

CAUSE NO. C-4080-21-F

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|---|---|--------------------------------|
| LAURA DEL SOCORRO ZAMORA, | § | IN THE DISTRICT COURT |
| INDIVIDUALLY, AND AS | § | |
| REPRESENTATIVE OF THE | § | |
| ESTATE OF JUAN PEDRO | § | |
| GUERRA, DECEASED, AND | § | |
| NATHAN ALEXIS GUERRA, | § | |
| INDIVIDUALLY AND AS | § | |
| REPRESENTATIVE OF THE | § | |
| ESTATE OF JUAN PEDRO | § | |
| GUERRA; AND JAZMIN | § | |
| CASTANEDA, A/N/F of J.I.G, a Child | § | |
| INDIVIDUALLY, AND AS | § | |
| REPRESENTATIVE OF THE | § | |
| ESTATE OF JUAN PEDRO | § | |
| GUERRA, DECEASED; | § | |
| Plaintiffs, | § | |
| v. | § | _____ JUDICIAL DISTRICT |
| | § | |
| CITY OF WESLACO FIRE | § | |
| DEPARTMENT AND JOHN DOE; | § | |
| Defendants. | § | HIDALGO COUNTY, TEXAS |

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, LAURA DEL SOCORRO ZAMORA, individually and as Representative of the Estate of Juan Pedro Guerra, deceased; Nathan Alexis Guerra, individually and as Representative of the Estate of Juan Pedro Guerra, deceased and JAZMIN CASTANEDA, a/n/f of J.I.G, a child, as Representative of the Estate of JUAN PEDRO GUERRA, Deceased, (hereinafter "Plaintiffs"), and files this Original Petition, complaining of CITY OF WESLACO FIRE DEPARTMENT (hereinafter referred to as "Weslaco") and JOHN DOE (hereinafter collectively referred to as "Defendants"), and in support thereof, would show this Court as follows:

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DISCOVERY CONTROL PLAN

1. Plaintiff intends that discovery be conducted under Discovery Level 3 as set forth in Rule 190.4 of the Texas Rules of Civil Procedure. Plaintiffs request that a case management conference be set at the Court's earliest convenience so that a discovery/docket control order may be entered.

CLAIM FOR RELIEF

2. Plaintiffs seeks monetary relief over \$1,000,000.00.

PARTIES

3. Plaintiff, LAURA DEL SOCORRO ZAMORA, brings this wrongful death action individually, and as Representative of the Estate of JUAN PEDRO GUERRA, Deceased. Plaintiff LAURA DEL SOCORRO ZAMORA is the surviving mother of JUAN PEDRO GUERRA. Plaintiff LAURA DEL SOCORRO ZAMORA is a resident of Hidalgo County, Texas, and JUAN PEDRO GUERRA was a resident of Hidalgo County, Texas, at the time of his tragic death.

4. Plaintiff, NATHAN ALEXIS GUERRA, brings this wrongful death action individually, and as Representative of the Estate of JUAN PEDRO GUERRA, Deceased. Plaintiff NATHAN ALEXIS GUERRA is the surviving son of JUAN PEDRO GUERRA. Plaintiff NATHAN ALEXIS GUERRA is a resident of Hidalgo County, Texas, and JUAN PEDRO GUERRA was a resident of Hidalgo County, Texas, at the time of his tragic death.

5. Plaintiff, JAZMIN CASTANEDA, brings this wrongful death action in her capacity as next friend of J.I.G, a minor child, for the minor's individual claims and claims as Representative of the Estate of JUAN PEDRO GUERRA, Deceased. Plaintiff J.I.G is the surviving child of JUAN PEDRO GUERRA. Plaintiff J.I.G is a resident of Hidalgo County,

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Texas, and JUAN PEDRO GUERRA was a resident of Hidalgo County, Texas, at the time of his tragic death.

6. Based upon information and belief, no administration of an estate is pending and none is necessary as the deceased had no will, no assets and no debts.

7. Defendant, CITY OF WESLACO FIRE DEPARTMENT, is a political subdivision of the State of Texas with administrative offices at 255 S. Kansas Ave., Weslaco, Texas 78596. CITY OF WESLACO FIRE DEPARTMENT may be served by serving its Mayor, **David Suarez**, at 255 S. Kansas Ave., Weslaco, Texas 78596 or wherever he may be found.

Service of citation is requested by private service.

8. Defendant, John Doe, is an individual that resides in Hidalgo County, Texas, and is employed by Defendant City of Weslaco Fire Department as an ambulance driver. Service for Defendant John Doe is pending until City of Weslaco Fire Department discloses the name and address for Defendant John Doe.

