

CAUSE NO. DC-2021-CV-0534

ALEXZANDRA GARCIA AS NEXT	§	IN THE ____ DISTRICT COURT
FRIEND OF E.R., A MINOR,	§	
MARCUS ROSALES and LAURA ROSALES	§	
<i>Plaintiffs,</i>	§	
	§	OF
v.	§	
	§	
	§	
X-FAB TEXAS, INC.	§	
<i>Defendant.</i>	§	LUBBOCK COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Plaintiffs Alexzandra Garcia as Next Friend of E.R., a minor child, Marcus Rosales, and Laura Rosales in the above-entitled cause complaining of Defendant named herein, and would respectfully show the Court the following:

I. DISCOVERY

1.01 Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, Plaintiffs intend to conduct discovery in this case under level 3 as outlined in Rule 190.4 Texas Rules of Civil Procedure.

II. PARTIES

2.01 Plaintiff Alexzandra Garcia, as next friend of E.R., is an individual and a resident of Texas. E.R. is the biological daughter of Alexzandra Garcia and Emmanuel Rosales, deceased. Pursuant to Tex. Civ. Prac. Rem. Code § 30.014, the last three digits of Plaintiff's social security number are 579.

2.02 Plaintiff Marcus Rosales is an individual and a resident of Texas. Marcus Rosales is the biological father of Emmanuel Rosales, deceased. Pursuant to Tex. Civ. Prac. Rem. Code § 30.014, the last three digits of Plaintiff's social security number are 123.

2.03 Plaintiff Laura Rosales is an individual and a resident of Texas. Laura Rosales is the biological mother of Emmanuel Rosales, deceased. Pursuant to Tex. Civ. Prac. Rem. Code § 30.014, the last three digits of Plaintiff's social security number are 759.

2.04 Defendant X-FAB Texas, Inc. ("X-FAB") is a corporation with its principal place of business located at 2301 N. University Ave., Lubbock, Texas 79415. Defendant X-FAB can be served through its registered agent, MYRTLE D MCDONALD, 3305 66TH STREET, SUITE 3, LUBBOCK, TX 79413.

III. JURISDICTION AND VENUE

3.01 Venue is proper in Lubbock County, Texas, pursuant to TEX. CIV. PRAC. REM. CODE § 15.002(a)(1), because it is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred

3.02 The amount of the Plaintiffs' damages is substantial and well in excess of the jurisdictional minimums of this Court. Many elements of damage cannot be determined with mathematical precision. Furthermore, the determination of many of these elements of damage is peculiarly within the province of the jury. Plaintiffs do not at this time seek any certain amount of damages for any of these particular elements of damage but would instead rely upon the collective wisdom of the jury to determine an amount that would fairly compensate Plaintiffs and hold Defendant accountable for its conduct. However, in order to comply with the pleading requirements of TEX. R. CIV. P. 47(C)(5), Plaintiffs plead that they seek monetary relief over \$1,000,000. Plaintiffs also seek judgment for all other relief to which Plaintiffs are entitled.

IV. FACTS

4.01 On or about November 12, 2021, Emmanuel Rosales was working at X-FAB's facility in Lubbock, Texas, which is equipped with a Deionized (DI) Water system. On the day of this

incident, X-Fab added hydrogen peroxide to a tank associated with the DI water system which contained resin, creating an unsafe environment near the DI water system and water tanks. Emmanuel Rosales was later instructed to open a valve on the DI water system and an explosion occurred causing significant injuries to Emmanuel, which led to his death.

4.02 Defendant X-FAB's negligence proximately caused the incident, and the resulting injuries and damages sustained by Plaintiffs in the incident.

