KENNY, O'KEEFE & USSEGLIO, P.C.
CAPITOL PLACE • 21 OAK STREET, SUITE 208 • HARTFORD, CONNECTICUT 06106 • (860) 246-2700 • JURIS NO. 420163

RETURN DATE: MAY 17, 2022	:	SUPERIOR COURT
CECILIA GUTIERREZ, ADMINISTRATRIX OF THE ESTATE OF MARTINA MENDOZA-GUTIERREZ	:	J. D. OF LITCHFIELD
V.	:	AT TORRINGTON
RED STONE PUBS, LLC AND MICHAEL SCHOMBURG	:	APRIL 18, 2022

COMPLAINT

FIRST COUNT – (Dram Shop Liability Pursuant to General Statutes § 30-102 v. Red Stone Pubs, LLC)

1. The plaintiff, Cecilia Gutierrez, has been appointed by the Torrington Area Probate Court to serve as the Administratrix of the Estate of Martina Mendoza-Gutierrez and brings this civil action for damages on behalf of the Estate.

2. At all times mentioned herein, the defendant, Red Stone Pubs, LLC, was a domestic limited liability company with a principal place of business in Simsbury, Connecticut.

3. At all times mentioned herein, the defendant owned, managed, controlled, operated, possessed, and/or maintained the business known as "Red Stone Pub," a bar which serves alcoholic beverages and is located at 10 Jim Gallagher Way, Simsbury, Connecticut.

4. On or about May 15, 2021, from approximately 6:30 p.m. to 11:30 p.m., the plaintiff's decedent, Martina Mendoza-Gutierrez, was an invitee of the defendant, Red Stone Pubs, LLC.

5. On said date and at said time, the plaintiff's decedent, Martina Mendoza-Gutierrez, was given, sold, or otherwise provided with alcoholic beverages by the defendant

through its agents, servants, and/or employees, and had consumed alcoholic beverages at the premises in such quantity so as to become perceivably and/or visibly intoxicated.

6. On said date and at said time, despite the decedent, Martina Mendoza-Gutierrez's, perceivable and/or visible signs of intoxication, the defendant, through its agents, servants and/or employees, continued to serve her alcohol.

7. At the time that the plaintiff's decedent left the Red Stone Pub, on said date, she was very heavily intoxicated. Her intoxicated condition was known to the employees, servants and/or agents of the defendant, Red Stone Pubs, LLC.

8. At the time that the plaintiff's decedent left the Red Stone Pub, on said date, all of the other members of her party had also been served very heavy amounts of alcohol and had all become very heavily intoxicated.

9. At the time that the plaintiff's decedent left the Red Stone Pub, on said date, the plaintiff's decedent was requested by another heavily intoxicated patron to operate his vehicle in order to transport him to his home in Canton, Connecticut.

10. Subsequent to these events, the plaintiff's decedent, upon leaving Red Stone Pub, was operating a motor vehicle in a westbound direction on North Mountain Road in the Town of Canton, County of Hartford, and State of Connecticut.

11. At said time and place, the plaintiff's decedent, Martina Mendoza-Gutierrez, while attempting to navigate a curve on said roadway, lost control of the vehicle. This caused the vehicle to leave the main portion of the roadway, strike the curb, become airborne, and ultimately strike a large tree. The trauma related to this crash ultimately caused her death.

KENNY, O'KEEFE & USSEGLIO, P.C.
CAPITOL PLACE • 21 OAK STREET, SUITE 208 • HARTFORD, CONNECTICUT 06106 • (860) 246-2700 • JURIS NO. 420163

KENNY, O'KEEFE & USSEGLIO, P.C.
CAPITOL PLACE • 21 OAK STREET, SUITE 208 • HARTFORD, CONNECTICUT 06106 • (860) 246-2700 • JURIS NO. 420163

12. Said vehicle crash and the plaintiff's resulting injuries and death were the consequence of the plaintiff's decedent's intoxication and, therefore, the plaintiff seeks to recover damages for such injuries and losses from the defendant pursuant to Section 30-102 of the Connecticut General Statutes.

