

REBECCA BROWN,	§	IN THE DISTRICT COURT
	§	
SUMESHNI ADJINI,	§	
	§	
KINGSTON BRYAN,	§	
	§	
AND	§	
	§	
JOSHUA COBB,	§	
	§	
PLAINTIFFS,	§	
	§	
V.	§	OF DALLAS COUNTY, TEXAS
	§	
TOPGOLF INTERNATIONAL, INC.,	§	
	§	
TOPGOLF USA, INC.,	§	
	§	
TOPGOLF USA PARK LANE RANCH,	§	
L.L.C.,	§	
	§	
TOPGOLF USA COLONY, L.L.C.,	§	
	§	
AND	§	
	§	
TOPGOLF USA GRANITE PARK, L.L.C.,	§	
	§	
DEFENDANTS.	§	68TH JUDICIAL DISTRICT

PLAINTIFFS' FIRST AMENDED PETITION
& REQUESTS FOR DISCLOSURE

TO THE HONORABLE JUDGE OF THIS DISTRICT COURT:

NOW COME to this Honorable Court, Plaintiff Rebecca Brown, Plaintiff Sumeshni Adjina, Plaintiff Kingston Bryan, and Plaintiff Joshua Cobb; and file their *First Amended*

Petition and Requests for Disclosure complaining of (1) Defendant Topgolf International, Inc.; (2) Defendant Topgolf USA, Inc.; (3) Defendant TopGolf USA Park Lane Ranch, L.L.C.; (4) Defendant Top Golf USA Colony, L.L.C.; and (5) Defendant Topgolf USA Granite Park, L.L.C. — hereinafter collectively referred to as “TopGolf Defendants” — and would show the Court the following:

I.
DISCOVERY CONTROL PLAN

1. Plaintiffs intend to conduct discovery under Level 3 of TEXAS RULES OF CIVIL PROCEDURE, and affirmatively plead that this suit does not fall under the expedited-actions process of TEXAS RULE OF CIVIL PROCEDURE 169.

2. Plaintiffs affirmatively plead that they collectively seek monetary relief in excess of \$1,000,000.

II.
PARTIES

1. Plaintiff Rebecca Brown is an individual and a resident of Val Verde County, Texas, and may be contacted through her counsel.

2. Plaintiff Sumeshni Adjina is an individual, and a resident of Dallas County, Texas, and may be contacted through her counsel.

3. Plaintiff Kingston Bryan is an individual and resident of Harris County, Texas, and may be contacted through his counsel.

4. Plaintiff Joshua Cobb is an individual and resident of Hamilton County, Ohio, and may be contacted through his counsel.

5. **Defendant Topgolf International, Inc.**, is a privately held corporation with its United States headquarters at 1717 McKinney Ave., Suite 800, Dallas, Texas 75202-1237. It may be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701, as its agent for service pursuant to BUS. ORGS. CODE §5.251 because Topgolf International, Inc., engages in business in Texas but has not designated an agent for service of process in this state. This suit arose from This Defendant's business conducted in Texas. This Defendant is required to maintain a registered agent in Texas for service of process but has not designated such an agent for service of process in this state. This Defendant engages in business in Texas, and this suit arose from this Defendant's business conducted in Texas.

6. **Defendant Topgolf USA, Inc.**, is a privately held corporation with its United States headquarters at 1717 McKinney Ave., Suite 800, Dallas, Texas 75202-1237. It may be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701, as its agent for service pursuant to BUS. ORGS. CODE §5.251 because Topgolf USA, Inc., engages in business in Texas but has not designated an agent for service of process in this state. This suit arose from This Defendant's business conducted in Texas. This Defendant is required to maintain a registered agent in Texas for service of process but has not designated such an agent for service of process in this state. This Defendant engages in business in Texas, and this suit arose from this Defendant's business conducted in Texas.

7. **Defendant TopGolf USA Park Lane Ranch, L.L.C.**, is a privately held

corporation with its United States headquarters at 1717 McKinney Ave., Suite 800, Dallas, Texas 75202-1237. **Service of process** is requested to be made upon the registered agent to TopGolf USA Park Lane Ranch, L.L.C.:

**C.T. Corporation System
1999 Bryan Street, Ste. 900
Dallas, Texas 75201-3136.**

8. **Defendant Top Golf USA Colony, L.L.C.**, is a privately held corporation with its United States headquarters at 1717 McKinney Ave., Suite 800, Dallas, Texas 75202-1237. **Service of process** is requested to be made upon the registered agent to Top Golf USA Colony, L.L.C.:

**C.T. Corporation System
1999 Bryan Street, Ste. 900
Dallas, Texas 75201-3136.**

9. **Defendant Topgolf USA Granite Park, L.L.C.**, is a privately held corporation with its United States headquarters at 1717 McKinney Ave., Suite 800, Dallas, Texas 75202-1237. **Service of process** is requested to be made upon the registered agent to Topgolf USA Granite Park, L.L.C.:

**C.T. Corporation System
1999 Bryan Street, Ste. 900
Dallas, Texas 75201-3136.**

10. The TopGolf Defendants often hold themselves out to the public without distinction between any entities. Variations of the core name appear as “TopGolf,” “Topgolf,” and “Top Golf.” As a result, the entities are often referred to as each other, and by a great quantity of A/K/A’s.

