

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

MONIQUE NAVARRO as Personal  
Representative of the ESTATE OF MARIO  
NAVARRO, Deceased,

Plaintiff,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

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IN THE \_\_\_\_ DISTRICT COURT

OF

EL PASO COUNTY, TEXAS

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**PLAINTIFF’S ORIGINAL PETITION AND JURY DEMAND**

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TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Plaintiff and for her causes of action against Defendants state as follows:

**I. PARTIES**

1. Plaintiff Monique Navarro is an individual and wife of Mario Aurelio Navarro who is deceased (hereinafter referred to from time to time as "Decedent"). On December 7, 2022, the Presiding Judge of Probate County Court 2, El Paso County, Texas, appointed Monique Nevarro to be the Dependent Administrator of the Estate of Mario Aurelio Navarro. Therefore, for purposes of pursuing a claim under FELA, Monique Navarro is the duly appointed personal representative of the estate of her husband, Mario Navarro, who was killed in the incident forming the basis of this case. At the time of the incident giving rise to this action, Mario Aurelio Navarro was a citizen of El Paso, El Paso County, Texas, as was his wife, Monique Navarro.

2. Defendant Union Pacific Railroad Company (“Union Pacific” or “Defendant”) is a railroad company performing rail operations in Texas. Its registered principal place of business in

the United States is located at Attention: Curt Snodgrass, 1400 Douglas Street, Stop 1650, Omaha, Nebraska 68179. It may be served with process through its designated Registered Agent: CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

3. At all times pertinent hereto, all employees of the Defendants were acting in their individual capacity and also as agents of Defendants within the scope of their employment and authority and in the furtherance of the business of Defendants. All the acts and omissions of the employees of the Defendant Railroad are imputed to their employer, who is liable for such acts and omissions, as well as rendering the individual Defendants liable in their individual capacities.

## **II. JURISDICTION AND VENUE**

4. Jurisdiction is proper in this Court pursuant to 45 U.S.C. §§51-60 known as the Federal Employers' Liability Act ("FELA"). At the time of the incident giving rise to this litigation, Decedent Mario Aurelio Navarro was an employee of Union Pacific subject to the control of Union Pacific. Subject to the FELA, venue is properly in state court, and is non-removable.

5. Venue is proper in this Court in that Defendant is registered to do business as a corporation in the State of Texas and the incident giving rise to this litigation occurred in El Paso, El Paso County, Texas. To comply with TEX. R. CIV. P. 47(c), Plaintiffs specifically seek monetary relief in excess of \$1,000,000.00. Plaintiffs also seek judgment for all other relief to which Plaintiff is entitled.

6. All allegations herein related to Union Pacific are based upon and should be interpreted either as action under the FELA or in the alternative, state causes of action seeking damages under state law for personal injury damage.

## **III. PLAINTIFF'S NARRATIVE**

7. All allegations set forth in this Complaint are based upon information and belief.

8. All allegations set forth in each of the paragraphs in this Complaint are incorporated by reference into each of the other sections and paragraphs contained in this Complaint as if fully set forth therein.

9. At the time of his death on August 29, 2022, Decedent Mario Aurelio Navarro was employed by Union Pacific.

10. On August 29, 2022, Decedent Mario Aurelio Navarro was performing his duties as a conductor with Union Pacific under the supervision, training, direction and control of Union Pacific. On that day, Decedent and other Union Pacific employees were working in the Union Pacific railyard known as the Alfalfa Railyard in El Paso, Texas.

11. Decedent was working with other Union Pacific employees moving railcars at the time of this incident. In particular, Decedent and other Union Pacific employees were shoving (reversing) railcars from Main Track 1 through Control Point Rosedale onto the yard lead in the Alfalfa Railyard.

12. Prior in the day, a Union Pacific maintenance of way crew was working on the yard lead track and placed a portable derail to protect them while working on the track.

13. After the Union Pacific maintenance of way crew completed their work and left the yard lead track, they reported the track was clear.