13. Written notice as required was given to the defendants within the time frame set out in Section 30-102 of the Connecticut General Statutes. Written correspondence was served upon the defendant by a State Marshal on May 27, 2021. (A copy of the notice served by State Marshal is attached as "Exhibit A").

14. As a result of the intoxication of the defendant's patrons, Red Stone Pubs, LLC, acting through its agents, servants and/or employees as aforesaid, the plaintiff's decedent, Martina Mendoza-Gutierrez, suffered significant bodily injuries that ultimately resulted in her untimely death.

15. As a further result of the intoxication of the defendant's patrons, the plaintiff's decedent, Martina Mendoza-Gutierrez, suffered pre-death conscious pain and suffering and was forced to apprehend her imminent death.

16. As a further result of the intoxication of the defendant's patrons, the plaintiff's decedent, Martina Mendoza-Gutierrez, suffered a total destruction of her ability to pursue and enjoy all of life's activities.

17. As a further result of the intoxication of the defendant's patrons, the plaintiff, Cecilia Gutierrez, on behalf of her decedent, has incurred funeral and burial expenses.

18. As a further result of the intoxication of the defendant's patrons, the plaintiff's decedent has suffered a total destruction of her earning capacity.

KENNY, O'KEEFE & USSEGLIO, P.C.
CAPITOL PLACE • 21 OAK STREET, SUITE 208 • HARTFORD, CONNECTICUT 06106 • (860) 246-2700 • JURIS NO. 420163

19. This is a wrongful death claim brough under Connecticut General Statutes §52-555, on behalf of the Estate of Martina Mendoza-Gutierrez, who died on May 16, 2021.

SECOND COUNT —(Recklessness v. Red Stone Pubs, LLC)

1-11. Paragraphs 1 through 11 of the First Count are hereby incorporated and made Paragraphs 1 through 11 of the Second Count as if fully set forth herein.

12. The injuries and losses sustained by plaintiff's decedent, Martina Mendoza-Gutierrez, were the direct and proximate result of the wanton and reckless misconduct of the defendant, Red Stone Pubs, LLC, its agents, servants, and employees in one or more of the following respects:

a. In that it, through its agents, servants and/or employees, sold to and/or served the plaintiff's decedent, Martina Mendoza-Gutierrez, alcoholic beverages in such heavy quantities as to cause her to become heavily intoxicated while at the defendant's bar;

b. In that it, through its agents, servants and/or employees, sold to and/or served the plaintiff's decedent, Martina Mendoza-Gutierrez, alcoholic beverages while the decedent was already perceivably and/or visibly intoxicated;

c. In that it, through its agents, servants and/or employees, sold to and/or served the plaintiff's decedent, Martina Mendoza-Gutierrez, alcoholic beverages while she was obviously intoxicated, when it knew that the decedent would be driving a motor vehicle when she left the premises and would create an unreasonable risk of injury to herself and others;

d. In that it, acting through its agents, servants and/or employees, continued to sell and/or provide alcoholic beverages to the decedent despite extremely visible and observable signs of very heavy intoxication; and

e. In that it, acting through its agents, servants, and/or employees sold and/or provided the other members of the plaintiff's decedent's party with heavy amounts of alcohol.

13. As a result of the wanton and reckless misconduct of the defendant, Red Stone Pubs, LLC, acting through its agents, servants and/or employees as aforesaid, the plaintiff's decedent, Martina Mendoza-Gutierrez, suffered significant bodily injuries that ultimately resulted in her untimely death.

14. As a further result of the wanton and reckless misconduct of the defendant, the plaintiff's decedent, Martina Mendoza-Gutierrez, suffered pre-death conscious pain and suffering and was forced to apprehend her imminent death.