III. VENUE AND JURISDICTION

1. Venue is proper in Dallas County pursuant to § 15.001, *et seq.*, of the TEXAS CIVIL PRACTICE AND REMEDIES CODE because all or part of the causes of action accrued here, and because the United States headquarters for the TopGolf Defendants is here.

2. Jurisdiction is proper because the amount in controversy exceeds the minimum jurisdictional limits of this Court.

IV. FACTS

1. On August 16, 2013, Plaintiff Brown was a paying customer at the TopGolf location at 8787 Park Lane, in Dallas. She was sitting at a table behind the “red line” when another customer (who was uninsured and is now bankrupt) hit an errant ball from the “tee line.” The errant ball hit the Plaintiff in her eye. Doctors were unable to save the eye. Though this injury occurred at the same TopGolf location as the paralysis injury being litigated in this courthouse in *Palomo v. TopGolf* (DC-13-12383), no records of it were produced in response to an Order requiring the production of all injury reports at the location.

2. Whereas other golf ranges are marketed to golf-focused customers and are configured for minimal onlookers who are kept at a safer distance, the TopGolf Defendants solicit a social atmosphere and position numerous guests at tables, chairs and couches immediately behind the tee without separating the areas by using a vertical net:

Other Golf Range:



TopGolf:



3. On June 24th of 2015, Plaintiff Adjini was a paying customer at the TopGolf location at 3760 Blair Oaks Drive, in The Colony. An unidentified child customer at another tee line lost control of its club. The club struck Plaintiff Adjini in the face, severely braking her nose.

4. Whereas other golf ranges completely protect their guests in one bay from the errant balls and clubs of guests in other bays by separating the spaces with full-height, impact-absorbing dividers, the TopGolf Defendants choose only partial protection.

Other Golf Range:



TopGolf:



5. On December 27, 2013, Plaintiff Bryan was a paying customer at the TopGolf location at 1030 Memorial Brook Blvd., in Houston. While at the tee line, the vehicle that gathers golf balls from the range instead shot one into Plaintiff Bryan, striking him so forcefully that he was dropped to the floor and rendered nauseated. Medical records state that the impact caused “acute deformity” and “traumatic injury.” Plaintiff Bryan was told, and also heard, that errant balls from the vehicle were common.

6. On August 12, 2015, Plaintiff Cobb and his family were paying customers at the TopGolf location at 13313 Pawnee Drive, Oklahoma City, Oklahoma. The bay in which Plaintiff Cobb and his family were playing was chosen for them by an employee of the location. It was the bay farthest to the left. The Topgolf Defendants’ games, however, called for Plaintiff Cobb to shoot for a target towards the right. A ball ricocheted off of the raised ball dispenser and struck Plaintiff between the eyes, requiring stitches.

7. Whereas other golf ranges utilize sub-surface ball dispensers that automatically tee the ball and are not in the line of the shot, the Topgolf Defendants chose a matt & dispenser configuration that allows for no margin of error for their customers.

Other Golf Range:



TopGolf:



8. The TopGolf Defendants market themselves to inexperienced golfers, children, and social-event customers, all of which are more likely to hit errant shots, lose their clubs, and perform at levels less than what would be seen at ranges that are golf-focused.

9. The TopGolf Defendants market themselves to guests seeking a party atmosphere, and are almost always the largest drink provider in every locale in which they open.

10. The TopGolf defendants shown a pattern and practice of minimizing the injuries that occur, of seeking to avoid creating injury reports, of resisting safety improvements in new venues, of failing to train customers, and of failing to warn customers of known hazards and related injuries.

11. The injuries in this suit — some life-long, some mending — are notable in that they represent injuries from four different TopGolf properties. They include an old property in the Dallas Park Lane location, as well as an injury that occurred less than two months after the opening of the very new property at the Oklahoma City location. Though the TopGolf Defendants have made many changes in the aesthetics of the properties over the years, the TopGolf Defendants continue to maintain, manage, and build properties with the same poor safety standards. They have yet to begin to do any of the following:

- Build fall-arrest netting systems to the OSHA 8-foot standard, instead maintaining properties' nets at 4-feet or less.

- Build properties with auto-teeing equipment to remove shot-line obstacles and decrease customers' risks at the tee line.
- Hang vertical nets in between each bay and behind each bay.
- Prohibit children from playing on elevated decks despite knowing that the fall-arrest netting systems grossly fail to meet the the OSHA 8-foot standard, instead maintaining properties' nets at 4-feet or less.
- Mandating flat-soled shoes at all elevated decks.
- Requiring that all drink servers be trained & licensed by the State.
- Fully informing customers of the known risks of their locations before inducing waivers.
- Closing all upper decks until such time as the fall-arrest netting can be extended to the OSHA 8-foot standard.

