

CAUSE NO. _____

MARCO ANTONIO ORTUNO AND
CECILIA RODRIGUEZ,
INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE
OF THE ESTATE OF SERGIO
RODRIGUEZ

Plaintiffs,

v.

UNION PACIFIC RAILROAD
COMPANY and UNION PACIFIC
CORPORATION

Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

Plaintiffs Marco Antonio Ortuno and Cecilia Rodriguez, individually and as personal representatives of the estate of Sergio Rodriguez, file this Original Petition against Union Pacific Railroad Company, Union Pacific Corporation (collectively, the “Union Pacific Defendant”), and John Doe. Plaintiffs would respectfully show as follows:

I.
DISCOVERY LEVEL

1. Plaintiffs request that discovery in this matter be conducted under Level 3 of the Texas Rules of Civil Procedure.

II.
PARTIES & SERVICE

2. Plaintiff Marco Antonio Ortuno is the biological father of the Decedent Sergio Rodriguez. At all relevant times, Mr. Ortuno was a resident of the state of

Texas. As Sergio's father, Mr. Ortuno has standing and does now pursue his own wrongful death claims pursuant to Texas Civil Practice and Remedies Code § 71.001, *et seq.* in addition to the survival claims he is bringing on behalf of the Estate of Sergio Rodriguez. He may be reached through his counsel of record, ZEHL & ASSOCIATES, P.C.

3. Plaintiff Cecilia Rodriguez is Sergio's biological mother. At all relevant times, Ms. Rodriguez was a resident of the state of Texas. As Sergio's mother, Ms. Rodriguez has standing and does now pursue her wrongful death claims pursuant to Texas Civil Practice and Remedies Code § 71.001, *et seq.* in addition to the survival claims she is bringing on behalf of the Estate of Sergio Rodriguez. He may be reached through her counsel of record, ZEHL & ASSOCIATES, P.C.

4. Defendant Union Pacific Corporation is a foreign corporation that conducts substantial business in Texas such that it may be considered to be at home in this state. This defendant may be served with process through its registered agent, CT Corporation System, at 1999 Bryan Street Ste. 900, Dallas, Texas 75201.

5. Defendant Union Pacific Company is a foreign corporation that conducts substantial business in Texas such that it may be considered to be at home in this state. This defendant may be served with process through its registered agent, CT Corporation System, at 1999 Bryan Street Ste. 900 Dallas, Texas 75201.

6. Defendant John Doe is an unidentified locomotive engineer and/or train operator. Upon information and belief, this Defendant is a Texas resident. Plaintiffs

intend to amend their petition to include the train operator once his identity has been established.

III.
MISONOMER/ALTER EGO

7. If any parties are misnamed or not included here, Plaintiffs contend that such an omission is a “misidentification,” “misnomer,” or an “alter ego” of the parties named here. Alternatively, Plaintiffs contend that any “corporate veils” should be pierced to properly include, in the interest of equity and justice, those who injured Sergio Rodriguez.

8. Plaintiffs specifically invoke the right to institute suit against whatever entities were conducting business using any assumed or common name, if any, related to the events described herein. Plaintiffs specifically invoke the right under Texas Rule of Civil Procedure 28 to have the true name of such parties substituted later, if necessary.

IV.
JURISDICTION & VENUE

9. Jurisdiction and venue are proper in this county because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in Harris County, Texas.

10. The subject matter in controversy is within the jurisdictional limits of this Court.

11. This Court has personal jurisdiction over Defendants because they conduct a substantial amount of business in Texas and have continuous and

systematic contacts with Texas. Moreover, this Court has personal jurisdiction over Defendants because they committed the torts alleged herein in Harris County.

V. FACTS

12. On or about December 9, 2024, Sergio Rodriguez, a minor, tragically lost his life in an incident involving a train owned and operated by the Union Pacific Defendants. The accident occurred around 7:30 AM at or near 2000 Broadway Street in southeast Houston, Texas when Sergio was struck by a train operated by Defendant John Doe on behalf of the Union Pacific Defendants.

13. The area where the incident occurred is a well-known pedestrian crossing frequently used by residents in the community, including students walking to the local high school. It was reasonably foreseeable to Defendants that individuals, including minors like Sergio, could be present in this area, particularly in the early morning hours when students are crossing the tracks on their way to school. At no point was there any fencing or other barriers preventing Sergio and others from crossing at the location where the incident occurred.

14. At the time of the incident, Sergio was attempting to cross over the railroad tracks on his way to school when suddenly and without warning he was struck by Defendants' train. Upon information and belief, Defendants failed to sound their horn prior to the train striking and ultimately killing Sergio, in direct violation of both state and federal regulations.