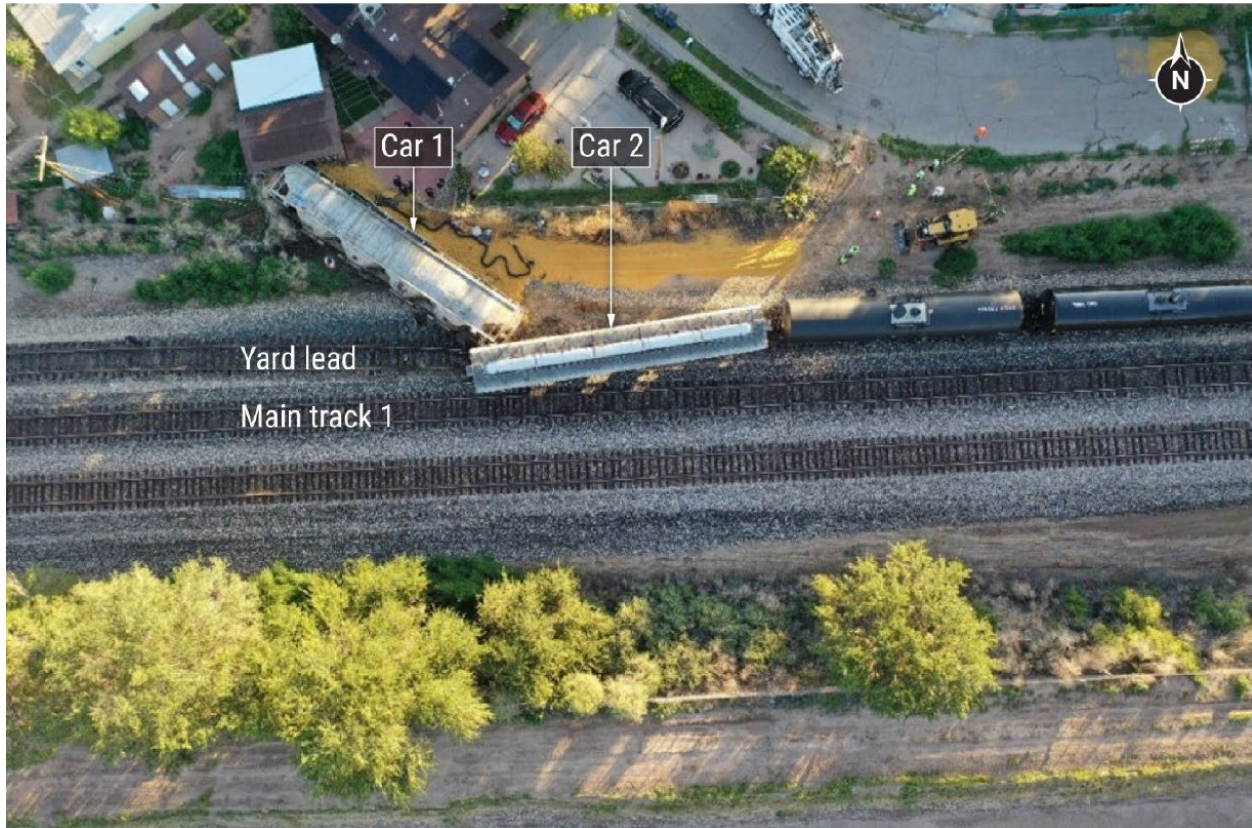
14. However, unbeknownst to Decedent, the Union Pacific maintenance of way crew did not remove a portable derail on the yard lead track after completing their work and releasing the track.

15. Later during then evening of August 29, 2022, Decedent and other Union Pacific employees were given the all clear to begin the shove movement and Mario Aurelio Navarro was on the lead end of the movement as the railcars was being shoved onto the yard lead track.

16. It was dark at the time of this shove movement.

17. Without timely warning of the portable derail, the lead railcar struck the portable derail, derailing the two leads onto their side and crushing Mario Aurelio Navarro (hereinafter the “Incident”).

18. Below is an aerial image of the derailment:



19. Mario Aurelio Navarro was pronounced deceased as a result of his injuries from this Incident.

#### **IV. CAUSES OF ACTION**

20. At all times material hereto, Union Pacific controlled, supervised, trained and directed Union Pacific employees, including Decedent.

21. As a result, Decedent was an employee and can maintain a cause of action against Union Pacific under the FELA.

22. Under the FELA, Union Pacific had a duty to provide its employees, including Decedent, a reasonably safe place in which to work and safe and sufficient equipment.

23. Under the FELA, Union Pacific had actual and/or constructive notice of the dangerous and defective condition of the portable derailer placed on the rail track in sufficient time prior to the Incident to have taken appropriate preventative measures but failed to do so.

24. As a legal result of Union Pacific's wrongful conduct as alleged herein, Plaintiff suffered damages, conscious pre death pain and suffering, and death.

