

CAUSE NO. \_\_\_\_\_

**JESSICA WEAVER, Individually and  
As Representative of the Estate of A.M.,  
a Minor**  
*Plaintiff*

vs.

**ASM GLOBAL, LLC d/b/a  
DESTINATION EL PASO, ASM  
GLOBAL PARENT, INC., and CITY  
OF EL PASO**  
*Defendants*

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**IN THE DISTRICT COURT**

\_\_\_\_ **JUDICIAL DISTRICT**

**EL PASO COUNTY, TEXAS**

**PLAINTIFF’S ORIGINAL PETITION,  
JURY DEMAND, AND RULE 193.7 NOTICE**

Plaintiff Jessica Weaver, Individually and As Representative of the Estate of A.M., a Minor, files this Original Petition, Jury Demand and Rule 193.7 Notice against Defendants ASM Global, LLC d/b/a Destination El Paso, ASM Global Parent, Inc., and City of El Paso (collectively “Defendants”) and shows the Court as follows:

**I. DISCOVERY CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Level 3. *See* TEX. R. CIV. P. 190.

**II. PARTIES**

2. Plaintiff Jessica Weaver, Individually and As Representative of the Estate of A.M., a Minor, is an individual who is a resident of Texas. Plaintiff is the surviving mother of Decedent A.M., who was a resident of Texas at the time of his death. Plaintiff brings this suit in her individual capacity under the Texas Wrongful Death Statute and as Representative to the Estate of Decedent A.M. under the Texas Survival Statute. Plaintiff has instituted estate administration proceedings in El Paso County, Texas. She may be reached through her undersigned counsel.

3. Defendant ASM Global, LLC d/b/a Destination El Paso is a foreign limited liability company conducting substantial business in the State of Texas. Defendant may be served with process by and through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, at the following address: 211 E 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701, or wherever it may be found. Plaintiff additionally asserts all rights and requests relief under Texas Rule of Civil Procedure 28 and demands that this Defendant answer in its true name, if it differs from that outlined above. Plaintiff requests a citation.

4. Defendant ASM Global Parent, Inc. is a foreign corporation conducting substantial business in the State of Texas. Defendant may be served with process by and through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, at the following address: 211 E 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701, or wherever it may be found. Plaintiff additionally asserts all rights and requests relief under Texas Rule of Civil Procedure 28 and demands that this Defendant answer in its true name, if it differs from that outlined above. Plaintiff requests a citation.

5. Defendant City of El Paso is an incorporated city in the State of Texas. Defendant may be served with process by serving the Mayor of El Paso, Oscar Leeser, at the following address: 300 N Campbell, El Paso, Texas 79901, or wherever it may be found. Plaintiff additionally asserts all rights and requests relief under Texas Rule of Civil Procedure 28 and demands that this Defendant answer in its true name, if it differs from that outlined above. Plaintiff requests a citation.

### **III. JURISDICTION & VENUE**

6. This Court has jurisdiction of the subject matter of this action, and the amount in controversy is above its minimum jurisdictional limits.

7. This Court has personal jurisdiction over the parties because this lawsuit arises out of a tort committed by Defendants in the State of Texas.

8. Venue in El Paso County is proper in this cause under Section 15.002(a)(1) of the Texas Practice and Remedies Code because El Paso County is the county in which all or a substantial part of the events or omissions giving rise to this lawsuit occurred. Further, venue is also proper pursuant to Section 15.002(a)(3) because El Paso County is the county in which Defendant City of El Paso maintains their principal office in this State as outlined above. Further, El Paso County is a convenient forum and venue to all Defendants, maintaining this litigation in this forum and venue would not work a substantial injustice on Defendants, and the interests of justice dictate that this litigation be maintained in this forum and venue.

9. This case cannot be removed to federal court because no federal question exists. Further, removal based on diversity jurisdiction is not permitted because complete diversity does not exist as Decedent A.M. was a citizen of the State of Texas at the time of his death. Further, Defendant City of El Paso is citizen of the State of Texas. *See* 28 U.S.C. § 1441(b)(2). Removal would therefore have no basis in law or fact, and an improper removal would subject Defendants to an award of costs, expenses, and fees, including, but not limited to, attorney's fees under 28 U.S.C. § 1447(c).

10. Plaintiff affirmatively pleads that this action is not subject to the Texas Tort Claims Act because Defendant City of El Paso's operation of the Camp Cohen Water Park was a proprietary function. *See* TEX. CIV. PRAC. & REM. CODE § 101.0215. Any attempt by Defendant City of El Paso to apply the Texas Tort Claims Act to this case would be without any basis in fact or law.

#### IV. FACTUAL BACKGROUND

11. This lawsuit is necessary as a result of the tragic drowning death of 3-year-old A.M. on or about May 13, 2023, at the Camp Cohen Water Park in El Paso, Texas. Camp Cohen Water Park was at all relevant times owned, operated, managed, and/or controlled by Defendants.