JURISDICTION AND VENUE

9. The court has subject-matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

10. This claim is brought under the Texas Tort Claims Act (TTCA), Texas Civil Practice and Remedies Code chapter 101. This Court has jurisdiction over this claim because the TTCA waives a defendant's governmental immunity for claims involving personal injury, death or property damage caused by the negligent operation or use of a motor-driven vehicle or motor-driven equipment by the defendant's employee, if that employee would be personally liable to the plaintiff under Texas law. Tex. Civ. Pract. & Rem. Code § 101.021(1). This claim, as set out more fully below, involved personal injuries caused in whole or in part by the negligent

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operation or use of a motor-driven vehicle or motor-driven equipment by Defendant's employee, John Doe, and the employee would be liable to Plaintiff under Texas law.

11. No exception to the waiver of immunity applies to reinstate Defendant's governmental immunity for this claim.

12. Plaintiff gave Defendant notice as required by the Texas Civil Practice & Remedies Code § 101.101(a). Notice was sent within 180 days of the date of the incident.

13. Venue is mandatory in Hidalgo County, Texas under Texas Civil Practice & Remedy Code § 101.102(a) because this suit is brought under the Texas Tort Claims Act and this is the county where all of the cause of action arose.

FACTUAL BACKGROUND

14. On or about October 4, 2021, an accident occurred in Hidalgo County, Texas wherein Juan Pablo Guerra was struck and fatally injured by an ambulance driven by Defendant JOHN DOE on behalf of Defendant, WESLACO.

15. As Defendant John Doe operated the ambulance, John Doe, drove at an excessive rate of speed for the driving conditions and failed to yield the right of way or take any evasive measures to avoid striking Juan Pablo Guerra.

16. Upon information and belief, Defendant, WESLACO, is the owner of the vehicle and entrusted its use to Defendant JOHN DOE. At all times relevant hereto, Defendant JOHN DOE operated the ambulance during the course and scope of his employment.

17. As a result of the accident, JUAN PABLO GUERRA suffered the damages described herein.

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CAUSE OF ACTION
Count 1 - Negligence

18. Defendant WESLACO is a governmental unit that employed John Doe to operate its motor vehicle, to wit: an ambulance.

19. At the time of Plaintiff's injury, JOHN DOE was driving the motor vehicle owned by Defendant, WESLACO within the course and scope of his employment.

20. Defendant, WESLACO's employee (John Doe) had a duty to exercise ordinary care and operate Defendant's vehicle reasonably and prudently.

21. Defendant WESLACO's employee (John Doe) breached the duty of care in the following ways:

- a. Failing to timely apply the brakes;
- b. Failing to maintain a proper lookout;
- c. Failing to maintain proper control of the vehicle;
- d. Driving his vehicle at a rate of speed greater than that at which an ordinarily prudent person would have driven under the same or similar circumstances;
- e. Failure to yield the right of way to a pedestrian; and,
- f. Failing to operate his motor vehicle within his designated lane.

22. Defendant, WESLACO employee's breach of duty cause injury to Plaintiff as described herein.

23. Defendant is legally responsible and liable for the negligence of its employee and for the injuries caused thereby. Tex. Civ. Pract. & Rem. Code § 101.021(1).

24. Plaintiffs seek unliquidated damages within the jurisdictional limits of this Court.

Count 2–Survival Action – TCPR § 71.021 – JUAN PEDRO GUERRA

25. Plaintiffs, LAURA DEL SOCORRO ZAMORA, NATHAN ALEXIS GUERRA and JAZMIN CASTANEDA, a/n/f of JIG, a minor, as Representatives of the Estate of JUAN PEDRO GUERRA, deceased, assert JUAN PEDRO GUERRA's own claims.

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26. Before dying, JUAN PEDRO GUERRA had a cause of action against Defendants WESLACO and JOHN DOE for negligence.

27. Plaintiffs, LAURA DEL SOCORRO ZAMORA, NATHAN ALEXIS GUERRA and JAZMIN CASTANEDA, a/n/f of JIG, a minor, as Representatives of the Estate of JUAN PEDRO GUERRA, deceased, seeks damages within the jurisdictional limits of this Court.

Count 3 – Wrongful Death Action – TCPR § 71.002 – JUAN PEDRO GUERRA

28. Plaintiffs, LAURA DEL SOCORRO ZAMORA, NATHAN ALEXIS GUERRA and JAZMIN CASTANEDA, a/n/f of JIG, a minor, asserts a claim for the wrongful death of their son/father, JUAN PEDRO GUERRA.

