis, in the past and on the date of the subject incident;
- c. Defendant regularly served DERICK KUILAN alcoholic drinks free of charge, in the past and on the date of the subject incident;
- d. Defendant regularly served DERICK KUILAN alcoholic drinks in non-alcoholic beverage containers in order to conceal the consumption of alcohol by DERICK KUILAN, an on-duty, uniformed police officer, in the past and on the date of the subject incident; **and/or**

- e. Defendant regularly facilitated the consumption of alcohol by DERICK KUILAN by providing a place for the officer to drink freely while he was on-duty and uniformed, including on the date of the subject incident.

29. On or about July 3, 2011, Defendant, 2K SOUTH BEACH, violated Florida Statute § 768.125 and knowingly sold, furnished or served alcoholic beverages to Defendant, DERICK KUILAN, an on-duty, uniformed police officer who was habitually addicted to the use of alcoholic beverages.

30. On or about July 3, 2011, Defendant, DERICK KUILAN, was under the influence of the alcoholic beverages sold, furnished or served by the Defendant, 2K SOUTH BEACH.

31. As a direct, proximate and foreseeable result of the Defendant's, 2K SOUTH BEACH HOTEL, LLC, d/b/a CLEVELANDER SOUTH BEACH, violation of Florida Statute § 768.125, by and through their employees, representatives or agents, Defendant, DERICK KUILAN, negligently operated and/or maintained the subject ATV causing it to run over the Plaintiff due to his impairment, intoxication and/or influence by the alcoholic beverages sold, furnished or served by the Defendant, 2K SOUTH BEACH.

32. As a further direct, proximate and foreseeable result of the conduct of Defendant, 2K SOUTH BEACH HOTEL, LLC, d/b/a CLEVELANDER SOUTH BEACH, in violating Florida Statute § 768.125, the Plaintiff, KITZIE NICANOR, suffered severe traumatic brain injury, surgical orthopedic injuries, bodily injury, and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and aggravation of a previously existing condition, and sustained

permanent injuries and/or permanent loss of a bodily function within a reasonable degree of medical probability. These losses are either permanent or continuing and Plaintiff will continue to suffer these losses in the future.

WHEREFORE Plaintiff, KITZIE NICANOR, demands judgment for damages against Defendant, 2K SOUTH BEACH HOTEL, LLC, d/b/a CLEVELANDER SOUTH BEACH, together with costs and demands trial by jury of all issues herein triable as of right by a jury.

COUNT IV
NEGLIGENCE OF 2K CLEVELANDER, LLC d/b/a CLEVELANDER SOUTH BEACH

Plaintiff, KITZIE NICANOR, re-alleges and re-avers paragraphs (1) through (16) as if fully set forth herein and further alleges:

33. At all times material hereto, Defendant, 2K CLEVELANDER, owed a duty to use reasonable care in the operation of its business such that their acts and/or omissions would not pose an unreasonable risk of harm/injury to the public, including the Plaintiff.

34. At all times material hereto, Defendant, 2K CLEVELANDER, created a foreseeable zone of risk of harm by:

- a. Creating, facilitating, encouraging, promoting, permitting, and condoning an environment for on-duty, uniformed police officers, including DERICK KUILAN, to drink freely while on duty;
- b. Creating, facilitating, encouraging, promoting, permitting, and condoning the concealment of consumption of alcohol by on-duty, uniformed police officers, including DERICK KUILAN, on a regular basis;
- c. Creating, facilitating, encouraging, promoting, permitting, and condoning the consumption of alcohol by on-duty, uniformed police officers,

including DERICK KUILAN, by not charging the officers for alcoholic beverages on a regular basis;

d. Creating, facilitating, encouraging, promoting, permitting, and condoning police officers, including DERICK KUILAN, to frequent, visit, congregate, meet or hangout on its premises while the officers are on-duty;

e. Creating, facilitating, encouraging, promoting, permitting, and condoning on-duty, uniformed police officers, including DERICK KUILAN, to violate Miami Beach Police Department policies and procedures and/or state laws on Defendant's premises; and/or

f. Accepting special accommodations, privileges and treatment from police officers, including DERICK KUILAN, on a regular basis in return for the above special treatment and accommodations given to the police officers.

35. At all times material hereto, the Plaintiff, KITZIE NICANOR, fell within the foreseeable zone of risk of harm created by the Defendant, 2K CLEVELANDER.

36. At all times material hereto, Defendant, 2K CLEVELANDER, breached the above duty of care by its conduct as set forth in paragraph 34(a)-(f), which was the cause of Defendant, DERICK KUILAN, to operate an ATV while impaired, intoxicated and/or while under the influence of alcohol when he ran over the Plaintiff.

37. As a direct, proximate and foreseeable result of the negligence of the Defendant, 2K CLEVELANDER, by and through its employees, Plaintiff sustained a severe injury as a result of being run over by the ATV.

38. As a further direct, proximate and foreseeable result of the negligence of Defendant, 2K CLEVELANDER, LLC, d/b/a CLEVELANDER SOUTH BEACH, by and

through their employees, representatives or agents, the Plaintiff, KITZIE NICANOR, suffered severe traumatic brain injury, surgical orthopedic injuries, bodily injury, and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and aggravation of a previously existing condition, and sustained permanent injuries and/or permanent loss of a bodily function within a reasonable degree of medical probability. These losses are either permanent or continuing and Plaintiff will continue to suffer these losses in the future.

