

**IN THE COURT OF COMMON PLEAS OF
YORK COUNTY, PENNSYLVANIA**

PEARL WISE,
individually and as
Personal Representative
of the **Estate of CHAD**
MICHAEL MERRILL

Case No.2020-SU-001480

Plaintiff

vs.

**FRANK SPAGNOLO d/b/a RED ROSE
RESTAURANT & LOUNGE,
NICK SPAGNOLO a/k/a NICHOLAS
SPAGNOLO d/b/a RED ROSE RESTAURANT & LOUNGE,
GIUSEPPE SPAGNOLO d/b/a RED ROSE
RESTAURANT & LOUNGE,
SPAGNOLO BROS, LLC a/k/a
SPAGNOLO BROTHERS, LLC d/b/a RED
ROSE RESTAURANT & LOUNGE,
NICK & JOE, LLC d/b/a RED ROSE
RESTAURANT & LOUNGE,
ANITA'S, INC. a/k/a ANITA INC. a/k/a ANITA'S CORP d/b/a RED ROSE RESTAURANT &
LOUNGE and RED
ROSE BAR AND LOUNGE,
DAVID VOUGHT d/b/a GLAD CRAB
GLAD CRAB, INC., d/b/a GLAD CRAB**
Defendants

NOTICE TO PLEAD

TO: **PEARL WISE**, individually and as Personal Representative of the **Estate of CHAD**
MICHAEL MERRILL
c/o Samuel G. Encarnacion, Esquire
Howard G. Silverman, Esquire
240 North Duke Street
Lancaster, PA 17602 (717) 397-3200

You are hereby notified you must file a written response to Defendants, Frank Spagnolo
d/b/a Red Rose Restaurant & Lounge; Nick Spagnolo a/k/a Nicholas Spagnolo d/b/a Red
Rose Restaurant & Lounge; Giuseppe Spagnolo d/b/a Red Rose Restaurant & Lounge;

Spagnolo Bros, LLC, a/k/a Spagnolo Brothers, LLC d/b/a Red Rose Restaurant & Lounge;
Nick & Joe, LLC d/b/a Red Rose Restaurant & Lounge; aka Anita's, Inc. a/k/a Anita Inc.
a/k/a Anita's Corp d/b/a Red Rose Restaurant & Lounge and Red Rose Bar and Lounge's New
Matter within twenty (20) days from service or judgment may be entered against you.

CGA LAW FIRM, P.C.

/s/ Charles B. Calkins

Charles B. Calkins, Esq.

PA 36208

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PA 310319

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Attorneys for Defendants

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ROSE BAR AND LOUNGE,
DAVID VOUGHT d/b/a GLAD CRAB
GLAD CRAB, INC., d/b/a GLAD CRAB**
Defendants

ANSWER WITH NEW MATTER TO PLAINTIFF'S COMPLAINT

AND NOW, to wit, this 18th day of December, comes the Defendants, Frank Spagnolo d/b/a Red Rose Restaurant & Lounge; Nick Spagnolo a/k/a Nicholas Spagnolo d/b/a Red Rose Restaurant & Lounge; Giuseppe Spagnolo d/b/a Red Rose Restaurant & Lounge; Spagnolo Bros, LLC, a/k/a Spagnolo Brothers, LLC d/b/a Red Rose Restaurant & Lounge; Nick & Joe, LLC d/b/a Red Rose Restaurant & Lounge; aka Anita's, Inc. a/k/a Anita Inc. a/k/a Anita's Corp d/b/a Red Rose Restaurant & Lounge and Red Rose Bar and Lounge by and

through Counsel, the CGA Law Firm, P.C., and files the within Answer with New Matter to Plaintiff's Complaint, and avers as follows:

1. Denied. After reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the allegations set forth in Paragraph 1 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof is demanded at trial.

2. Denied. After reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the allegations set forth in Paragraph 2 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof is demanded at trial.

3. Denied. After reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the allegations set forth in Paragraph 3 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof is demanded at trial.

