

CAUSE NO. 2019CV3471

JESSICA GARCIA, Individually, and As
Next Friend of GUILLERMO GARCIA, and
As Next Friend of K.G. and G.G., Minors;
JANE DOE 1, Individually and on Behalf of the
Estate of JOHN DOE 1, Deceased, and As Next
Friend of MINOR DOE 1 and MINOR DOE 2;
ARNULFO RASCON; and ILDA CAMPOS,
Individually and on Behalf of the Estate of
LEONARDO CAMPOS, Deceased,

Plaintiffs

AURORA BONILLA HERNANDEZ,
Individually, and As Representative of the
Estate of MARIBEL HERNANDEZ LOYA,
Deceased, ANDRES LOYA, RAUL
ROBERTO LOYA, YVETTE SHIBLEY,
YVONNE LOYA, DONNA RAE SIFFORD,
ERNEST CHRISTOPHER GRANT, and
ROSA BARRON

Intervenors

PATRICIA BENAVIDES, INDIVIDUALLY
AND AS REPRESENTATIVE OF THE
ESTATE OF ARTURO BENAVIDES

Intervenor

v.

WALMART, INC.; WAL-MART STORES
TEXAS, LLC; and PATRICK WOOD
CRUSIUS

Defendants

IN THE DISTRICT COURT OF

EL PASO COUNTY, TEXAS

448TH JUDICIAL DISTRICT

PLAINTIFF PATRICIA BENAVIDES’S ORIGINAL PETITION IN INTERVENTION

PATRICIA BENAVIDES, Individually and as Representative of the Estate of ARTURO BENAVIDES, Deceased, files this Petition in Intervention, complaining of WALMART, INC.; WAL-MART STORES TEXAS, LLC; and PATRICK WOOD CRUSIUS (herein “Defendants”), and would respectfully show the Court as follows:

I. DISCOVERY CONTROL PLAN

1. Pursuant to Rules 190.1 and 190.4 of the Texas Rules of Civil Procedure, discovery in this lawsuit is intended to be conducted under Level 3.

II. PARTIES

2. Plaintiff Intervenor Patricia Benavides is the surviving wife of Arturo Benavides, and is a resident of El Paso County, Texas.

3. Defendant Walmart, Inc. is a foreign for-profit corporation authorized to do and is doing business in the State of Texas.

4. Defendant Wal-Mart Stores Texas, LLC is a foreign limited liability company doing business in the State of Texas.

5. Defendants Walmart, Inc. and Wal-Mart Stores Texas, LLC may be referred to collectively in this Petition in Intervention as “Wal-Mart” and/or “the Wal-Mart Defendants.”

6. Defendant Patrick Wood Crusius is an individual with a place of residence located at 900 Kingsbury Court, Allen, Texas 75013-5357.

III. JURISDICTION AND RULE 47 STATEMENT

7. This court has subject matter jurisdiction over this case because the subject matter of this dispute and the amount in controversy are within the jurisdictional limits of this Court.

8. This Court has personal jurisdiction over Defendants because they conduct business in Texas and have committed a tort in Texas.

9. As required by TEX. R. CIV. P. 47, Plaintiff Intervenor Patricia Benavides is seeking monetary relief over \$1,000,000.

IV. VENUE

10. Venue is proper and maintainable in El Paso County, Texas, since a substantial part

of the events or omissions giving rise to Plaintiff Intervenor Patricia Benavides's claims occurred in El Paso County, Texas.

V. FACTS

11. The Wal-Mart Supercenter, Store # 2201, located at 7101 Gateway Boulevard W, El Paso, Texas 79925 ("the Premises"), is an especially busy retail location.

12. Decedent, Arturo Benavides and his wife, Intervenor Plaintiff Patricia Benavides, were shopping within the Premises on August 3, 2019.

13. While they were shopping inside the store, Defendant Patrick Wood Crusius ("the Shooter") walked inside to case the Premises and to plan his attack. If there had been any discernible security presence on the Premises, the Shooter would have been deterred when he took this survey.

14. The Shooter then exited the Premise store, walked back to his vehicle, which was parked in the Premises' parking lot, grabbed an assault rifle, and began shooting, killing and wounding several other victims in the parking lot.

15. Defendant Crusius continued shooting customers on the Premises, eventually making his way inside the store. At that time, Arturo Benavides was standing in line near the cash register, waiting to pay for the items he and his wife, Plaintiff Intervenor Patricia Benavides, had chosen. Plaintiff Intervenor Patricia Benavides was sitting on a bench nearby, at the front of the store, because she was tired from standing.