V. CAUSES OF ACTION

I. Defendants are liable for negligence, negligent undertaking, premises liability and gross negligence.

VI. GROSS NEGLIGENCE

I. Plaintiffs will show that the acts and omissions of the Defendants, separately and collectively, constitute gross negligence. Defendants acted with willful, wanton disregard both before, and at the time of, the incident in question. Given the extreme degree of risk of potential harm to others, Defendants proceeded with the acts and

omissions described above, with conscious indifference to the rights, safety or welfare of others, including Plaintiffs. Accordingly, Plaintiffs seek an assessment of exemplary damages against Defendants.

VII.
DAMAGES OF PLAINTIFF BROWN

1. As a result of the Defendants' torts, Plaintiff incurred medical expenses in the past and Plaintiff's medical expenses will continue in the future.

2. As a result of the Defendants' torts, Plaintiff incurred pain and suffering in the past, and Plaintiff's pain and suffering will continue in the future.

3. As a result of the incident described herein, Plaintiff incurred mental anguish in the past, and Plaintiff's mental anguish will continue in the future.

4. As a result of the Defendants' torts, Plaintiff incurred physical impairment in the past, and Plaintiff's physical impairment will continue in the future.

5. As a result of the Defendants' torts, Plaintiff incurred physical disfigurement in the past, and Plaintiff's physical disfigurement will continue in the future.

6. As a result of the Defendants' torts, Plaintiff experienced lost earnings and earning capacity in the past, and Plaintiff's diminished earnings & earning capacity will continue in the future.

VIII.
DAMAGES OF PLAINTIFF ADJINI

1. As a result of the Defendants' torts, Plaintiff incurred medical expenses in the past and Plaintiff's medical expenses will continue in the future.

2. As a result of the Defendants' torts, Plaintiff incurred pain and suffering in the past, and Plaintiff's pain and suffering will continue in the future.

3. As a result of the incident described herein, Plaintiff incurred mental anguish in the past, and Plaintiff's mental anguish will continue in the future.

4. As a result of the Defendants' torts, Plaintiff incurred physical impairment in the past.

5. As a result of the Defendants' torts, Plaintiff incurred physical disfigurement in the past, and Plaintiff's physical disfigurement will continue in the future.

6. As a result of the Defendants' torts, Plaintiff experienced lost earnings and earning capacity in the past, and Plaintiff's diminished earnings & earning capacity will continue in the future.

IX.

DAMAGES OF PLAINTIFF BRYAN

1. As a result of the Defendants' torts, Plaintiff incurred medical expenses in the past.

2. As a result of the Defendants' torts, Plaintiff incurred pain and suffering in the past.

3. As a result of the incident described herein, Plaintiff incurred mental anguish in the past.

4. As a result of the Defendants' torts, Plaintiff incurred physical impairment in the past.

5. As a result of the Defendants' torts, Plaintiff incurred physical disfigurement

in the past.

6. As a result of the Defendants' torts, Plaintiff experienced lost earnings and earning capacity in the past.

X.
DAMAGES OF PLAINTIFF COBB

1. As a result of the Defendants' torts, Plaintiff incurred medical expenses in the past and some medical expenses will continue in the future.

2. As a result of the Defendants' torts, Plaintiff incurred pain and suffering in the past, and some pain and suffering will continue in the future.

3. As a result of the incident described herein, Plaintiff incurred mental anguish in the past.

4. As a result of the Defendants' torts, Plaintiff incurred physical impairment in the past, and some physical impairment will continue in the future.

5. As a result of the Defendants' torts, Plaintiff incurred physical disfigurement in the past, and some physical disfigurement will continue in the future.

XI.
CLAIM FOR PREJUDGMENT AND POST-JUDGMENT INTEREST

1. Plaintiffs seek interest in accordance with TEXAS FINANCE CODE § 304.001, *et seq.*

XII.
REQUESTS FOR DISCLOSURES

1. Pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE, Defendants are requested to disclose and produce to Plaintiffs, within 50 days of service of this Request,

the information and materials described in RULE 194.2, through his attorneys at LENAHAN LAW, P.L.L.C., 2655 Villa Creek, Suite 204, Dallas, Texas 75234, during normal business hours.

XIII.
PRAYER

WHEREFORE, Plaintiffs pray that the Defendants be cited to *Appear* and *Answer* and, upon final trial, that Plaintiffs have *Judgment* against the Defendants for actual damages, for costs of suit, pre-judgment and post-judgment interest, and for such other relief to which Plaintiffs may be justly entitled.

Respectfully submitted,



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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document will be attached with the *Citation* at time of service.



Marc C. Lenahan