

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

CHALALA GUTIERREZ, Individually	§	THE DISTRICT COURT OF
and as Representative of the Estate of	§	
RICHARD THOMAS VEGA, II, Deceased	§	
and as Next Friend for RICHARD	§	
THOMAS VEGA, III, a Minor Child and	§	
ROSITA HERNANDEZ, Mother of	§	
RICHARD THOMAS VEGA, II, Deceased	§	
	§	
VS.	§	GREGG COUNTY, TEXAS
	§	
PATTERSON MOTORS OF LONGVIEW,	§	
INC. d\b\ a PATTERSON NISSAN OF	§	
LONGVIEW	§	_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION, REQUEST FOR DISCLOSURE,  
INTERROGATORIES, AND REQUEST FOR PRODUCTION

A. Discovery Control Plan

1. Plaintiffs intend to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3 because there is over \$50,000 in controversy but no need for a tailored control plan as contemplated by Rule 190.4.

B. Parties

2. Plaintiffs are residents of Gregg County.

3. Defendant is a corporation incorporated under the laws of the State of Texas and can be served through its registered agent for service of process, William Rowan Patterson III at 201 McCann Road, Longview, Texas 75601

C. Venue

4. The facts giving rise to this cause of action and the residence of the parties is in Gregg County.

D. Facts

5. On September 15, 2005, at 1201 McCann Road, Longview, Texas, Gregg County, Texas, Patterson Nissan of Longview conducted a "Hands On A Hardbody" contest which it had done numerous times before. This contest was for the purpose of garnering press coverage to promote the sales of its cars and trucks. The conditions of the contest caused Richard Vega to become temporarily insane and to take his own life.

6. Because of its experience in the past and common knowledge, Defendant knew or should have known that the terms of the contest would cause the contestants to lose control of their mental faculties. In fact, the draw of the contest was the spectacle caused by contestants losing their minds.

7. Each contestant was required to place a hand on a Nissan Hardbody Truck for hours at a time, with short breaks for the purpose of using the restroom and getting some nutrition. The contest in question breaks were shortened for the purpose of having the contestants break down faster to accommodate an earlier finish to coincide with maximum press coverage.

8. Every year contestants would fall out due to losing their ability to think or control rational thought. Bizarre and dangerous consequences to contestants happened each year. The defendant witnessed on various years contestants wander from the contest site without control or ability to protect their safety or the safety of those around them. The only accommodation to safeguard for this foreseeable consequence was to verbally insist that contestants leave with someone rather than trying to drive themselves home.

9. During the contest in question Richard Vega began to lose control of his mind. He was unable to control his hands. He asked people if he was okay. He talked irrationally. He told bystanders he thought something was wrong with him. Yet the Defendant had no one present to observe arrant behavior or anyone qualified to help or standing procedures to rescue those they put into this state of mindlessness.

10. Defendant conducted no background check or psychological test to screen contestants.

11. Defendant conducted no psychological or medical monitoring of contestants during the contest except for blood pressure readings. No physician or psychologist was present to monitor the contest or consulted to be sure the contest was conducted in a responsible and safe manner.

12. Defendant provided no safe area for contestants who dropped out of the contest to assess their ability to conduct themselves in a sane and safe manner before leaving the area. Defendant did not retain anyone qualified to debrief and evaluate the departing contestants.

13. Defendant did not commit contestants before the contest, while sane, to stay in a safe area until released by a medical professional.

14. The term “brainwashing” is best known from the techniques used by the Communist Army in the Korean War to break down, (or induce insanity), American troops to get information they would otherwise never divulge. This technique was simply sleep deprivation and stress—the very techniques used in this contest that brought contestants to a state of insanity, therefore entertaining on-lookers and creating free press for the Defendant.

15. The stress endured by the contestants was created by the need to win the prize of a Nissan pickup, not disappoint their families and loved ones and not to fail in front of continual press coverage and audiences. Additionally contestants endured the stress of pain and physical fatigue from being required to stand for long periods of time without lifting their hands or leaning on the truck.

16. Richard Vega did not sleep before the contest because of his worry of not doing well for his wife and children. His sleeplessness was common among contestants and was foreseeable to the Defendant. He stood by the pickup with his hand on its body for 48 hours. His condition was worsened by consumption of many high energy “Monster Drinks” which were provided free, without limit by the Defendant. After 48 hours of standing, his body was cramping and in pain, adding to the caffeine and stress and sleep deprivation.

17. It was foreseeable, in fact desired, by the Defendant that Richard Vega would become insane. It was that very insanity that caused the contest to be entertaining and attract press coverage for the Defendant car dealership. One of the foreseeable risks of such an outcome is that the contestants could do harm to themselves or others. Not even the slightest effort or money was expended to protect these victims of Defendant’s publicity stunt. Only the slightest care would have prevented Richard Vega taking his life or some other foreseeable tragedy happening to him or another contestant.