4. Admitted in part and denied in part. It is admitted that Frank Spagnolo is an adult individual. It is denied that Frank Spagnolo has an ownership interest in the business and/or premises of Red Rose Restaurant & Lounge located at 5370 Lincoln Highway, York, Pennsylvania 17406. On the contrary, Defendant Frank Spagnolo has no ownership interest in the business and/or premises of the Red Rose Restaurant & Lounge located at 5370 Lincoln Highway, York, Pennsylvania 17406.

5. Admitted in part and denied in part. It is admitted that Nick Spagnolo is an adult individual. It is denied that Nick Spagnolo has an ownership interest in the business and/or premises of Red Rose Restaurant & Lounge located at 5370 Lincoln Highway, York,

Pennsylvania 17406. On the contrary, Defendant Nick Spagnolo has no ownership interest in the business and/or premises of the Red Rose Restaurant & Lounge located at 5370 Lincoln Highway, York, Pennsylvania 17406.

6. Admitted in part and denied in part. It is admitted that Guiseeppe Spagnolo is an adult individual. It is denied that Guiseeppe Spagnolo has an ownership interest in the business and/or premises of Red Rose Restaurant & Lounge located at 5370 Lincoln Highway, York, Pennsylvania 17406. On the contrary, Defendant Guiseeppe Spagnolo has no ownership interest in the business and/or premises of the Red Rose Restaurant & Lounge located at 5370 Lincoln Highway, York, Pennsylvania 17406.

7. Admitted in part and denied in part. It is admitted that Defendant Spagnolo Bros., LLC a/k/a Spagnolo Brothers, LLC is a Pennsylvania entity and has an ownership interest in the business known as Red Rose Restaurant & Lounge located at 5370 Lincoln Highway, York, Pennsylvania 17406. It is denied that Defendant Spagnolo Bros., LLC a/k/a Spagnolo Brothers, LLC has an ownership interest in the premises where the business known as Red Rose Restaurant & Lounge is located, 5370 Lincoln Hwy, York, Pennsylvania 17406.

8. Admitted in part and denied in part. It is admitted that Defendant Nick & Joe, LLC is a Pennsylvania entity and has an ownership interest in the premises whereupon the business known as Red Rose Restaurant & Lounge located at 5370 Lincoln Highway, York, Pennsylvania 17406 operates. It is denied that Defendant Nick & Joe, LLC has an ownership interest in the business known as Red Rose Restaurant & Lounge located at 5370 Lincoln Highway, York, Pennsylvania 17406.

9. Admitted in part and denied in part. It is admitted that Anita Inc. is a Pennsylvania entity. It is denied that Defendant Anita Inc. has an ownership interest in the

business and/or premises of Red Rose Restaurant & Lounge located at 5370 Lincoln Highway, York, Pennsylvania 17406. On the contrary, Defendant Anita's Inc. has no ownership interest in the business and/or premises of Red Rose Restaurant & Lounge located at 5370 Lincoln Highway, York, Pennsylvania 17406. After reasonable investigation, the Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of or veracity of the remaining allegations set forth in Paragraph 9 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof thereof is demanded at trial.

10. Denied. The allegations set forth in Paragraph 10 of Plaintiff's Complaint pertain to a Defendant other than the Answering Defendants, and they are, therefore, deemed to be denied.

11. Denied. The allegations set forth in Paragraph 11 of Plaintiff's Complaint pertain to a Defendant other than the Answering Defendants, and they are, therefore, deemed to be denied.

12. Denied. The allegations set forth in Plaintiff's Complaint Paragraph 12 constitute a conclusion of law to which no response is necessary.

13. Denied. After reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the allegations set forth in Paragraph 13 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof is demanded at trial.

14. Denied. After reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the allegations set forth in Paragraph 14 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof is demanded at trial.

15-23. Denied. The allegations set forth in Plaintiff's Complaint, specifically Paragraphs 15 through 23 inclusive, pertain to a Defendant other than Answering Defendants, and they are, therefore, deemed to be denied. By way of further answer, the Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the allegations set forth in Paragraphs 15-23 inclusive, and they are, therefore, deemed to be denied and strict proof thereof is demanded at trial.