12. On the date in question, Defendants were holding a “soft opening” for the new Camp Cohen Water Park. Rather than ensuring that guests – like 3-year-old A.M. – were safe, Defendants were too concerned with packing the water park with people and ensuring that the live band was playing. But even before the date in question, Defendants’ conduct clearly shows that safety was not a priority. For example, a news article was posted in the El Paso Times in February 2022 seeking lifeguards for the four new water parks soon to open in El Paso, including Camp Cohen. The article literally states that a lifeguard need only be 16 years or older with “no experience required.” An Indeed job posting made by Defendant ASM Global likewise states that a lifeguard need only be 16 years or older to apply. Defendants’ lack of concern for the safety of their water park guests, especially young children, was already abundantly clear long before Camp Cohen Water Park even opened.



13. On May 13, 2023, while Defendants were packing Camp Cohen Water Park with as many guests as they could and making sure the live band was playing, 3-year-old A.M. drowned in Defendants’ pool. Video evidence from the day a 3-year-old child lost his life would have revealed that Camp Cohen was severely understaffed and that the few lifeguards on duty were undertrained and had no idea what they were doing. Conveniently, the video footage – which Defendant City of El Paso was responsible for maintaining – was destroyed. This is clearly spoliation under the law and further efforts of Defendant City of El Paso to deflect all blame.

14. Not surprisingly, neither Defendant ASM Global, LLC d/b/a Destination Death, nor Defendant ASM Global Parent, Inc., nor Defendant City of El Paso attended the two funerals held for A.M. by his mother Jessica Weaver. This clearly demonstrates the lack of care regarding the death of a child who should have been protected by Defendants, even by their 16-year-old lifeguards with “no experience required.” Instead, it was business as usual and Defendants continued operating the water park.



15. A.M. died as a direct and proximate result of Defendants' collective negligent and grossly negligent conduct. Plaintiff Jessica Weaver lost her only child, 3-year-old A.M., and has experienced unimaginable suffering and anguish as a result.

**V. NEGLIGENCE CLAIMS AGAINST ALL DEFENDANTS**

16. Plaintiff incorporates all other paragraphs by reference here fully.

17. Plaintiff would show that Defendants had ownership, management, and/or control over the premises, instrumentality, and/or activity in question and thus had a duty to exercise the degree of care that a person of ordinary prudence would use to avoid harm under circumstances similar to those described herein.

18. A.M.'s death and Plaintiff's resulting damages were proximately caused by Defendants' negligent, careless, and reckless disregard of this duty.

19. The negligent, careless, and reckless disregard and breach of this duty consisted of, but is not limited to, the following acts and omissions:

- a. Failing to comply with applicable safety regulations, standards, customs, and practices;
- b. Violating applicable safety regulations, standards, customs, and practices;
- c. Failing to implement, maintain, follow, and/or enforce policies and procedures for proper water park supervision and guest safety;
- d. Failing to implement, maintain, follow, and/or enforce policies and procedures for preventing guests, including Minor A.M., from drowning;
- e. Failing to provide proper, safe equipment and competent water park personnel;
- f. Failing to properly hire, train, supervise, monitor and retain their employees and/or contractors;
- g. Failing to properly hire, train, supervise, monitor, and retain their lifeguards;
- h. Failing to have an adequate number of lifeguards present and monitoring the subject water park;
- i. Failing to provide proper and safe water park management services;
- j. Failing to institute precautionary measures to protect water park guests, including Minor A.M., from the risks of drowning;
- k. Failing to properly inspect the subject water park in order to discover and eliminate dangerous conditions;
- l. Creating a dangerous condition in the state of the inadequate supervision and/or lifeguarding at the time of the incident;
- m. Failing to eliminate unreasonably dangerous conditions;
- n. Failing to properly warn Decedent and others that a dangerous condition existed in the state of the inadequate supervision and/or lifeguarding;
- o. Vicarious liability for the acts and/or omissions of their employees;

- p. Failing to use ordinary care as a reasonable company and/or entity would under the same or similar circumstances; and
- q. Other additional acts of negligence and gross negligence, which will be established as this case progresses.

20. Plaintiff further asserts the doctrine of *res ipsa loquitur*. The character of the incident made the basis of this suit is such that it would not ordinarily occur in the absence of negligence, and Defendants had management and control over the instrumentality and activity in question.

21. One, some, or all of the foregoing acts and/or omissions or others on the part of Defendants constituted negligence, and such negligence was a proximate cause of the occurrence and Plaintiff's resulting injuries and damages.

#### **VI. GROSS NEGLIGENCE AGAINST ALL DEFENDANTS**

22. Plaintiff incorporates all other paragraphs by reference here fully.

23. The acts and/or omissions described above, when viewed from Defendants' standpoint, involved an extreme degree of risk considering the probability and magnitude of the potential harm to Decedent A.M. and others. Defendants had actual, subjective awareness of this risk but proceeded with conscious indifference to the rights, safety, and welfare of Decedent A.M. and others.

24. Plaintiff would further show that the injuries and damages that Decedent and Plaintiff sustained as a result of the incident in question were caused by the gross negligence of Defendants acting by and through their employees, agents, officers and representatives in the course and scope of their employment for said Defendants. Plaintiff would further show that Defendants ratified and failed to repudiate their agents' gross negligence.

