

CAUSE NO. _____

**LIZZETTE ZAMBRANO, INDIVIDUALLY §
AND AS LEGAL REPRESENTATIVE OF §
THE ESTATE OF JORGE GUILLEN §
Plaintiff, §**

IN THE DISTRICT COURT OF

VS. §

EL PASO COUNTY, TEXAS

**CASAGO, LLC, CASAGO §
INTERNATIONAL, LLC AND HIGH §
DESERT TRAVEL, INC §
Defendants. §**

_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION, VERIFIED APPLICATION FOR TEMPORARY
RESTRAINING ORDER, AND INJUNCTIVE RELIEF**

COMES, Lizzette Zambrano, Individually and as Legal Representative of the Estate of Jorge Guillen, and files this Original Petition, Verified Application for Temporary Restraining Order, and Injunctive Relief against Casago, LLC, Casago International, LLC and High Desert Travel, Inc. (hereinafter referred to as “Defendants”) and would respectfully show the Court as follows:

**I.
DISCOVERY CONTROL PLAN**

1. Pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, Plaintiffs maintain that discovery in this case should be conducted under Level 3.
2. Plaintiff seeks monetary relief over \$1,000,000.00, including damages of any kind, penalties, court costs, expenses, and prejudgment interest.

**II.
PARTIES**

3. Plaintiff is a resident of El Paso County, Texas who may be served through her undersigned counsel.

4. Defendant Casago, LLC is a domestic corporation with their principal office located at 16526 Park Row, Houston, TX 77084. Defendant may be served with process through its registered agent, Jesus Enrique Gomez Montes De OCA, at 16525 Park Row, Houston, Texas 77084, or wherever it may be found.

5. Defendant Casago International, LLC is a foreign corporation with their principal office located at 15475 N. Greenway Hayden Loop B2, Scottsdale, Arizona 85260. Defendant may be served with process through its registered agent, Stevie Schwab, at 15475 N. Greenway Hayden Loop B2, Scottsdale, Arizona 85260, or wherever it may be found.

6. Defendant High Desert Travel, LLC. is a foreign corporation with their principal office located at 15475 N. Greenway Hayden Loop B2, Scottsdale, Arizona 85260. Defendant may be served with process through its registered agent, Stevie Schwab, at 15475 N. Greenway Hayden Loop B2, Scottsdale, Arizona 85260, or wherever it may be found.

III.
MISNOMER & ALTER EGO

7. In the event any parties are misnamed or are not included herein, it is Plaintiff's contention that such was a "misidentification," "misnomer," and/or such parties are/were "alter egos" of parties named herein.

IV.
JURISDICTION & VENUE

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

9. Venue of this lawsuit is proper in El Paso County, Texas under Tex. Civ. Prac. Rem. Code § 15.002 (a)(4) because El Paso County is the county in which the Plaintiffs resided at the time of the accrual of the cause of action.

V.
FACTS

10. On or about June 11, 2024, Plaintiffs were on vacation at the Sonoran Sea Resort located at Blvd. Dr. Ernesto Guevara del Campo, Playa Arenos, 83550 Puerto Penasco, Son., Mexico (the “Premises”) with family.

11. The Defendants operated, managed, and maintained the Premises.

12. As dusk began to set, Plaintiffs, excited about their arrival to their vacation destination, sought to spend some time in the common pool area. A hot tub jacuzzi was only a few feet away from the common pool area.

13. Plaintiffs decided to enjoy Defendants’ jacuzzi on the Premise. Jorge entered into the jacuzzi first. Immediately upon entrance into the jacuzzi, Jorge was exposed to an electrical current in the water. Jorge immediately keeled over into the tub and was taken under the surface of the water. Witnessing her husband immediately collapse, Lizzette sprang forward from the pool deck to try and grab Jorge’s body from the jacuzzi. However, upon touching Jorge and the water, Lizette was electrically shocked and also fell into the jacuzzi. Patrons began to encircle the chaos, attempting to save both Lizzette and her husband. Lizzette was able to be grabbed by another guest and was brought out of the water. Patrons attempted to assist, grabbing a shepherd’s cross and other items to attempt to get Jorge’s body from the jacuzzi. However, the metal from the objects carried the electrical current and began shocking the rescuers. It was only after approximately ten (10) painstaking minutes that Casago staff and the Defendants finally availed themselves and began to assist in rescuing Jorge. At no time prior to this, did Defendants seek to engage the emergency shutoff for the jacuzzi or attempt any rescue of either Jorge or Lizzette. Jorge was being electrocuted and drowned under water **for 10 minutes.**