24. Admitted in part and denied in part. It is admitted that Spagnolo Brothers, LLC owned and operated a business facility known as "Red Rose Restaurant & Lounge," a bar and restaurant located at 5370 Lincoln Highway, York, Pennsylvania 17406, open to the general public. It is denied that Defendants Frank Spagnolo, Nicholas Spagnolo, Giuseppe Spagnolo, Nick & Joe, LLC, and Anita Inc. owned and operated a business facility known as "Red Rose Restaurant & Lounge," a bar and restaurant open to the general public and located at 5370 Lincoln Highway, York, Pennsylvania 17406. On the contrary, Defendants Frank Spagnolo, Nicholas Spagnolo, Giuseppe Spagnolo, Nick & Joe, LLC, and Anita Inc. did not own and operate a business facility known as "Red Rose Restaurant & Lounge," a bar and restaurant open to the general public and located at 5370 Lincoln Highway, York, Pennsylvania 17406. By way of further answer, Defendants Frank Spagnolo, Nicholas Spagnolo, Giuseppe Spagnolo, Nick & Joe, LLC, and Anita Inc. had no ownership whatsoever in the business facility known as "Red Rose Restaurant & Lounge." The remaining allegations set forth in Paragraph 24 of Plaintiff's Complaint constitute a conclusion of law to which no response is required. To the extent a response is required, Defendants are without knowledge or information to form a belief as to the truth of or veracity of the remaining allegations set forth in Paragraph 24 of Plaintiff's

Complaint, and they are, therefore, deemed to be denied and strict proof thereof is demanded at trial.

25. Denied. The allegations set forth in Paragraph 25 of Plaintiff's Complaint constitute a conclusion of law to which no response is required. By way of further answer, after reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth or veracity of the Plaintiff's allegations, and they are, therefore, deemed denied and strict proof thereof is demanded at trial.

26. Denied. The allegations set forth in Paragraph 26 of Plaintiff's Complaint constitute a conclusion of law to which no response is required. By way of further answer, after reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth or veracity of the Plaintiff's allegations, and they are, therefore, deemed denied and strict proof thereof is demanded at trial.

27. Denied. The allegations set forth in Paragraph 27 of Plaintiff's Complaint constitute a conclusion of law to which no response is required. By way of further answer, after reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth or veracity of the Plaintiff's allegations, and they are, therefore, deemed denied and strict proof thereof is demanded at trial.

28. Denied. The allegations set forth in Paragraph 28 of Plaintiff's Complaint constitute a conclusion of law to which no response is required. By way of further answer, after reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth or veracity of the Plaintiff's allegations, and they are, therefore, deemed denied and strict proof thereof is demanded at trial. At all times pertinent

hereto, the Defendants acted in a reasonable, careful, cautious, and prudent manner, exercising due care at all times.

29. Admitted in part and denied in part. It is admitted that on or about July 21, 2018, James Saylor was on the premises of the Red Rose Restaurant. The remaining allegations set forth in Paragraph 29 of Plaintiff's Complaint constitute a conclusion of law to which no response is required.

30. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the allegations set forth in Paragraph 30 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof thereof is demanded at trial. By way of further answer, the allegation of a "visibly intoxicated person" constitutes a conclusion of law to which no response is required. To the extent a response is required, it is denied that James Saylor was a visibly intoxicated person. On the contrary, James Saylor was not visibly intoxicated.

31. Denied. After reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the allegations set forth in Paragraph 31 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof is demanded at trial.

32. Denied. The allegation of visible intoxication is a conclusion of law to which no response is required. To the extent a response is required, it is denied that James Saylor was visibly intoxicated. It is further denied that James Saylor was served and consumed several shots of Fireball and Pabst Blue Ribbon beers. It is further denied any Red Rose employees were employed by an Defendants except the Spagnolo Brothers, LLC. By way of further

answer, the employees of Spagnolo Brothers, LLC at all times pertinent hereto acted in a careful, cautious and prudent manner, using due care under the circumstances and at all times.

33. Admitted in part and denied in part. It is admitted that James Saylor made remarks directed at an African American by the name of Jerrell Grandison-Douglas. After reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the remaining allegations set forth in Paragraph 33 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof thereof is demanded.

34. Admitted in part and denied in part. It is admitted that Nick Spagnolo received a text from the bartender. It is denied an altercation developed. To the extent it may be implied by Plaintiff's allegation set forth in Paragraph 34 of Plaintiff's Complaint, Defendant Nick Spagnolo had no ownership interest in the business or the premises. After reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the remaining allegations set forth in Paragraph 34 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof thereof is demanded at trial.