15. As a further result of the wanton and reckless misconduct of the defendant, the plaintiff's decedent, Martina Mendoza-Gutierrez, suffered a total destruction of her ability to pursue and enjoy all of life's activities.

16. As a further result of the wanton and reckless misconduct of the defendant, the plaintiff, Cecilia Gutierrez, on behalf of her decedent, has incurred funeral and burial expenses.

17. As a further result of the wanton and reckless misconduct of the defendant, the plaintiff's decedent has suffered a total destruction of her earning capacity.

18. This is a wrongful death claim brough under Connecticut General Statutes §52-555, on behalf of the Estate of Martina Mendoza-Gutierrez, who died on May 16, 2021.

KENNY, O'KEEFE & USSEGLIO, P.C.
CAPITOL PLACE • 21 OAK STREET, SUITE 208 • HARTFORD, CONNECTICUT 06106 • (860) 246-2700 • JURIS NO. 420163

KENNY, O'KEEFE & USSEGLIO, P.C.
CAPITOL PLACE • 21 OAK STREET, SUITE 208 • HARTFORD, CONNECTICUT 06106 • (860) 246-2700 • JURIS NO. 420163

THIRD COUNT —(Negligent Entrustment v. Michael Schomburg)

1-11. Paragraphs 1 through 11 of the First Count are hereby incorporated and made Paragraphs 1 through 11 of the Third Count as if fully set forth herein.

12. At all times relevant herein, the defendant, Michael Schomburg, was a resident of the Town of Canton and the State of Connecticut.

13. On or about May 15, 2021, at some point prior to 11:30 p.m., Martina Mendoza-Gutierrez consumed intoxicating liquors with defendant, Michael Schomburg, present.

14. At all times mentioned herein, the defendant, Michael Schomburg, knew and/or reasonably should have known that Martina Mendoza-Gutierrez was intoxicated and/or was drinking alcohol.

15. On said date, at approximately 11:30 p.m., the defendant, Michael Schomburg, allowed, encouraged, and/or required the plaintiff's decedent, Martina Mendoza-Gutierrez, to operate his vehicle, a 2014 Audi A4, despite the fact that he knew she was very heavily intoxicated.

16. On said date and at said time, the defendant, Michael Schomburg, knew, or in the exercise of reasonable care should have known, that the plaintiff's decedent, Martina Mendoza-Gutierrez, was incompetent to operate his motor vehicle by reason of her intoxication.

17. On said date and at said time, the defendant, Michael Schomburg, continued to allow, encourage, and/or require the plaintiff's decedent, Martina Mendoza-Gutierrez, to use and operate his motor vehicle despite the fact that he knew, or in the exercise of reasonable care should have known, that she was incompetent to operate the motor vehicle and that said

operation would give rise to a reasonable likelihood of injury to her and other occupants of the vehicle.

18. The injuries and losses sustained by plaintiff's decedent, Martina Mendoza-Gutierrez, were caused by the defendant, Michael Schomburg, in one or more of the following respects:

a. In that he permitted, encouraged, and/or required the decedent, Martina Mendoza-Gutierrez, to operate the motor vehicle he owned, although he knew or should have known that it was unsafe for her to operate the motor vehicle;

b. In that he permitted, allowed, and/or required the decedent, Martina Mendoza-Gutierrez, to operate his motor vehicle without first ascertaining her ability to operate said motor vehicle in a safe, careful manner; and

c. In that the defendant, Michael Schomburg, permitted, allowed and/or required a drunk driver to operate his motor vehicle.

19. As a result of the misconduct of the defendant, Michael Schomburg, the plaintiff's decedent, Martina Mendoza-Gutierrez, suffered significant bodily injuries that ultimately resulted in her untimely death.

20. As a further result of the misconduct of the defendant, the plaintiff's decedent, Martina Mendoza-Gutierrez, suffered pre-death conscious pain and suffering and was forced to apprehend her imminent death.