14. Jorge died from the incident. Lizzette was then evacuated to the hospital.

VI.
CAUSES OF ACTION

Negligence

15. Paragraphs 1 through 14 are incorporated by reference.
16. The Defendants are the operators, managers, and possessors of the Premises.
17. Plaintiffs visited the Premises as business customers and patrons. Plaintiffs were invitees, in that they received an implied invitation, for a mutual benefit, to enter and vacation at the resort.
18. The electrical wiring in the jacuzzi on the Premises was faulty and had not been treated or dealt with by any Defendant employees. Further, there were no signs diverting people from the jacuzzi or providing them notice of the deadly hazard.
19. The faulty jacuzzi on the Defendants' Premise constituted a dangerous condition. The dangerous condition on the Premise posed an unreasonable risk of harm as it was not readily apparent to Plaintiff, thus creating a situation where the presence of the dangerous condition could cause invitees to become injured and resulted in death. The Defendants had knowledge of, or in the exercise of ordinary care, should have had knowledge of the defective jacuzzi awaiting any patron, or individual, which created the dangerous condition but, nonetheless failed to warn Plaintiff of the dangerous condition all of which, either singularly or collectively, caused the incident in question and Plaintiffs' resulting injuries and death.
20. Due to the unsafe manner in which the Defendants operated its Premise, Plaintiff suffered and sustained bodily injuries resulting from the incident. These injuries caused Plaintiff to sustain damages including past and future medical bills, and pain and suffering and mental anguish.
21. Defendants breached their duty of ordinary care by failing to adequately maintain the Premise and the condition and/or failing to make the condition reasonably safe.
22. The Defendants' breach proximately caused Plaintiff's injuries and damages.

23. The Defendants, acting through their agents, servants, and/or employees, who were at all times acting within the course and scope of their employment and committed acts and/or omissions that constituted negligence which proximately caused the incident in question, to wit:

- a. In failing to maintain the premises in question in a reasonably safe condition and free of hazards to Plaintiff, and other invitees, entering the premises;
- b. In failing to correct the unreasonably dangerous condition of the premises in question;
- c. In failing to properly inspect the premises in question to discover the unreasonably dangerous conditions in question;
- d. In failing to properly train agents, servants, and/or employees regarding the proper manner in which to make the premises reasonably safe;
- e. In failing to implement proper policies, rules, and/or procedures to make the premises reasonably safe;
- f. In failing to properly train agents, servants, and/or employees regarding the proper manner in which to properly handle a medical emergency;
- g. In failing to implement proper policies, rules, and/or procedures on how to handle a medical emergency;
- h. In failing to enforce proper policies, rules, and/or procedures to make the premises reasonably safe;
- i. In failing to take affirmative action to control or avoid increasing the danger from a condition that was at least partially created by the Defendant.

24. Each and all of the above foregoing acts, both of omission and commission, singularly or in combination with others, constituted negligence which proximately caused this incident, and Plaintiff's injuries and damages.

VII. **WRONGFUL DEATH**

25. Lizzette Zambrano is the statutory beneficiary under the Texas Wrongful Death Statute for a claim made by Jorge Guillen. Defendants, as persons and/or corporations, were negligent and grossly negligent and such acts or omissions proximately caused Plaintiffs' damages and death of Jorge Guillen. Had Mr. Guillen survived, he would have been entitled to bring a cause of action against Defendants. It is clear that just prior to his demise, Mr. Guillen was cognizant, alert, and active and suffered horrible physical pain, suffering, and mental anguish for which Plaintiff and

heirs, as statutory beneficiaries under the Act, are entitled to recover on Mr. Guillen's behalf. Plaintiff has suffered serious injuries because of the death of Jorge and seek damages over \$1,000,000.00.

26. During his lifetime, Jorge was an industrious, affectionate, loving, compassionate, energetic, cooperative, patient, and attentive father and gave guidance, advice, counseling, protection, comfort, services, care, and attention to his family. His death has deprived Lizzette of the love and society of her husband, and the right to that affection, solace, comfort, companionship, and assistance. In the future, Mr. Guillen would have continued to be a good husband and parent, and would have provided care, advice, maintenance, services counseling, and support to Plaintiff. Mr. Guillen's death has caused Plaintiff and his children to suffer the loss of his care, advice, maintenance, services, counseling, and all other damages available to Plaintiff under the Act.