WHEREFORE Plaintiff, KITZIE NICANOR, demands judgment for damages against Defendant, 2K CLEVELANDER, LLC, d/b/a CLEVELANDER SOUTH BEACH, together with costs and demands trial by jury of all issues herein triable as of right by a jury.

COUNT V
NEGLIGENCE OF 2K SOUTH BEACH HOTEL, LLC
d/b/a CLEVELANDER SOUTH BEACH

Plaintiff, KITZIE NICANOR, re-alleges and re-avers paragraphs (1) through (16) as if fully set forth herein and further alleges:

39. At all times material hereto, Defendant, 2K SOUTH BEACH, owed a duty to use reasonable care in the operation of its business such that their acts and/or omissions would not pose an unreasonable risk of harm/injury to the public, including the Plaintiff.

40. At all times material hereto, Defendant, 2K SOUTH BEACH, created a foreseeable zone of risk of harm by:

- a. Creating, facilitating, encouraging, promoting, permitting, and condoning an environment for on-duty, uniformed police officers, including DERICK KUILAN, to drink freely while on duty;

- b. Creating, facilitating, encouraging, promoting, permitting, and condoning the concealment of consumption of alcohol by on-duty, uniformed police officers, including DERICK KUILAN, on a regular basis;
- c. Creating, facilitating, encouraging, promoting, permitting, and condoning the consumption of alcohol by on-duty, uniformed police officers, including DERICK KUILAN, by not charging the officers for alcoholic beverages on a regular basis;
- d. Creating, facilitating, encouraging, promoting, permitting, and condoning police officers, including DERICK KUILAN, to frequent, visit, congregate, meet or hangout on its premises while the officers are on-duty;
- e. Creating, facilitating, encouraging, promoting, permitting, and condoning on-duty, uniformed police officers, including DERICK KUILAN, to violate Miami Beach Police Department policies and procedures and/or state laws on Defendant's premises; and/or
- f. Accepting special accommodations, privileges and treatment from police officers, including DERICK KUILAN, on a regular basis in return for the above special treatment and accommodations given to the police officers.

41. At all times material hereto, the Plaintiff, KITZIE NICANOR, fell within the foreseeable zone of risk of harm created by the Defendant, 2K SOUTH BEACH.

42. At all times material hereto, Defendant, 2K SOUTH BEACH, breached the above duty of care by its conduct as set forth in paragraph 40(a)-(f), which was the cause of Defendant, DERICK KUILAN, to operate an ATV while impaired, intoxicated and/or while under the influence of alcohol when he ran over the Plaintiff.

43. As a direct, proximate and foreseeable result of the Defendant's, 2K SOUTH BEACH, negligence, Plaintiff sustained a severe injury as a result being run over by the ATV.

44. As a further direct, proximate and foreseeable result of the negligence of Defendant, 2K SOUTH BEACH HOTEL, LLC, d/b/a CLEVELANDER SOUTH BEACH, by and through their employees, representatives or agents, the Plaintiff, KITZIE NICANOR, suffered severe traumatic brain injury, surgical orthopedic injuries, bodily injury, and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and aggravation of a previously existing condition, and sustained permanent injuries and/or permanent loss of a bodily function within a reasonable degree of medical probability. These losses are either permanent or continuing and Plaintiff will continue to suffer these losses in the future.

WHEREFORE Plaintiff, KITZIE NICANOR, demands judgment for damages against Defendant, 2K SOUTH BEACH HOTEL, LLC, d/b/a CLEVELANDER SOUTH BEACH, together with costs and demands trial by jury of all issues herein triable as of right by a jury.

COUNT VI
LOSS OF CONSORTIUM OF IVEN AYALA PURSUANT
TO FLORIDA STATUTE § 768.0415

Plaintiff, KITZIE NICANOR, re-alleges and re-avers paragraphs (1) through (16) as if fully set forth herein and further alleges:

45. At all times material hereto, Plaintiff, KITZIE NICANOR, was the mother and natural parent of IVEN AYALA, a minor dependent.

46. Plaintiff, KITZIE NICANOR, suffered a significant permanent injury resulting in

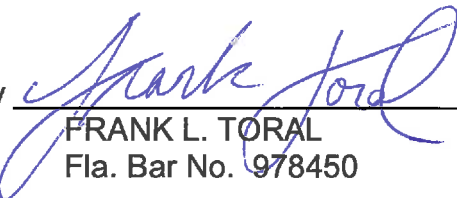
permanent total disability as a direct, proximate and foreseeable result of Defendants' negligence and conduct.

47. As a direct, proximate and foreseeable result of the negligence and conduct of the Defendants, 2K CLEVELANDER, LLC, d/b/a CLEVELANDER SOUTH BEACH, 2K SOUTH BEACH HOTEL, LLC, d/b/a CLEVELANDER SOUTH BEACH, and DERICK KUILAN, which proximately caused a significant permanent injury resulting in permanent total disability to his mother, KITZIE NICANOR, the Plaintiff, IVEN AYALA, has lost the services, comfort, companionship, and society of his mother.

WHEREFORE the minor Plaintiff, IVEN AYALA, through his mother and natural parent, KITZIE NICANOR, individually demands judgment for damages against Defendants, 2K CLEVELANDER, LLC, d/b/a CLEVELANDER SOUTH BEACH, 2K SOUTH BEACH HOTEL, LLC, d/b/a CLEVELANDER SOUTH BEACH, and DERICK KUILAN, together with costs and interest and demands trial by jury of all issues herein triable as of right by a jury.

Dated this 28th day of July, 2011.

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By 
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