21. As a further result of the misconduct of the defendant, the plaintiff's decedent, Martina Mendoza-Gutierrez, suffered a total destruction of her ability to pursue and enjoy all of life's activities.

KENNY, O'KEEFE & USSEGLIO, P.C.
CAPITOL PLACE • 21 OAK STREET, SUITE 208 • HARTFORD, CONNECTICUT 06106 • (860) 246-2700 • JURIS NO. 420163

22. As a further result of the misconduct of the defendant, the plaintiff, Cecilia Gutierrez, on behalf of her decedent, has incurred funeral and burial expenses.

23. As a further result of the misconduct of the defendant, the plaintiff's decedent suffered a total destruction of her earning capacity.

24. This is a wrongful death claim brought under Connecticut General Statues §52-555, on behalf of the Estate of Martina Mendoza-Gutierrez, who died on May 16, 2021.

WHEREFORE, the plaintiff claims damages in accordance with the attached Claim for Relief. Hereof, fail not, but of this writ, with your doings thereon, make due service and return according to law.

Dated at Hartford, Connecticut, this 18th day of April, 2022.

PLAINTIFF,
CECILIA GUTIERREZ,
ADMINISTRATRIX OF THE ESTATE
OF MARTINA MENDOZA-GUTIERREZ

BY: _____

TIMOTHY L. O'KEEFE, ESQ.
Kenny, O'Keefe & Usseglio, P.C.
Capitol Place
21 Oak Street, Suite 208
Hartford, CT 06106
Tel.: (860) 246-2700
Juris No.: 420163

KENNY, O'KEEFE & USSEGLIO, P.C.
CAPITOL PLACE • 21 OAK STREET, SUITE 208 • HARTFORD, CONNECTICUT 06106 • (860) 246-2700 • JURIS NO. 420163

KENNY, O'KEEFE & USSEGLIO, P.C.
CAPITOL PLACE • 21 OAK STREET, SUITE 208 • HARTFORD, CONNECTICUT 06106 • (860) 246-2700 • JURIS NO. 420163

RETURN DATE: MAY 17, 2022	:	SUPERIOR COURT
CECILIA GUTIERREZ, ADMINISTRATRIX OF THE ESTATE OF MARTINA MENDOZA-GUTIERREZ	:	J. D. OF LITCHFIELD
V.	:	AT TORRINGTON
RED STONE PUBS, LLC AND MICHAEL SCHOMBURG	:	APRIL 18, 2022

CLAIM FOR RELIEF

The plaintiffs in the above-captioned matter hereby claim:

1. Money damages which are in excess of $15,000.00, exclusive of interests and costs;

2. Punitive or exemplary damages where applicable; and

3. Such further legal or equitable relief as the court may deem necessary or appropriate.

THE PLAINTIFF,
CECILIA GUTIERREZ,
ADMINISTRATRIX OF THE ESTATE
OF MARTINA MENDOZA-GUTIERREZ

BY: _____
TIMOTHY L. O'KEEFE, ESQ.
Kenny, O'Keefe & Usseglio, P.C.

EXHIBIT A

KENNY, O'KEEFE & USSEGLIO, P.C.
COUNSELORS AT LAW

CAPITOL PLACE
21 OAK STREET, SUITE 208
HARTFORD, CONNECTICUT 06106
(860) 246-2700

TIMOTHY L. O'KEEFE*
*Board Certified Civil Trial Advocate

FACSIMILE: (860) 246-6480
EMAIL: tokeefe@kou-law.com

May 27, 2021

SERVICE BY STATE MARSHAL

Charles D. Houlihan, Jr., Esq. Agent
Red Stone Pubs, LLC
D/B/A Red Stone Pub
75 West Street
Simsbury, CT 06070

Re: Connecticut Dram Shop Act Claim/ Preservation of Evidence

To Whom It May Concern:

As is evident from the enclosed "Notice Pursuant to Connecticut General Statutes § 30-102," please be advised that this firm represents Ms. Cecilia Gutierrez proposed Fiduciary of the Estate of Martina Mendoza-Gutierrez. Please forward the enclosed Notice to any liability insurance carrier which may provide insurance coverage to you for liquor liability and/or negligence claims.