VIII. **SURVIVAL**

27. Pursuant to the Texas Survival Statute, Plaintiffs brings this action seeking recovery for all elements of damages recoverable under Texas Law, including but not limited to, pain and suffering, earnings loss of earning capacity of enduring by Decedent Jorge Guillen as a result of his injuries and until the time of his death, mental anguish endured by Lizzette as a result of her injuries until the time of his death, medical expenses, funeral and burial expenses, prejudgment interest herein as provided by law and all post-judgment interest allowed bylaw at the prevailing legal rate.

28. The total amount of such damages sought to be recovered by the Estate of Jorge Guillen are in a sum within the jurisdictional limits of this court.

29. For Plaintiffs, nearly all of the elements of damages for personal injury are unliquidated and, therefore, not subject to precise computation. Consequently, Plaintiffs seek to recover

damages in an amount the factfinder finds the evidence supports and to be appropriate under all the circumstances within the jurisdictional limits of this court for causes of action and parties herein plead, including those for past and future medical expenses and charges; past and future physical pain and mental anguish; past and future physical impairment; past and future lost wages; punitive damages; and all consequential damages listed *infra*.

IX.
RESPONDEAT SUPERIOR

30. The Defendants are legally responsible to Plaintiff for the acts and omissions of its employees, agents, servants, and representatives under the legal doctrines of respondeat superior, agency and/or ostensible agency. As a result thereof, the Defendants are vicariously liable for all wrongful and illegal acts, omissions, and conduct of its employees, agents, servants and representatives.

X.
CONDITIONS PRECEDENT

31. All conditions precedent to Plaintiff's claims for relief have been performed or have occurred.

XI.
DAMAGES

32. This claim for damages is based upon the facts and legal theories more fully set out herein.

33. As a result of the negligent acts of Defendant, Plaintiffs suffered damages in the past and will in reasonable probability continue to suffer damages in the future in an amount which is within the jurisdictional limits of this Court.

34. As a proximate cause of Defendant's negligence, Plaintiffs sustained the following damages:

- Past and future physical pain and suffering;

- Past and future mental anguish;
- Past and future impairment;
- Past and future medical expenses;
- Past and future lost wages; and
- Past and future lost earning capacity;
- Past and future disfigurement;
- Loss of life; and
- Loss of companionship.

35. Based on the above enumerated injuries and damages which were caused by the negligent acts and/ or omissions of Defendants, Plaintiffs plead for actual damages in an amount that the Court deems reasonable under the circumstances, and which exceeds the minimum jurisdictional limits of the Court.

36. Plaintiffs affirmatively plead and seek monetary relief over \$1,000,000.00. Plaintiffs reserve the right to amend this damage calculation as discovery progresses. Damages sought are within the jurisdictional limits of the court. Plaintiff makes this damage calculation at this time pursuant to Texas Rule of Civil Procedure 47.

XII.
APPLICATION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF AGAINST DEFENDANTS RELATING TO JACUZZI INVOLVED IN THE INCIDENT MADE THE BASIS OF THIS LAWSUIT

37. Plaintiff incorporates by reference all preceding paragraphs as though set forth fully herein.

38. Plaintiff's applications for temporary restraining order are authorized by Tex. R Civ. Pro. 680 and Tex. Civ. Prac. & Remedies Code §65.011.

39. Based on reasonable information and belief, Plaintiff asserts that the jacuzzi on the Premises is currently under the custody and control of Defendants. However, based on reasonable information and belief, Defendants will attempt to repair, deconstruct, and/or put jacuzzi back into operation. Plaintiffs therefore request the Court enter an order restraining Defendants from repairing, utilizing, or destroying any evidence from the jacuzzi involved in the incident made the basis of this lawsuit. Additionally, Plaintiff requests that Defendants be required to preserve and not alter and/or destroy the following items with regard to Defendants premise 1) the employee's logbook 2) employee communications on the date of the incident; and 3) any video evidence of the incident taking place on June 11, 2024. There is not enough time to serve notice on Defendants and hold a hearing because Defendants are likely to alter, salvage, repair, utilize, or destroy evidence obtained from the subject jacuzzi, the logbook, and the video evidence from the Premises.