35. Admitted in part and denied in part. It is admitted that Nick Spagnolo a/k/a Nicholas Spagnolo escorted James Saylor out of the bar. It is denied that efforts to de-escalate failed. By way of further answer, the employees of the Red Rose, through their/its agents, servants or employees, at all times pertinent hereto, acted in a careful, cautious and prudent manner, using due care under the circumstances at all times. It is further denied that Defendant Nicholas Spagnolo had any ownership interest in the business or the premises. On the contrary,

and at all times pertinent hereto, Defendant Nicholas Spagnolo had no ownership interest in the business or the premises.

36. Denied. After reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the allegations set forth in Paragraph 36 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof is demanded at trial.

37. Admitted in part and denied in part. It is admitted that James Saylor was escorted out of the bar area. It is specifically denied that another verbal altercation occurred with another patron who was coming into the bar through the vestibule area. On the contrary, and all times pertinent hereto, James Saylor followed the instructions of the Defendants through their agents, servants or employees.

38. Admitted in part and denied in part. It is admitted that Nicholas Spagnolo did not escort James Saylor out of the parking lot area. By way of further explanation, escorting James Saylor out of the parking lot would have required Nicholas Spagnolo to accompany James Saylor onto Lincoln Highway. It is denied that Nicholas Spagnolo only reached the vestibule area. On the contrary Nicholas Spagnolo escorted James Saylor out of the Red Rose and into the parking lot. At all times pertinent hereto, Nick Spagnolo, acting on behalf of Defendant Spagnolo Brothers, LLC, acted in a careful, cautious and prudent manner using due care at all times. After reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the remaining allegations set forth in Paragraph 38 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof thereof is demanded at trial.

39. Denied. It is denied that James Saylor exited the Red Rose on his own. On the contrary, at all times pertinent hereto, James Saylor was accompanied by Nick Spagnolo, acting on behalf of Defendant Spagnolo Bros., LLC, while Mr. Saylor exited the bar. After reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of remaining allegations set forth in Paragraph 39 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof thereof is demanded.

40. Admitted. It is admitted that Spagnolo Bros., LLC had no security staff or personnel outside the parking lot area. By way of further answer, at all times pertinent hereto, Defendant Spagnolo Bros., LLC acted in a careful, cautious and prudent manner, using due care under the circumstances and at all times.

41. Admitted in part and denied in part. It is admitted the Red Rose had a network of video cameras. It is denied the Red Rose restaurant monitors the inside of the bar and parking lot in real time. By way of further answer, the Red Rose restaurant is an "it", not a "them", and is without the capacity to monitor the videos. After reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of remaining allegations set forth in Paragraph 41 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof thereof is demanded.

42. Denied. After reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the allegations set forth in Paragraph 42 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof is demanded at trial. By way of further answer, it is specifically

denied that a firearm was discharged resulting in windows being hit. On the contrary, there were no windows hit as a result of a firearm being discharged.

43. Denied. After reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the allegations set forth in Paragraph 43 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof is demanded at trial.

44. Denied. After reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the allegations set forth in Paragraph 44 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof is demanded at trial.

45. Denied. The allegations set forth in Paragraph 45 constitute a conclusion of law to which no response is required. To the extent a response is required, at all times pertinent hereto, the Defendants acted in a careful, cautious and prudent manner, using due care under the circumstances and at all times.

46. Denied. The allegations set forth in Paragraph 46 constitute a conclusion of law to which no response is required. To the extent a response is required, at all times pertinent hereto, the Defendants acted in a careful, cautious and prudent manner, using due care under the circumstances and at all times.

47. Denied. The allegations set forth in Paragraph 47 constitute a conclusion of law to which no response is required. To the extent a response is required, at all times pertinent hereto, the Defendants acted in a careful, cautious and prudent manner, using due care under the circumstances and at all times.

48. Denied. After reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the allegations set forth in Paragraph 48 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof is demanded at trial.

49. Denied. The allegations set forth in Paragraph 49 of Plaintiff's Complaint constitute a conclusion of law to which no response is required. To the extent a response is required, after reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the allegations set forth in Paragraph 49 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof is demanded at trial.