16. When the Shooter entered the store, he began shooting more customers. In the scramble, Plaintiff Intervenor Patricia Benavides was shoved into a stall in the nearby restroom. Her husband, Arturo Benavides, who had been standing in line, was not so lucky and was shot and killed by the Shooter, along with other customers in the store.

17. Defendant Crusius then went back outside to finish off several victims he had already shot and wounded.

18. Defendant Crusius would later tell police that he was surprised nobody challenged him as he roamed the Premises.

19. The Shooter then left the Premises and surrendered to the police.

20. The Wal-Mart Defendants have a long history of problems with crime at their stores.

21. In 2015, an Indiana town declared their local Wal-Mart a public nuisance because of how bad the crime at the store was.

22. In June 2016, an armed man took two employees hostage and was later shot by police at a Wal-Mart in Amarillo, Texas.

23. Shortly thereafter, Bloomberg Businessweek reported in August 2016 that “Walmart’s out-of-control crime problem is driving police crazy.” That report concluded that the level of crime at Wal-Mart was the direct result of a cost-cutting corporate policy dating back to 2000.

24. In November 2017, an armed man shot and killed three shoppers at a Wal-Mart in Thornton, Colorado.

25. Just a few days before the shooting in El Paso, an armed man shot and killed two people and injured a third at a Wal-Mart in Southaven, Mississippi.

26. On information and belief, the Wal-Mart Defendants previously had an armed, off-duty police officer protecting the Premises and their patrons at all times, but the Wal-Mart Defendants stopped providing this security measure in order to save money and improve their bottom line.

27. Despite years of rampant crime at its stores, the Wal-Mart Defendants did not take necessary and reasonable steps to protect their customers on August 3, 2019 at the Wal-Mart Supercenter in El Paso, Texas.

VI. CAUSES OF ACTIONS

A. FIRST CAUSE OF ACTION – NEGLIGENCE (VICARIOUS LIABILITY – CORPORATE VEIL – WAL-MART DEFENDANTS)

28. All paragraphs above are incorporated herein by reference.

29. The Wal-Mart Defendants own and operate the Premises where Arturo Benavides was shot and killed. Further, the Wal-Mart Defendants were responsible for providing security for the Premises. Specifically, the Wal-Mart Defendants had an obligation to provide security to patrol and monitor the entrances and common areas of the Premises, including the areas inside the store where Plaintiff Intervenor Patricia Benavides and Arturo Benavides were, before Arturo was killed.

30. It was the responsibility of the Wal-Mart Defendants to provide security to the Premises due to the capacity of patrons at the Premises. Despite the crowd at the Premises on the day of the shooting, no security guards were provided to protect the patrons at the Premises.

31. Arturo Benavides's death and Plaintiff Intervenor Patricia Benavides's injuries, harms, and losses would not have occurred but for the negligence, gross negligence and premises liability of the Wal-Mart Defendants. The occurrence made the basis of this lawsuit and the resulting injuries and damages were proximately caused by the following non-exhaustive list of acts and omissions of the Wal-Mart Defendants, including:

- a. failing to keep a proper lookout;
- b. failing to maintain proper security equipment;
- c. failing to properly secure the premises;

- d. failing to properly patrol the premises in question;
- e. being inattentive; and
- f. failing to observe ordinary care and prudence given the circumstances.

32. The Wal-Mart Defendants owed a duty to Plaintiff Intervenor Patricia Benavides and her husband, Arturo Benavides, to take reasonable care to discover dangers and to reduce or eliminate such dangers on the Premises. The Wal-Mart Defendants each had a non-delegable duty of ordinary care to secure the Premises and to keep patrons of the Premises safe. The Wal-Mart Defendants failed to comply with this duty by failing to provide proper security at the Premises to discourage, timely stop, and/or prevent the shooting from occurring. Despite the Shooter arming himself with a powerful rifle and dressing in armored gear, the Wal-Mart Defendants' failure to provide a guard on the Premises to prevent the Shooter from entering the Premises and protect patrons on the Premises created a hazardous condition to patrons of the Premises.

33. Each of the above acts and omissions, taken singularly or in combination with others, constituted negligence which proximately caused the occurrence made the basis of this action and caused the death of Arturo Benavides and injuries, harms, and damages to Plaintiff Intervenor Patricia Benavides.

34. Each of these acts and omissions, singularly or in combination with others, constituted gross negligence in that, when viewed objectively, it indicated an extreme degree of risk, considering the probability and magnitude of the potential harm to the invitees of the Premises, including Plaintiff Intervenor Patricia Benavides and her husband, Arturo Benavides. The Wal-Mart Defendants had actual, subjective awareness of the other risks but proceeded anyway with conscious indifference to the rights, safety, or welfare of others, and in particular, the invitees of the Premises. Such gross negligence was a proximate cause of the occurrence, the death

of Arturo Benavides, and Plaintiff Intervenor Patricia Benavides's injuries, harms, and damages.