VI.
CAUSES OF ACTION AGAINST DEFENDANTS

15. Sergio was tragically killed as a direct and proximate result of Defendants' negligence and gross negligence, by way of act and/or omission.

16. Plaintiffs sustained injuries as a result of Defendants' negligence, negligence per se, and gross negligence because Defendants:

- a. Operated the train at an excessive and unreasonable speed under the circumstances;
- b. Failed to timely engage the train's horn, bells, or other auditory warning;
- c. Failed to maintain a proper lookout for pedestrians;
- d. Failed to take necessary precautions to avoid the collision despite the foreseeable risk;
- e. Failed to have a headlamp;
- f. Failed to timely apply the train's emergency brakes;
- g. Failed to have warning devices, gates, signs and/or symbols;
- h. Failed to hire qualified and adequately trained employees and/or agents;
- i. Failed to properly train their employees and/or agents;
- j. Failed to properly supervise their employees and/or agents;
- k. Failed to create and/or enforce adequate safety policies and procedures;
- l. Failed to take action to prevent the incident;
- m. Violated applicable government regulations, laws, and rules; and
- n. Other acts deemed negligent and grossly negligent.

VII.

DAMAGES

17. As a result of Defendants' conduct, Plaintiffs Marco Antonio Ortuno and Cecilia Rodriguez lost their beloved son. Plaintiffs seek recovery of damages because Plaintiffs have sustained in the past and will continue to sustain in the future:

- a. Pre-death physical pain and suffering;
- b. Pre-death mental pain, suffering, and anguish;
- c. Loss of earning capacity and inheritance;
- d. Loss of fringe benefits;
- e. Loss of services and support;
- f. Loss of nurture, guidance, care, and instruction;
- g. Loss of enjoyment of life;
- h. Loss of future pecuniary support;
- i. Loss of society and companionship;
- j. Emotional distress and mental anguish; and
- k. All other damages recoverable under the law.

18. Plaintiffs are also entitled to punitive damages because Defendants acted with willful and wanton disregard for Sergio's safety. Defendants knowingly and recklessly disregarded the substantial risks their actions posed, demonstrating a flagrant indifference to Sergio's health and safety. Despite being aware of the hazardous conditions and the extreme risk to Sergio, Defendants failed to take any corrective actions. Their acts and omissions reflect an extreme degree of risk given the likelihood and severity of harm that ultimately resulted. Defendants had actual knowledge of the dangers posed yet consciously disregarded them.

VII.
RESPONDEAT SUPERIOR

19. Plaintiffs incorporate all paragraphs by reference here fully.

20. Whenever in this Petition it is alleged that Defendants did or failed to do any particular act and/or omission, it is meant that Defendants, acting individually, or by and through agents, officers, directors, servants, and employees, either did or failed to do that particular act and/or omission, in the course and scope of their employment, agency or contract with the Union Pacific Defendants, and in furtherance of Defendants' business.

21. Therefore, under the doctrine of respondeat superior, Defendants are vicariously liable for the acts and omissions of their agents, officers, directors, servants, and employees in the course and scope of their employment, further outlined elsewhere in this petition and incorporated by reference here fully.

IX.
NOTICE OF INTENT TO USE DISCOVERY AT TRIAL

22. Pursuant to Texas Rule of Civil Procedure 193.7, Plaintiffs hereby give notice that they intend to use at trial or any pre-trial proceeding all discovery instruments and documents Defendants produce in response to written discovery requests.

X.
RULE 47 STATEMENT OF MONETARY RELIEF SOUGHT

23. Plaintiffs prefer to have the jury determine the fair amount of compensation for Plaintiffs' damages. It is too early in this case to assess the full

nature, amount, and scope of Plaintiffs' injuries and damages, and Plaintiffs entrust the decision regarding the amount of compensation to be awarded to them to the jury.

24. Rule 47 of the Texas Rules of Civil Procedure requires Plaintiffs to provide a statement regarding the amount of monetary relief sought. Accordingly, Plaintiffs seek monetary relief of over \$1,000,000, in an amount to be determined by the jury.

XI.
JURY TRIAL REQUESTED

25. Plaintiffs hereby request a jury trial of this matter and have paid the appropriate jury fee.

XII.
CONCLUSION & PRAYER

For these reasons, Plaintiffs respectfully pray that Defendants be cited to appear and answer herein, and, upon a final hearing of the cause, judgment be entered for Plaintiffs against Defendants for damages in an amount within the jurisdictional limits of the Court; for exemplary damages; together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate; costs of court; and such other and further relief to which the Court determines Plaintiffs may be entitled at law or in equity.

[Signature on next page.]

Respectfully submitted,

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