50. Denied. The allegations set forth in Paragraph 49 of Plaintiff's Complaint constitute a conclusion of law to which no response is required. To the extent a response is required, after reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the allegations set forth in Paragraph 50 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof is demanded at trial.

COUNT ONE – SURVIVAL ACTION (NEGLIGENCE)
Against Glad Crab Defendants

51-56. The allegations set forth in Plaintiff's Complaint Paragraphs 51-56 inclusive pertain to a party or defendant other than Answering Defendants, and therefore no response is required.

WHEREFORE, Answering Defendants respectfully request Your Honorable Court to enter a judgment in their favor, together with costs of suit and other such relief as Your Honorable Court deems just and proper.

COUNT TWO – SURVIVAL ACTION (NEGLIGENCE)

57. Denied. The allegations set forth in Paragraph 57 of the Plaintiff's Complaint do not constitute an allegation to which a response is required. To the extent a response is required, all responses in preceding Paragraphs 1-56 inclusive are incorporated herein as if more fully set forth below. By way of further answer, the Defendants at all times pertinent hereto acted in a careful, cautious and prudent manner, using due care under the circumstances and at all times.

58. Denied. After reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the allegations set forth in Paragraph 58 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof is demanded at trial.

59. The allegations set forth in Paragraph 59 of the Plaintiff's Complaint constitute a conclusion of law to which no response is necessary. To the extent a response is deemed necessary, after reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the allegations set forth in Paragraph 59 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof is demanded at trial. Furthermore, at all times pertinent hereto, the Defendants acted in a careful, cautious and prudent manner, using due care under the circumstances at all times.

60. The allegations set forth in Paragraphs 60 (a)-(t) of Plaintiff's Complaint constitute a conclusion of law to which no response is required. To the extent that a response is required, at all times pertinent hereto, the Defendants acted in a careful, cautious and prudent manner, using due care under the circumstances at all times.

61. Denied. The allegations set forth in Paragraph 61 of Plaintiff's Complaint constitute a conclusion of law to which no response is required. To the extent that a response is required, at all times pertinent hereto, the Defendants acted in a careful, cautious and prudent manner, using due care under the circumstances at all times.

62. Denied. The allegations set forth in Paragraph 62 of Plaintiff's Complaint constitute a conclusion of law to which no response is required. To the extent that a response is required, at all times pertinent hereto, the Defendants acted in a careful, cautious and prudent manner, using due care under the circumstances at all times.

WHEREFORE, Answering Defendants respectfully request Your Honorable Court to enter a judgment in their favor, together with costs of suit and other such relief as Your Honorable Court deems just and proper.

COUNT THREE – WRONGFUL DEATH

63. Denied. The allegations set forth in Paragraph 63 of the Plaintiff's Complaint do not constitute an allegation to which a response is required. To the extent a response is required, all responses in preceding Paragraphs 1-62 inclusive are incorporated herein as if more fully set forth below. By way of further answer, the Defendants at all times pertinent hereto acted in a careful, cautious and prudent manner, using due care under the circumstances and at all times.

64. Denied. The allegations set forth in Paragraph 64 of Plaintiff's Complaint constitute a conclusion of law to which no response is required. To the extent that a response is required, the Defendants at all times pertinent hereto acted in a careful, cautious and prudent manner, using due care under the circumstances at all times.

65. Denied. After reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the

allegations set forth in Paragraph 65 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof is demanded at trial.

66. Denied. The allegations set forth in Paragraph 49 of Plaintiff's Complaint constitute a conclusion of law to which no response is required. To the extent a response is required, after reasonable investigation, the Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of or veracity of the allegations set forth in Paragraph 66 of Plaintiff's Complaint, and they are, therefore, deemed to be denied and strict proof is demanded at trial.

67. Denied. The allegations set forth in Paragraph 67 of Plaintiff's Complaint constitute a conclusion of law to which no response is required. To the extent that a response is required, the Defendants at all times pertinent hereto acted in a careful, cautious and prudent manner, using due care under the circumstances at all times.

WHEREFORE, Answering Defendants respectfully request Your Honorable Court to enter a judgment in their favor, together with costs of suit and other such relief as Your Honorable Court deems just and proper.