40. To prevent Defendants from altering, salvaging, repairing, utilizing, or destroying evidence from the subject jacuzzi, the video evidence of the Premises, and employees and in order for Plaintiff to properly investigate and pursue her claims, recover damages, and see that justice is done, this Court should grant the following injunctive relief and require the Defendants, their agents, servants, employees, contractors, contract employees, attorneys, and those acting in concert with or in representation of Defendants to:

- a. Refrain from altering, salvaging, selling, repairing or destroying any evidence from the jacuzzi until the subject jacuzzi are fully inspected;
- b. Refrain from putting the jacuzzi back into operation until Plaintiff's legal representatives and any experts have had a chance to inspect the jacuzzi;
- c. Refrain from destroying or altering any video evidence from the Premises for the date of June 11, 2024 and surrounding the incident in question until the Premises is fully inspected; and
- d. Refrain from destroying any logbooks or electronic communications between Defendants' employees on June 11, 2024 and surrounding the incident in question

until Plaintiffs' legal representatives and any experts have had a chance to inspect and conduct discovery.

41. It is probable Plaintiff will recover from Defendants after a trial on the merits because Plaintiff has viable causes of action against Defendants for negligence, gross negligence, negligent hiring, training, supervision, and retention, and respondeat superior. Plaintiff has presented substantial evidence that Defendant failed to maintain the premise or warn patrons of the hazard located on Defendants premise.

42. If Plaintiff's application is not granted, harm is imminent. There is evidence in and surrounding the jacuzzi which will show the lack of maintenance and inspection of the jacuzzi by Defendants. Additionally, the jacuzzi has faulty or defective wiring that will further evidence the facts of the incident. If no restraint is placed, Defendants will have the ability to either repair or deconstruct the jacuzzi, and this evidence will be forever lost.

43. The harm that will result if the temporary restraining order is not issued is irreparable because the viability of Plaintiff's claims are dependent on preventing Defendants from altering, destroying, and/or repairing the jacuzzi. Once lost, it is highly unlikely that Plaintiff will ever recover this evidence.

44. There is no adequate remedy at law available to Plaintiff to prevent Defendants from altering, salvaging, selling, repairing, utilizing, or destroying evidence from the subject jacuzzi and Defendants unless this Court grants immediate relief restraining such conduct. Plaintiff would pray that this Court enters a Temporary Restraining Order preserving the status quo by restraining Defendants from in any way altering the aforementioned evidence in this case.

XIII.
REQUEST FOR HEARING ON TEMPORARY RESTRAINING ORDER

45. Plaintiff requests this Court to set her application for temporary restraining order for a hearing, and after the hearing, issue a temporary restraining order against Defendants.

XIV.
REQUEST FOR TEMPORARY INJUNCTION

46. Plaintiff asks the Court to set her application for temporary injunction for a hearing and, after the hearing, issue a temporary injunction against Defendants. Plaintiff has joined all indispensable parties under Texas Rule of Civil Procedure 39.

XV.
REQUIRED DISCLOSURES

47. Defendants are not exempt from the required disclosure and production of the information contained in Rules 194.2, 194.3, and 194.4. Along with the required disclosures under Rule 194.2(b), Plaintiff requests that Defendants take notice of the amended Rule 194 and. “[w]ithout awaiting a discovery request,” timely produce copies of “all documents, electronically stored information, and tangible things that the responding party has in its possession, custody, or control, and may use to support its claims or defenses.” Tex. R. Civ. P. 194.2(b)(6).

XVI.
PRAYER

48. Plaintiff request that Defendants be cited to appear and answer herein, and that upon a final hearing hereof, Plaintiff have judgment against Defendants, jointly and severally, for actual and exemplary damages in an amount the Court deems reasonable under the circumstances, which are in excess of the minimum jurisdictional limits of the Court, together with pre-judgement interest, post-judgement interest, costs of court, and for such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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Kathryn McMillan on behalf of Tej Paranjpe

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Envelope ID: 88816793

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Filing Description: Plaintiff's Original Petition, Verified Application for Temporary Restraining Order and Injunctive Relief/ AA

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Associated Case Party: LizetteZambrano

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