We hereby request that you preserve all relevant evidence in your possession or under your control in connection with this matter. Such evidence would include, but not be limited to, incident reports, witness statements, witness information, any insurance policies that may provide coverage for this claim, reports/statements to insurance companies, reports/statements to risk management, video surveillance, security footage, still photography, telephone records, business receipts, credit card receipts, employee training manuals, policy and procedure manuals, employee lists and any and all human resources information on facility management and employees. Be advised that it is our intention to seek an adverse inference against you (or against any other properly named defendants) in any future civil litigation in this matter if any of the above relevant evidence is not properly preserved. In addition, if appropriate, we will pursue an independent civil action for damages of this evidence or not properly preserved.

Please contact our office should you have any questions.

Very Truly Yours,

Timothy L. O'Keefe
Attorney

TLO/hr
Enclosure

KENNY, O'KEEFE & USSEGLIO, P.C.
COUNSELORS AT LAW

CAPITOL PLACE
21 OAK STREET, SUITE 208
HARTFORD, CONNECTICUT 06106
(860) 246-2700

TIMOTHY L. O'KEEFE*
*Board Certified Civil Trial Advocate

FACSIMILE: (860) 246-6480
EMAIL: tokeefe@kou-law.com

May 27, 2021

SERVICE BY STATE MARSHAL

Charles D. Houlihan, Jr., Esq. Agent
Red Stone Pubs, LLC
D/B/A Red Stone Pub
75 West Street
Simsbury, CT 06070

Re: NOTICE PURSUANT TO CONNECTICUT GENERAL STATUTES § 30-102

TAKE NOTICE, Pursuant to Connecticut General Statutes § 30-102, of the intention of Ms. Cecilia Gutierrez proposed Fiduciary of the Estate of Martina Mendoza-Gutierrez, to bring an action pursuant to said statute because of harm to Martina Mendoza-Gutierrez's person and property sustained by reason of the sale of intoxicating liquor to, Martina Mendoza-Gutierrez, who then proceeded to operate a motor vehicle while under the influence of intoxicating liquor.

Time of Sale:	Between the approximate hours of 6:30 p.m. and 11:30 p.m.
Date of Sale:	May 15, 2021
Person to Whom Sale Made:	Ms. Martina Mendoza-Gutierrez of Winsted, Connecticut
Person Suffering Damage:	Ms. Cecilia Gutierrez of Winsted, Connecticut
Time, Date & Location of Injury:	Approximately 11:30 p.m. on May 15 2021 near the area of the intersection of North Mountain Road and Orchard Hill Road in Canton, Connecticut
General Description of Injury:	Traumatic Bodily Injuries; Death The subject motor vehicle crash was the direct result of Ms. Mendoza-Gutierrez having been served intoxicating liquors by employees, agents and/or servants of the Red Stone Pub causing her to be in an intoxicated condition at the time of the crash.

Said service occurred when Ms. Mendoza-Gutierrez was perceivable intoxicated.

Please forward this letter to your insurance carrier and contact Attorney Timothy L. O'Keefe at Kenny, O'Keefe & Usseglio, P.C. (860-246-2700) should you have any questions about this notice.

Ms. Cecilia Gutierrez proposed Fiduciary of the Estate of Martina Mendoza-Gutierrez

By: _____

Timothy L. O'Keefe
Kenny, O'Keefe & Usseglio, P.C.
Capitol Place
21 Oak Street, Suite 208
Hartford, CT 06106
Tel.: (860) 246-2700
Juris No.: 420163