NEW MATTER

68. The allegations set forth in Defendants' Answer, Paragraphs 1-67, are incorporated herein as if more fully set forth below.

69. Plaintiff fails to state a cause of action upon which relief can be granted.

70. Plaintiff's claims are barred for failure to join necessary and indispensable parties.

71. Plaintiff's claim is barred by the Statute of Limitations.

72. Plaintiff's claim is barred or reduced by the Comparative Negligence Act 42 Pa.C.S. §7102.

73. Plaintiff's claims are barred or reduced by the contributory negligence of the decedent.

74. No action or inaction of the Defendants was the proximate cause of the injuries and damages, if any, sustained by the Plaintiff and/or the decedent. While it is specifically denied that the Defendants' actions or inactions were the cause of the Plaintiff's decedent's injuries, said injuries or damages of Plaintiff's decedent's injuries were caused as a result of the negligence or intentional act of a party or parties other than the Answering Defendants.

75. The Defendants have not violated any laws, rules, or regulations of the Pennsylvania Liquor Code as it pertains to this matter. The Defendants did not owe the Plaintiff and/or Plaintiff's decedent a duty of care.

76. James Saylor was not a business invitee of the Defendants on the date and at the times in question.

77. James Saylor was not served alcoholic beverages by the Defendants or the owner, members, employees, associates, servants, or affiliates of the Defendants while visibly intoxicated.

78. The Defendants were under no obligation or duty to alert authorities about Mr. James Saylor's presence at the Red Rose on the date in question or alert authorities of Mr. James Saylor's condition because he was not visibly intoxicated.

79. There is no duty to control the conduct of a third person to protect another from harm, except where a defendant stands in some special relationship with either the person whose

conduct needs to be controlled or in a relationship with the intended victim of the conduct which gives the intended victim a right to protection.

80. Defendants are not responsible for the injuries and damages of the Plaintiff or the decedent of the Plaintiff due to the injuries and damages, if any, of the Plaintiff and Plaintiff's decedent were caused by the criminal conduct of another.

81. Defendants are not liable for the criminal conduct of another in the absence of a special relationship imposing a pre-existing duty.

82. The intentional acts taken by Mr. James Saylor against the Plaintiff's decedent were criminal in nature.

83. The Defendants had no knowledge at any time that Mr. James Saylor was in the possession of a weapon.

84. The Defendants had no constructive notice that James Saylor was in the possession of a deadly weapon.

85. The Defendants had no obligation to search James Saylor or any other patron of the Red Rose Restaurant to determine whether or not Mr. James Saylor or any other patron was carrying a deadly weapon.

86. The intention acts taken by Mr. James Saylor against the Plaintiff's decedent were criminal. No special relationship existed between the Defendants and Mr. James Saylor.

87. No special relationship existed between the Defendants and Mr. James Saylor which would impose upon the Defendants a duty to prevent Mr. James Saylor from committing an intentional and criminal act against the Plaintiff's decedent. Mr. James Saylor shot and killed the Plaintiff's decedent in an act not induced by the consumption of alcohol, but rather an act inspired by race discrimination to which Defendants owed no duty or obligation to the Plaintiff's

decedent.

88. James Saylor was convicted by a York County jury of 1) Murder of the First Degree (18 Pa.C.S. §2502(a)); 2) Harassment-Communication Repeatedly in another Manner (18 Pa.C.S. §2709 (a)(7)); 3) Ethnic Intimidation (18 Pa.C.S. § 2710(a)); 4) Recklessly Endangering another Person (18 Pa.C.S. §2705); and 5) Accident Involving Damage Attended Vehicle/Property (75 Pa.C.S §3743(a)) for the crimes committed against Plaintiff's decedent.

89. To the extent that Plaintiff's decedent suffered injuries and/or damages, such injuries and/or damages were caused solely by the intentional actions and criminal actions of Mr. James Saylor and/or the negligence of other parties.

90. Pennsylvania's Fair Share Act is applicable to this matter.

91. Because Plaintiff's decedent's injuries and/or damages are solely the result of Mr. James Saylor's actions, joint and several liability applies to Mr. James Saylor, and Mr. James Saylor is 100% liable for any and all damages which may be awarded.

