

NO. \_\_\_\_\_

**AARON GRAY AND THE SPOT  
LOUNGE & BAR**  
Plaintiffs,

V.

**CAGE INSURANCE & FINANCIAL  
SERVICES, DARRELL CAGE, AS OF  
CAGE INSURANCE AND CRUM &  
FOSTER**  
Defendants.

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**IN THE DISTRICT COURT**

\_\_\_\_\_ **JUDICIAL**  
**DISTRICT**

**OF HARRIS COUNTY, TEXAS**

**PLAINTIFFS' ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**NOW COME** Aaron Gray and The Spot Lounge & Bar, hereinafter called Plaintiffs, complaining of and about Cage Insurance & Financial Services, Darrell Cage, as of Cage Insurance and Crum & Foster, hereinafter called Defendants, and for cause of action show unto the Court the following:

**DISCOVERY CONTROL PLAN LEVEL**

- 1. Plaintiffs intend that discovery be conducted under Discovery Level 2.

**PARTIES AND SERVICE**

2. Plaintiff, Aaron Gray, is an Individual whose address is 4709 Emancipation Avenue, Houston, Texas 77004.

3. The last three numbers of Aaron Gray's driver's license number are xxx. Aaron Gray has not been issued a social security number.

4. Plaintiff, The Spot Lounge & Bar, is a Texas Corporation whose address is 4709 Emancipation Avenue, Houston, Texas 77004.

5. The Spot Lounge & Bar has not been issued a driver's license. The Spot Lounge & Bar has not been issued a social security number.

6. Defendant Cage Insurance & Financial Services, a Corporation based in Texas, is organized under the laws of the State of Texas, and service of process on the Defendant may be effected pursuant to sections 5.201 and 5.255 of the Texas Business Organizations Code, by serving the registered agent of the corporation, Daryl Cage, at 3412 Saint Emanuel Street, Houston, Texas 77004, its registered office. Service of said Defendant as described above can be effected by personal delivery.

7. Defendant Darrell Cage, an Individual who is a resident of Texas, is the \_\_\_\_\_ of Cage Insurance, an individual, and may be served with process at his office at the following address: 3412 Saint Emanuel Street, Houston, Texas 77004. Service of said Defendant as described above can be effected by certified mail, return receipt requested.

8. Defendant Crum & Foster, a Corporation based in Texas, is organized under the laws of the State of Texas, and service of process on the Defendant may be effected pursuant to sections 5.201 and 5.255 of the Texas Business Organizations Code, by serving the registered agent of the corporation, \_\_\_\_\_, at 26600 Telegraph Road, Southfield, MI 48033, its registered office. Service of said Defendant as described above can be effected by personal delivery.

#### **JURISDICTION AND VENUE**

9. The subject matter in controversy is within the jurisdictional limits of this court.

10. Plaintiffs seek:

a. only monetary relief of \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.

11. This court has personal jurisdiction herein because Defendants are Texas residents.

12. Venue in Harris County is proper in this cause pursuant to Section 17.56 of the Texas Business and Commerce Code and under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

### **FACTS**

13. Plaintiff purchased an insurance policy on or about January 2019, Defendant, Daryl Cage, misrepresented that the policy was something that it was not. The policy number BAK-53326-1 Effective dates August 2, 2019 - August 2, 2020. Daryl Cage acting as an agent for Crum & Foster told Plaintiff that they had business interruption insurance. And this insurance would cover all losses, losses that included anything that would prevent the business from operating. ON March 25, 2020, Plaintiff business was closed because of the national lock down in response to COVID-19. Plaintiff contacted Defendant. Defendant told the Plaintiff that his insurance would cover this particular shut down.

### **DECEPTIVE TRADE PRACTICES**

14. Plaintiffs would show that Defendants engaged in certain false, misleading and deceptive acts, practices and/or omissions actionable under the Texas Deceptive Trade Practices - Consumer Protection Act (Texas Business and Commerce Code, Chapter 17.41, et seq.), as alleged herein below.

15. Unconscionable Action or Course of Action. Defendants engaged in an "unconscionable action or course of action" to the detriment of Plaintiffs as that term is defined by Section 17.45(5) of the Texas Business and Commerce Code, by taking advantage of the lack

of knowledge, ability, experience, or capacity of Plaintiffs to a grossly unfair degree.

16. Misrepresentation of Insurance Policy. Defendants misrepresented an insurance policy as prohibited by Section 541.061 of the Texas Insurance Code, to wit:

- (a) making an untrue statement of material fact;
- (b) failing to state a material fact necessary to make other statements made not misleading, considering the circumstances under which the statements were made;
- (c) making a statement in a manner that would mislead a reasonably prudent person to a false conclusion of material fact;
- (d) making a material misstatement of law; and
- (e) failing to disclose a matter required by law to be disclosed, including failing to make a disclosure in accordance with another provision of the Texas Insurance Code.