29. The wrongful acts, neglect, and carelessness of Defendant CITY OF WESLACO FIRE DEPARTMENT and JOHN DOE, proximately caused JUAN PEDRO GUERRA severe injuries resulting in his tragic death.

30. JUAN PEDRO GUERRA would have been entitled to bring the cause of action stated herein against Defendants had he lived.

31. Defendants' conduct that caused JUAN PEDRO GUERRA's death was a producing cause of injury to Plaintiffs.

32. Plaintiffs seek damages within the jurisdictional limits of this Court.

Count 4 – Loss of Consortium – JUAN PEDRO GUERRA

33. Plaintiff, LAURA DEL SOCORRO ZAMORA was the loving mother of JUAN PEDRO GUERRA. Plaintiff enjoyed a loving familial relationship, sharing the mutual affection, solace, comfort, companionship, society, assistance, emotional support, and felicity of a successful family and a successful parent-child relationship. As a result of the catastrophic injuries and subsequent death of their son, JUAN PEDRO GUERRA, the parent-child relationship has been destroyed.

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34. Plaintiff, NATHAN ALEXIS GUERRA and JAZMIN CASTANEDA, a/n/f of JIG, a minor, were the loving sons of JUAN PEDRO GUERRA. Plaintiffs enjoyed a loving familial relationship, sharing the mutual affection, solace, comfort, companionship, society, assistance, emotional support, and felicity of a successful family and a successful parent-child relationship. As a result of the catastrophic injuries and subsequent death of their father, JUAN PEDRO GUERRA, the parent-child relationship has been destroyed

DAMAGES

35. As a result of the catastrophic injuries and subsequent death suffered by their son/father JUAN PEDRO GUERRA, Plaintiffs, LAURA DEL SOCORRO ZAMORA, NATHAN ALEXIS GUERRA and JAZMIN CASTANEDA, a/n/f of JIG, a minor, suffered the following damages:

- a. Loss of consortium;
- b. Loss of advice and counsel;
- c. Loss of services;
- d. Mental anguish;
- e. Loss of companionship and society; and,
- f. Court costs.

36. As a result of the catastrophic injuries and subsequent death suffered by JUAN PEDRO GUERRA, Plaintiffs, LAURA DEL SOCORRO ZAMORA, NATHAN ALEXIS GUERRA and JAZMIN CASTANEDA, a/n/f of JIG, a minor, as Representatives of the Estate of JUAN PEDRO GUERRA, deceased, sues to recover the following damages:

- a. Physical pain suffered by JUAN PEDRO GUERRA prior to his death;
- b. Mental anguish suffered by JUAN PEDRO GUERRA prior to his death;
- c. Funeral and burial expenses; and,
- d. Court Costs.

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REQUESTS FOR MANDATORY DISCLOSURES

37. Pursuant to Tex. R. Civ. P. 194, Plaintiff requests Defendant disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2, 194.3 and 194.4.

**NOTICE OF INTENT TO USE DOCUMENTS PRODUCED BY DEFENDANT
IN RESPONSE TO PLAINTIFFS' WRITTEN DISCOVERY PURSUANT TO TEXAS
RULES OF CIVIL PROCEDURE, RULE 193.7**

38. Plaintiff hereby serves notice that Plaintiff intends to use any and all documents produced by Defendant in response to written discovery propounded to the Defendant. As such, the produced documents are self-authenticating pursuant to TRCP, Rule 193.7.

**PLAINTIFFS' REQUEST FOR NOTICE BY DEFENDANT OF INTENT TO SEEK
ADMISSION OF CRIMINAL CONVICTIONS OF WITNESSES PURSUANT TO
TEXAS RULES OF EVIDENCE, RULE 609(f)**

39. Plaintiffs' hereby requests, pursuant to Rule 609(f) of the Texas Rules of Evidence, that Defendant provide advance written notice of intent to seek admission of criminal convictions, as defined in TRE, Rule 609(a) against any witness designated by any party as a relevant fact witness, testifying expert witness and/or any consulting expert witness whose mental impressions or opinions have been reviewed by a testifying expert witness

JURY DEMAND

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

PRAYER

41. 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 economic damages;

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- b. Actual non-economic damages;
- c. Exemplary damages;
- d. Prejudgment and postjudgment interest;
- e. Court costs;
- f. All other relief to which Plaintiffs are entitled.

Respectfully submitted,

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