35. Plaintiff Intervenor Patricia Benavides hereby further asserts any and all alternative theories of piercing the corporate veil available under Texas law, and specifically, under *Castleberry v. Branscum*, 721 S.W.2d 270 (Tex. 1986).

B. SECOND CAUSE OF ACTION – BYSTANDER LIABILITY (VICARIOUS LIABILITY – CORPORATE VEIL – WAL-MART DEFENDANTS)

36. All paragraphs above are incorporated herein by reference.

37. Plaintiff Intervenor Patricia Benavides was the wife of Arturo Benavides, Decedent.

38. As set forth above, at the time the Shooter entered the store, Plaintiff Intervenor Patricia Benavides was sitting on a bench near the front of the store and saw and heard the Shooter enter and begin shooting. Plaintiff Intervenor Patricia Benavides was shoved into a stall of the nearby bathroom, but her husband, Arturo Benavides, who had been standing not far away, waiting to pay, was left exposed and was killed by the Shooter.

39. As a direct and proximate result of being at the scene of her husband's death, which was caused by the negligence and careless conduct of the Wal-Mart Defendants, as set forth above, Plaintiff Intervenor Patricia Benavides suffered severe mental and emotional anguish, including mental and emotional pain, torment, suffering, and despair.

C. THIRD CAUSE OF ACTION – ASSAULT (CRUSIUS)

40. All paragraphs above are incorporated herein by reference.

41. While the negligence by the Wal-Mart Defendants was the producing and proximate cause of the injuries to Plaintiff Intervenor Patricia Benavides, Plaintiff Intervenor Patricia Benavides alleges that Defendant Patrick Wood Crusius entered the Premises with the intent to fatally injure invitees of the Premises, and he succeeded in that intent.

42. Specifically, Plaintiff Intervenor Patricia Benavides alleges that Defendant Patrick Wood Crusius intentionally, knowingly, and/or recklessly caused bodily injury to Plaintiff Intervenors' Decedent husband, Arturo Benavides, and injuries, harms, and losses to Plaintiff Intervenor Patricia Benavides.

43. The conduct of Defendant Crusius was a proximate cause of the incident that occurred on the Premises.

D. FOURTH CAUSE OF ACTION – SURVIVAL ACTION (ALL DEFENDANTS)

44. All paragraphs above are incorporated herein by reference.

45. As a result of the wrongful conduct of Defendants, as described above, Decedent Arturo Benavides suffered physical pain and mental anguish, pain, and torment prior to his death. Additionally, his Estate incurred medical and funeral expenses, for which Defendants are liable.

46. As representative of Decedent Arturo Benavides's estate, Plaintiff Intervenor Patricia Benavides asserts the above-pled causes of action against Defendants on behalf of Arturo Benavides's estate pursuant to TEX. CIV. PRAC. & REM. CODE § 71.021 and seeks damages as set forth further below.

E. FIFTH CAUSE OF ACTION – WRONGFUL DEATH (ALL DEFENDANTS)

47. All paragraphs above are incorporated herein by reference.

48. Plaintiff Intervenor Patricia Benavides has suffered a pecuniary loss, which includes the loss of the care, maintenance, support, services and household services, advice, counsel, and reasonable contributions of a pecuniary value that she, in reasonable probability, would have received from Arturo Benavides, had he lived. Additionally, Plaintiff Intervenor Patricia Benavides has been forced to endure a loss of companionship and society, which means the loss of the positive benefits flowing from the love, comfort, companionship, and society that Plaintiff Intervenor Patricia Benavides, in reasonable probability, would have received from

Arturo Benavides, had he lived. Plaintiff Intervenor Patricia Benavides has unfortunately experienced mental anguish, meaning emotional pain, torment, and suffering caused by the death of her husband, Arturo Benavides. This pecuniary loss, loss of companionship and society, and mental anguish, in reasonable probability, will be sustained in the future.

49. Because the wrongful conduct of Defendants, as described above, caused the death of Decedent Arturo Benavides and because Decedent Arturo Benavides would have a cause of action against Defendants for his injuries, if he had lived, Plaintiff Intervenor Patricia Benavides has a cause of action against Defendants to recover damages for the wrongful death of Arturo Benavides pursuant to TEX. CIV. PRAC. & REM. CODE §§ 71.002 and 71.003, including but not limited to those set forth above.