17. Producing Cause. Plaintiffs would show that the acts, practices and/or omissions complained of were the producing cause of Plaintiffs' damages more fully described hereinbelow.

18. Reliance. Plaintiffs would further show the acts, practices and/or omissions complained of under Chapter 541 of the Texas Insurance Code were relied upon by Plaintiffs to Plaintiffs' detriment.

19. Written Notice Given. Plaintiffs have timely notified Defendants of such complaint pursuant to Section 17.505(a) of the Texas Business and Commerce Code and Section 541.154 of the Texas Insurance Code by letter dated April 27, 2020, and would show compliance with all conditions precedent to the filing of this suit and recovery of additional damages and attorney's fees.

## COMMON LAW FRAUD

20. Plaintiffs further show that Defendants made material false representations to Plaintiffs with the knowledge of their falsity or with reckless disregard of the truth with the intention that such representations be acted upon by Plaintiffs, and that Plaintiffs relied on these representations to their detriment.

21. As a proximate result of such fraud, Plaintiffs sustained the damages described more fully hereinbelow.

## AGENCY

22. At and during the time of the acts and/or omissions complained of herein, any acts and/or omissions committed by an agent, representative or employee of Cage Insurance & Financial Services and Crum & Foster, Defendants, occurred within the scope of the actual or apparent authority of such person on behalf of said Defendants.

23. Said Defendants are therefore liable to Plaintiffs for the acts and/or omissions of any such agent, representative or employee complained of herein by virtue of such agency relationship.

## RESPONDEAT SUPERIOR

24. At and during the time of the acts and/or omissions complained of herein, said acts and/or omissions of any employee of Cage Insurance & Financial Services and Crum & Foster, Defendants, occurred within the scope of the general authority and for the accomplishment of the objectives for which such employee was employed.

25. Defendants Cage Insurance & Financial Services and Crum & Foster are therefore liable to Plaintiffs for the acts and/or omissions of any such employee complained of herein under the doctrine of respondeat superior.

## **ECONOMIC AND ACTUAL DAMAGES**

26. Plaintiffs sustained the following economic and actual damages as a result of the actions and/or omissions of Defendants described hereinabove:

(a) Out-of-pocket expenses, including but not limited to fees paid to attorneys for court costs .

## **DAMAGES FOR MENTAL ANGUISH**

27. Plaintiffs would further show that the false, misleading and deceptive acts, practices and/or omissions described hereinabove were committed "knowingly," as provided by Section 17.45(9) of the Texas Business and Commerce Code, in that Defendants had actual awareness of the falsity, deception, or unfairness of such acts, practices, and/or omissions.

28. As a result of such acts, practices and/or omissions, Plaintiffs sustained a high degree of mental pain and distress of such nature, duration and severity that would permit the recovery of damages for mental anguish pursuant to Section 17.50(b) of the Texas Business and Commerce Code, and for which Plaintiffs hereby sue in an amount in excess of the minimum jurisdictional limits of this Court.

## **MULTIPLE DAMAGES**

29. As alleged hereinabove, Plaintiffs would show that the false, misleading and deceptive acts, practices and/or omissions complained of herein were committed "knowingly" in that Defendants had actual awareness of the falsity, deception, or unfairness of such acts, practices, and/or omissions.

30. Plaintiffs further aver that such acts, practices, and/or omissions were committed "intentionally" in that Defendants specifically intended that Plaintiffs act in detrimental reliance on the falsity or deception or in detrimental ignorance of the unfairness.

31. Therefore, Plaintiffs are entitled to recover multiple damages as provided by

17.50(b)(1) of the Texas Business and Commerce Code.

### **ATTORNEY'S FEES**

32. Request is made for all costs and reasonable and necessary attorney's fees incurred by or on behalf of Plaintiffs herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just, as provided by: (a) Section 17.50(d) of the Texas Business and Commerce Code; (b) Section 541.152(a)(1) of the Texas Insurance Code; and, (c) common law.

### **PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, Plaintiffs, Aaron Gray and The Spot Lounge & Bar, respectfully pray that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiffs against Defendants, jointly and severally, for the economic and actual damages requested hereinabove in an amount in excess of the minimum jurisdictional limits of the Court, together with prejudgment and postjudgment interest at the maximum rate allowed by law, attorney's fees, costs of court, and such other and further relief to which the Plaintiffs may be entitled at law or in equity, whether pled or unpled.

Respectfully submitted,

By: /s/ASHTON TAYLOR

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**PLAINTIFFS HEREBY DEMAND TRIAL BY JURY**

Unofficial Copy Office of Marilyn Bunch District Clerk