25. As such, Defendants were grossly negligent and should be subjected to exemplary damages.



## **VII. WRONGFUL DEATH**

26. Plaintiff incorporates all other paragraphs by reference fully.
27. Plaintiff is the surviving mother of Decedent A.M. and thus is a statutory beneficiary under Texas Civil Practice and Remedies Code § 71.004, the Texas Wrongful Death Act.
28. The negligence and gross negligence of Defendants, outlined elsewhere herein more fully, caused the tragic and untimely death of A.M. Plaintiff therefore brings this wrongful death action, individually and on behalf of all other statutory wrongful death beneficiaries and all other parties entitled to recover.
29. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff has suffered severe injuries and damages. Plaintiff depended on A.M. for love, companionship, affection, and support. Plaintiff accordingly prays for the following damages:
- a. Mental anguish in the past;
  - b. Mental anguish which, in all reasonable probability, will be suffered in the future;
  - c. Pecuniary losses, including, but not limited to, the loss of care, maintenance, support, services, advice, and counsel that would have been received from the Decedent, had Decedent lived;
  - d. Loss of companionship and society from the date of the incident to the time of trial, including, but not limited to, the loss of positive benefits flowing from the love, comfort, companionship, and society that would have been received from the Decedent, had Decedent lived;
  - e. Funeral and burial expenses;
  - f. Exemplary damages; and
  - g. Any and all other damages to which Plaintiff is justly entitled, in law or equity, as shown through the course of this proceeding.

## **VIII. SURVIVAL**

30. Plaintiff incorporates all other paragraphs by reference here fully.

31. As a direct and proximate result of the occurrence made the basis of this lawsuit, Decedent A.M. was forced to suffer severe injuries and damages, for which Plaintiff, as the mother of Decedent and Proposed Representative of the Estate of A.M., now seeks to recover. Such damages include the following:

- a. Reasonable medical care and expenses sustained by Decedent in the past;
- b. Physical pain and suffering sustained by Decedent in the past;
- c. Mental anguish sustained by Decedent in the past;
- d. Funeral and burial expenses;
- e. Exemplary damages; and
- f. Any and all other damages to which Plaintiff is justly entitled, in law or equity, as shown through the course of this proceeding.

**IX. RULE 47 STATEMENT OF MONETARY RELIEF SOUGHT**

32. Plaintiff prefers that the jury determine the fair amount of compensation for Plaintiff's damages. It is too early in this case to be assessing the full nature and scope of Plaintiff's damages, and Plaintiff places the decision regarding the amount of compensation to be awarded in the jury's hands. Rule 47 of the Texas Rules of Civil Procedure, however, requires Plaintiff to provide a statement regarding the amount of monetary relief sought. Accordingly, Plaintiff states that monetary relief of over \$1,000,000, in an amount to be determined by the jury, is being sought.

**X. RULE 193.7 NOTICE**

33. Pursuant to Texas Rule of Civil Procedure 193.7, Plaintiff hereby gives notice that Plaintiff intends to use all discovery instruments produced in this case at trial. Such discovery documents include, but are not limited to, all documents that Defendants have produced in response to Plaintiff's written discovery requests.

**XI. NOTICE TO PRESERVE EVIDENCE**

34. Plaintiff hereby requests and demands that Defendants, and their agents, attorneys, and insurers preserve, maintain, and place a litigation hold on all documents, communications, tangible things, and electronically stored information that arise out of or relate to the incident made the basis of this suit. Failure to maintain such items will constitute “spoliation” of the evidence and may subject Defendants to sanctions.

**XII. DUTY TO DISCLOSE**

35. Pursuant to Texas Rule of Civil Procedure 194.1, Defendants are required to provide the information or material described in Rule 194.2, 194.3 and 194.4 without awaiting a discovery request from Plaintiff.

**XIII. DEMAND FOR JURY TRIAL**

36. Plaintiff hereby demands a jury trial on this matter and has/will tender the appropriate jury fee.

**XIV. RESERVATION OF RIGHTS**

37. The above allegations against Defendants are made acknowledging that investigation and discovery, although undertaken, are continuing in this matter. As further investigation and discovery are conducted, additional facts may be uncovered that necessitate further, additional, and/or different allegations, including the potential of adding additional parties to the case or dismissing parties from the case. The right to do so, under Texas law, is expressly reserved.

**XV. PRAYER**

38. For these reasons, Plaintiff prays that Defendants be cited to appear and answer herein, and, upon a final hearing of the cause, judgment be entered for the Plaintiff and against Defendants for:

- a. Actual damages above the jurisdictional minimum of the Court, further outlined above;
- b. Pre-judgment and post-judgment interest at the maximum rate allowed by law;
- c. All costs of court;
- d. Exemplary damages; *and*
- e. All other relief to which Plaintiff is justly entitled.

Respectfully submitted,

**WEBSTER VICKNAIR MACLEOD**

By: /s/ Ryan S. MacLeod

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