VII. DAMAGES

50. All paragraphs above are incorporated herein by reference.

51. As a result of the acts and/or omissions of Defendants herein, Plaintiff Intervenor Patricia Benavides, individually and as representative of the estate of Arturo Benavides suffered injuries, harm, and damages. These injuries have had a serious effect on Plaintiff Intervenor Patricia Benavides's life, health, and well-being.

52. As a direct and proximate result of the acts and omissions alleged above, Plaintiff Intervenor Patricia Benavides seeks all damages allowed under law for all elements of damages recognized under existing law, including, but not limited to:

- a. Survival damages - the conscious physical pain and emotional pain, torment, and suffering experienced by Arturo Benavides, deceased, before his death as a result of the occurrence in question, in addition to any funeral and burial expenses of Arturo Benavides, deceased;
- b. Past mental anguish of Decedent Arturo Benavides;
- c. Decedent Arturo Benavides's medical and funeral expenses;

- d. Past and future pecuniary losses, including the loss of the care, maintenance, support, services and household services, advice, counsel, and reasonable contributions of a pecuniary value, excluding loss of inheritance, that Plaintiff Intervenor Patricia Benavides would, in reasonable probability, have received from Decedent, Arturo Benavides, had he lived;
- e. Loss of inheritance - the loss of the present value of the assets that the Decedent, Arturo Benavides, in reasonable probability, would have added to the Estate and left at natural death to Plaintiff Intervenor Patricia Benavides;
- f. Past and future lost companionship and society, including the loss of the positive benefits flowing from the love, comfort, companionship, and society that the beneficiaries, in reasonable probability, would have received from Decedent, Arturo Benavides, had he lived;
- g. Past and future mental anguish of Plaintiff Intervenor Patricia Benavides;
- h. Past and future medical expenses for Plaintiff Intervenor Patricia Benavides's physical and emotional injuries; and
- i. All other damages available at law and/or under the Texas Wrongful Death and Survival Statutes.

53. Plaintiff Intervenor Patricia Benavides additionally pleads and shows that she is entitled to recovery of prejudgment interest in accordance with law and equity as part of her damages herein, and Plaintiff Intervenor Patricia Benavides here and now sues for recovery of prejudgment interest as provided by the applicable provisions of the laws of the State of Texas and in equity.

54. Plaintiff Intervenor Patricia Benavides would further show that the conduct of Defendants constitutes gross negligence and malice, as these terms are defined and understood under Texas law, because Defendants' conduct demonstrated such an entire want of care as to establish that the acts or omissions complained of resulted from actual conscious indifference to the rights, welfare, or safety of others. Accordingly, Plaintiff Intervenors seek exemplary damages from Defendants, in addition to compensatory damages.

VIII. RESERVATION OF RIGHTS

55. These allegations against Defendants are made acknowledging that this lawsuit is still in its early stages, and investigation and discovery, although undertaken, are continuing.

56. As further investigation and discovery are conducted, additional facts will surely be uncovered that may and probably will necessitate further, additional, and/or different allegations, including the potential of adding parties to the case or dismissing parties from the case. The right to do so is, under Texas law, expressly reserved.

IX. PRESERVATION OF EVIDENCE

57. Plaintiff Intervenor Patricia Benavides hereby requests and demands that Defendants preserve and maintain all evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit and the damages resulting therefrom, including, but not limited to, photographs; videotapes; audiotapes; recordings; business or medical records; bills; estimates; invoices; checks; correspondence; memoranda; files; facsimiles; email; voice mail; text messages; investigation; cellular telephone records; calendar entries; and any electronic image, data, or information related to Plaintiff Intervenor Patricia Benavides, the referenced incident, or any damages resulting therefrom. Failure to maintain such items will constitute spoliation of the evidence.

X. REQUEST FOR DISCLOSURE

58. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants are requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2(a)–(1).

XI. NOTICE REGARDING PRODUCTION OF SELF-AUTHENTICATING DOCUMENTS

59. Pursuant to Texas Rule of Civil Procedure 193.7, you are hereby put on actual notice that any documents produced in response to written discovery will be used in pretrial

proceedings and at trial and will be deemed authentic unless you make valid objections to authenticity pursuant to this rule.

XII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Intervenor Patricia Benavides prays that citation issue and be served upon Defendants in a form and manner prescribed by law, requiring that the Defendants appear and answer, and that upon final hearing or final trial hereof, the Court enter judgment in her favor for actual and compensatory damages (including mental anguish), exemplary damages in an amount to be determined by the trier of fact, costs of court, pre- and post-judgment interest at the maximum rate allowed by law, and for each other and further relief to which she may be justly entitled at law or in equity.

Respectfully submitted,

**ABRAHAM, WATKINS, NICHOLS,
SORRELS, AGOSTO & AZIZ**

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