92. In accordance with Pennsylvania's Fair Share Act, the Defendants are only responsible for their proportion of damages which are assignable to them by virtue of their conduct. All allegations of responsibility for any damages are denied.

93. Mr. James Saylor has committed various intentional torts and crimes against the Plaintiff's decedent, and as a result of same, Mr. James Saylor is solely responsible for 100% of the Plaintiff's damages in accordance with the laws of the Commonwealth of Pennsylvania and the Commonwealth of Pennsylvania's Fair Share Act.

94. No action or inaction of the Defendants were the proximate cause of the injuries, if any, sustained by the Plaintiff's decedent or the damages incurred by the Plaintiff. Defendants at all times pertinent hereto acted in a careful, cautious and prudent manner, using due care under the circumstances at all times.

95. At all times pertinent hereto, Mr. James Saylor did not appear to be visibly intoxicate.

96. At all times pertinent hereto, Defendants took reasonable steps to protect its patrons, and as a result thereof, removed Mr. James Saylor from the premises.

97. Mr. James Saylor exited the premises of the Red Rose Restaurant, but due to his intention to commit a criminal act, returned to the Defendants' premises and committed a criminal act to which Defendants bear no responsibility.

98. At no time during Mr. James Saylor's presence in the Red Rose or while exiting the Red Rose made any type of threat to a patron or any other individual referencing the use of a weapon or any other type of device which would cause serious bodily injury or death.

99. Upon Mr. Saylor's exiting the premises, he did not appear to be aggressive or dangerous to others, nor did he make any threats or give the appearance that he intended to use a deadly weapon and/or cause death or serious injury to the Plaintiff's decedent, other patrons of the Red Rose Restaurant or employees of the Red Rose Restaurant.

100. At all times pertinent hereto, Defendant Spagnolo Bros., LLC a/k/a Spagnolo Brothers, LLC operated a business known as Red Rose Restaurant & Lounge located at 5370 Lincoln Highway, York, Pennsylvania 17406, and leased the premises known as 5370 Lincoln Highway, York, Pennsylvania 17406.

101. At all times pertinent hereto, including July 21, 2018, the servants and other staff of the business known as Red Rose Restaurant & Lounge were employees of Defendant Spagnolo Bros., LLC.

102. At all times pertinent hereto, Defendant Spagnolo Bros., LLC a/k/a Spagnolo Brothers, LLC was the employer of all employees employed at the Red Rose Restaurant &

Lounge located at 5370 Lincoln Highway, York, Pennsylvania 17406 on or about July 21, 2018.

103. Defendant Nick & Joe, LLC is a Pennsylvania limited liability corporation and owned real estate situate at 5370 Lincoln Highway, York, York County, Pennsylvania 17406, upon which a business known as Red Rose Restaurant & Lounge operated.

104. Defendant Nick & Joe, LLC has no vicarious liability as a result of or for the actions or inactions of the employees of Defendant Spagnolo Bros., LLC a/k/a Spagnolo Brothers, LLC.

105. At all times pertinent hereto, Defendant Nick & Joe, LLC did not exercise any control whatsoever, directly or indirectly, over the business interest or the business operations of the Red Rose Restaurant & Lounge.

106. At all times pertinent hereto, the business known as Red Rose Restaurant & Lounge was solely owned, controlled and operated by Spagnolo Bros., LLC t/a and a/k/a Red Rose Restaurant & Lounge.

107. Defendant Nick & Joe, LLC at all times pertinent hereto did not have any ownership interest in Spagnolo Bros., LLC t/a and a/k/a Red Rose Restaurant & Lounge.

108. Red Rose Restaurant & Lounge is a duly registered trade name in the Commonwealth of Pennsylvania, solely owned and used by Spagnolo Bros., LLC.

109. At all times pertinent hereto, Defendant Spagnolo Bros., LLC did not exercise any control, directly or indirectly, over the ownership interest in the premises.

WHEREFORE, Defendants respectfully request Your Honorable Court to enter judgment in their favor, together with costs of suit and other such relief Your Honorable Court deems just and proper.

Respectfully submitted,
CGA LAW FIRM, P.C.

/s/ Charles B. Calkins

Charles B. Calkins, Esq.