#### E. Count 1 - Negligence

18. Defendant had a duty to exercise ordinary care in conducting its contest especially in light of the desired outcome of causing insanity of its contestants.

19. Defendant breached the duty of care in the following ways:

- a. Failing to properly screen and test contestants.
- b. Failing to provide professionals to design the contest in such a manner as to provide a safe environment for the contestants.
- c. Failing to provide an agreement that contestants would stay in a safe area after dropping out of the contest.
- d. Failing to provide a professional to watch and monitor the contestants during the contest and screen them before leaving the contest.
- e. Providing high energy drinks to contestants already vulnerable to loss of mental control due to physical pain and fatigue, sleep deprivation and the stress of the contest as well and continual exposure to cameras and audiences.
- f. Failing to provide police or other personnel to restrain contestants that have temporarily lost their sanity.

- g. Conducting such a dangerous contest for monetary gain without concern for the safety of the contestants.
- h. Luring unqualified contestants into a dangerous contest with promises of a truck and fame.
- i. Failing to provide a secure and safe perimeter within which the contestants could participate.

#### F. Count 2 -Breach of Fiduciary Duty

20. Defendant occupied a superior position to that of the contestants. It was a large company with substantial resources. It lured common people in the community to participate in the contest without any regard to their ability to withstand or appreciate the hardships involved. Defendant not only intentionally lured common people of the community into the contest but it had superior knowledge, resources, experience and sophistication. The contest rules were not negotiated but were contracts of adhesion. Defendant alone had the ability to foresee possible dangers and alone had power to create rules and procedures to avoid the risks. Defendant intentionally promoted the contest for the purpose of luring in members of the public without any regard as to the applicants sophistication, education, awareness of danger or mental and emotional ability to handle the “brainwashing” contest.

21. Contestants such as Rick Vega literally put their safety and well-being in the hands of Defendant.

22. For these reasons Defendant owed Richard Vega a duty of candor, loyalty and utmost good faith. It owed a duty to refrain from self-dealing which extended to Richard Vega’s family. The fiduciary relationship created by Defendant required it to act with integrity of the strictest kind and exhibit fair and honest dealing, which included full disclosure of the circumstances of the contest and its dangers.

#### G. Damages

23. Defendant’s breach of duty related in Count I and II proximately caused injury to Richard Vega, which resulted in the following damages:

- a. Physical pain and mental anguish of Richard Vega
- b. Transportation and funeral expenses

24. Richard Vega’s widow, Chalala Gutierrez Individually and as Representative of the Estate of Richard Thomas Vega, II, Deceased and as Next Friend for Richard Vega’s son, Richard Thomas Vega, III a Minor Child, and Rosita Hernandez, Richard Vega’s mother, are the beneficiaries of Richard Vega’s cause of action and damages

25. Chalala Gutierrez Individually and as Next Friend for Richard Thomas Vega, III a Minor Child, and Rosita Hernandez, suffer past and future loss of the care, maintenance, support, services, advice, counsel and reasonable contributions of a pecuniary value, as well as loss of companionship and society they would have shared with Richard Vega, had he lived. They also suffer past and future mental anguish as a result of his death.

26. Chalala Gutierrez Individually and as Next Friend for Richard Thomas Vega, III a Minor Child suffer loss of probable inheritance had Richard Vega continued to live a full and productive life.

27. Plaintiffs seek unliquidated damages within the jurisdictional limits of this court.

#### H. Exemplary Damages

28. Plaintiffs' injury resulted from Defendant's gross negligence, malice, or actual fraud, which entitles Plaintiffs to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

#### I. Jury Demand

29. Plaintiffs demand a jury trial and tender the appropriate fee with this petition.

#### J. Request for Disclosure

30. Under Texas Rule of Civil Procedure 194, Plaintiffs request that Defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2. Plaintiffs also request that Defendant answer the attached interrogatories and requests for production, within 50 days of the service of these interrogatories and requests.

#### K. Prayer

31. For these reasons, Plaintiffs ask that the Court issue citation for Defendant to appear and answer, and that Plaintiffs be awarded a judgment against Defendant for the following:

- a. Actual damages.
- b. Exemplary damages.
- c. Prejudgment and postjudgment interest.
- d. Court costs.
- e. All other relief to which plaintiff is entitled.

Respectfully submitted,

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BLAKE BAILEY  
State Bar No. 01514500

Bailey Law Firm  
112 S. Broadway  
Tyler, TX 75702  
(903) 593-7660  
(903) 593-0090 Fax

C. D. COWAN  
State Bar No. 04911150

The Law Offices of C.D. Cowan, P.C.  
414 S. Bonner Ave.  
Tyler, TX 75702  
(903) 597-5500  
(903) 597-5598 Fax

ATTORNEY FOR PLAINTIFFS