V. CAUSES OF ACTION

Negligence

5.01 Defendant's negligence was the proximate cause of the incident and said Defendant was negligent in many respects including, but not limited to, the following:

- a. Failing to provide adequate training to their employees;
- b. Failing to provide a safe place to work;
- c. Failing to properly design, construct and maintain the facility in Lubbock, Texas, including the DI water system;
- d. Failing to routinely inspect the facility in Lubbock, Texas, including the DI water system;
- e. Failing to have adequate safety procedures in place at the facility in Lubbock, Texas;
- f. Failing to take reasonable steps to safeguard others against the hazards associated with the DI water system;
- g. Failing to identify the risks of the DI water system;
- h. Failing to establish safe practices related to the DI water system;
- i. Failing to use safe practices related to the DI water system;
- j. Failing to take reasonable steps to provide a workplace which was free from recognized hazards that cause or are likely to cause serious physical harm;
- k. Failing to implement appropriate safety controls;

- l. Failing to develop and maintain written safety information identifying workplace chemical and process hazards and equipment used in the processes;
- m. Failing to develop and implement written operating procedures for the chemical process, including procedures for each operating phase, operating limitations, and safety and health considerations;
- n. Failing to provide written safety and operating information to employees and provide training in operating procedures emphasizing hazards and safe practices; and,
- o. Failing to ensure contractors and contract employees are provided appropriate information and training.

Respondeat Superior of Defendant

5.02 Vicarious liability for Plaintiffs' injuries and damages attaches to Defendant X-FAB through *respondeat superior* in the following respects:

- a. Defendant's employees were working in the course and scope of their employment leading to and at the time of the incident;
- b. Defendant's employees were acting in furtherance of Defendant X-FAB's business leading to and at the time of the incident;
- c. Defendant's employees were working for the accomplishment of the object for which they were hired; and
- d. Defendant's employees' negligence are a proximate cause of Plaintiffs' injuries and damages.

Gross Negligence

5.03 The allegations of the preceding and succeeding paragraphs are incorporated herein by reference for all purposes.

5.04 The above-mentioned acts of negligence on the part of the Defendant were of such character as to make Defendant X-Fab guilty of gross negligence. Defendant's acts of negligence when viewed objectively from the standpoint of the Defendant involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendant X-Fab had actual, subjective awareness of this risk, but nevertheless proceeded with conscious indifference

to the rights, safety, and welfare of Plaintiffs. The gross negligence of Defendant X-Fab was a proximate cause of the fire and of the injuries and damages suffered by Plaintiffs. As a result of Defendant X-Fab's gross negligence, Plaintiffs seek and are entitled to an award of exemplary damages.

VI. DAMAGES

A. Wrongful Death Claims

6.01 Plaintiffs have each individually suffered a severe loss associated with the death of their father and/or son, Emmanuel Rosales, and the resulting destruction of their relationships, including the loss of the positive benefits flowing from the love, comfort, companionship, and society from Emmanuel Rosales, deceased.

6.02 As a direct and proximate result of Defendant's conduct, Plaintiffs have each individually suffered damages for the wrongful death of Emmanuel Rosales as follows:

- a. Loss of companionship and society sustained in the past and which will reasonably be sustained in the future;
- b. Mental anguish sustained in the past and which will reasonably be sustained in the future;
- c. Loss of consortium; and
- d. Loss of care & support.

VII. FOR THE COURT ONLY

7.01 At all times relevant hereto, Defendant was a "non-subscriber" to workers' compensation insurance, as that term is defined under the Texas Labor Code, meaning that Defendant did not have a current policy of workers' compensation insurance coverage. Plaintiffs are therefore entitled to protection of all of the provisions of the Texas Labor Code afforded to Plaintiffs in non-subscriber actions.

VIII. PRAYER

8.01 WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request Defendant X-FAB be cited to appear and answer and that upon final trial by jury, Plaintiffs recover against Defendant the following:

1. Compensatory and Punitive damages as set forth above;
2. Pre-judgment and post-judgment interest as allowed by law;
3. Costs of court; and
4. Such other, further and different relief to which Plaintiffs may show themselves justly entitled.

Respectfully Submitted,

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/s/ Jason Medina

Jason Medina
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ATTORNEYS FOR PLAINTIFFS

JURY DEMAND

Plaintiffs hereby respectfully demand a trial by jury in this cause and herewith pay the required fee.

/s/ Jason Medina

Jason Medina

Automated Certificate of eService

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Status as of 11/22/2021 9:53 AM CST

Associated Case Party: ALEXZANDRA GARCIA

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