PA 36208

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PA 310319

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Attorneys for Defendants

VERIFICATION

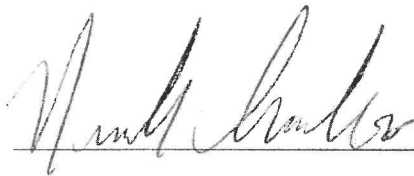
I hereby affirm that the following facts are correct. The attached is based upon information which has been furnished to counsel in the preparation of this document. The language of the Answer with New Matter and Counterclaim is that of counsel and not mine. I have read the Answer with New Matter and Counterclaim, and to the extent that the same is based upon information which I have given to counsel, it is true and correct to the best of my knowledge, information and belief. To the extent that the content of the Answer with New Matter and Counterclaim is that of counsel, I have relied upon counsel in making this Verification. I hereby acknowledge that the averments of fact set forth in the aforesaid are made subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsification to authorities.

 By: FRANK SPAGNOLO

Date: 12/14/2020 _____

VERIFICATION

I hereby affirm that the following facts are correct. The attached is based upon information which has been furnished to counsel in the preparation of this document. The language of the Answer with New Matter and Counterclaim is that of counsel and not mine. I have read the Answer with New Matter and Counterclaim, and to the extent that the same is based upon information which I have given to counsel, it is true and correct to the best of my knowledge, information and belief. To the extent that the content of the Answer with New Matter and Counterclaim is that of counsel, I have relied upon counsel in making this Verification. I hereby acknowledge that the averments of fact set forth in the aforesaid are made subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsification to authorities.


 By: NICK SPAGNOLO

Date: 12/14/2020

VERIFICATION

I hereby affirm that the following facts are correct. The attached is based upon information which has been furnished to counsel in the preparation of this document. The language of the Answer with New Matter and Counterclaim is that of counsel and not mine. I have read the Answer with New Matter and Counterclaim, and to the extent that the same is based upon information which I have given to counsel, it is true and correct to the best of my knowledge, information and belief. To the extent that the content of the Answer with New Matter and Counterclaim is that of counsel, I have relied upon counsel in making this Verification. I hereby acknowledge that the averments of fact set forth in the aforesaid are made subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsification to authorities.

By:

 Giuseppe SpagnoloDate: 12/14/2020

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by:

CGA Law Firm, P.C.

/s/ Charles B. Calkins

Charles B. Calkins, Esq.

PA 36208

Stephen R. McDonald, Esq.

PA 310319

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Attorneys for Defendants

**IN THE COURT OF COMMON PLEAS OF
YORK COUNTY, PENNSYLVANIA**

PEARL WISE, individually and
as Personal Representative of the
**Estate of CHAD MICHAEL
MERRILL**

Case No.2020-SU-001480

Plaintiff

vs.

**FRANK SPAGNOLO d/b/a RED ROSE
RESTAURANT & LOUNGE,
NICK SPAGNOLO a/k/a NICHOLAS
SPAGNOLO d/b/a RED ROSE RESTAURANT & LOUNGE,
GIUSEPPE SPAGNOLO d/b/a RED ROSE
RESTAURANT & LOUNGE,
SPAGNOLO BROS, LLC a/k/a
SPAGNOLO BROTHERS, LLC d/b/a RED
ROSE RESTAURANT & LOUNGE,
NICK & JOE, LLC d/b/a RED ROSE
RESTAURANT & LOUNGE,
ANITA'S, INC. a/k/a ANITA INC. a/k/a ANITA'S CORP d/b/a RED ROSE RESTAURANT &
LOUNGE and RED
ROSE BAR AND LOUNGE,
DAVID VOUGHT d/b/a GLAD CRAB
GLAD CRAB I, INC., d/b/a GLAD CRAB**
Defendants

CERTIFICATE OF SERVICE

I hereby certify that I am this day, December 18, 2020, serving a true and correct copy of the foregoing document upon the person(s) and in the manner indicated below, which service satisfies the requirements of Pa. R.C.P. 440.

SERVICE ADDRESSED AS FOLLOWS:

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*Attorney for David Vought, Glad Crab, Glad Crab Inc., Defendants
Via email to gwb@stockandleader.com and First Class Mail*

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PA 36208