25. The Incident described in this Complaint is the direct result of Union Pacific's negligence, gross negligence, negligence per se in:

- a. Failing to properly document, record, and notify other employees, including Decedent of the placement of the hazardous condition on the rail track
- b. Failing to restrict movement over the rail track until the hazard condition was remediated;
- c. Failing to provide adequate training to employees regarding the tasks performed in conjunction with Union Pacific's maintenance of way employees work on the day of this Incident;
- d. Failing to furnish Decedent with a reasonable safe place to work and perform the duties of his employment by failing to maintain the track, and/or Alfalfa Railyard in a reasonably safe condition;
- e. Failing to furnish Defendant with a reasonably safe place to work and to perform the duties of his employment by requiring Plaintiff's Decedent to perform his assigned job tasks in an area made unsafe due to the presence of a dangerous condition;

- f. Failing to warn Decedent of the dangerous and/or hazardous condition of the work area, including, but not limited to, the portable derailer placed on the track earlier in the day by Union Pacific maintenance of way employees;
- g. Failing to remedy and/or correct the defective, dangerous, and/or hazardous conditions of the track, and/or Alfalfa Railyard, as described above, when Union Pacific knew or should have known that said conditions existed;
- h. Failing to inspect and maintain the track, and/or Alfalfa Railyard to ensure that same were in a reasonable safe condition;
- i. Failing to furnish Decedent with a reasonable safe place to work and perform the duties of his employment by failing to provide Plaintiff's Decedent with a reasonably safe means with which to perform his work;
- j. Failing to furnish Decedent with a reasonable safe place to work and to perform the duties of his employment by requiring Plaintiff's Decedent to perform his assigned job tasks in an area made unsafe due to the presence of a dangerous condition, including but not limited to, the portable derailer;
- k. Failing to warn Decedent of the dangerous and/or hazardous condition of the work area, including, but not limited to, the portable derailer;
- l. Failing to remedy and/or correct the defective, dangerous, and/or hazardous conditions, as described above, when defendant knew or should have known that said conditions existed;
- m. Failing to use ordinary care to furnish Decedent with a reasonable safe place to work and perform the duties of his employment by failing to use safeguards in and around the work site at issue, preventing a dangerous and/or hazardous condition,

including but not limited to, failing to use lockout or other devices to warn maintenance of way crews that they had failed to pick up the portable derailer;

- n. Failing to use ordinary care to furnish Decedent with a reasonable safe place to work and perform the duties of his employment by failing to maintain the work site at issue in a reasonable safe condition;
- o. Failing to remedy and/or correct the defective, dangerous, and/or hazardous conditions, as described above, when defendant knew or should have known that said conditions existed;
- p. Failing to use ordinary care to properly inspect the subject work site to ensure that same was being operated properly and safely;
- q. Failing to use ordinary care to properly address safety complaints at the Alfalfa Railyard, including but not limited to, providing adequate lighting;
- r. Failing to properly maintain the aforesaid work site, and remove the aforesaid improper, dangerous and/or defective conditions and/or work practices in a proper and timely manner;
- s. Failing to use ordinary care to furnish Decedent with a reasonable safe place to work and perform the duties of his employment by failing to have a proper protocol in place to warn and protect moving trains of a portable derail placed on the tracks;
- t. Failing to discover, in the exercise of reasonable care, the defective, dangerous and/or hazardous conditions of the work area and the dangerous working conditions as more fully described above;

- u. Failing to provide Decedent with a reasonably safe place to perform his job duties in the immediate presence of a dangerous condition which posed an unreasonable risk of harm to Decedent;
- v. Failing to properly supervise the area in question so as to furnish to the Plaintiff's Decedent a safe place to work, free from hazards which should have been recognized by Union Pacific as causing or likely to cause the serious physical harm to the Plaintiff's Decedent and others;
- w. Failing to follow Union Pacific Dispatcher Rules and properly communicate to Decedent and other yard employees regarding the maintenance of way work that was being performed inside the Alfalfa Railyard;
- x. Failing to comply with governmental and/or other applicable safety regulations and/or guidelines concerning the safety of the workplace, particularly as it pertains to the existence and presence of such hazards, including but not limited to, 49 CFR Parts 213-214, 217-218, 220, 231, 243 *et seq*; and
- y. Failing to take reasonable safety measures given the then existing circumstances.

26. As a railroad common carrier of freight for hire, Union Pacific is strictly liable for its violations of federal law and regulations that were "enacted for the safety of employees..." 45 USC § 53. Upon information and belief, Union Pacific:

- A. Failed to comply with railroad workplace safety regulations concerning railroad operations, structures, equipment, communications, procedures, training, and associated rules and policies in violation of 49 C.F.R. Parts 213-214, 217-218, 220, 231, 243 and internal rules promulgated pursuant to these regulations;



- B. Failed to comply with the Occupational Safety and Health Act regulations and standards under 29 USC §§ 651-678;
- C. Violated of the Locomotive Inspection Act;
- D. Violated Texas Transportation Code Ch. 112;
- E. Violated state occupational safety and health code regulations;
- F. Violated other state and federal regulations related to railroad operations, shove movements, job briefings, radio operations, track structures, maintenance of way rules, and safety and portable derail standards.

27. Union Pacific is strictly liable for its violation of safety laws and regulations.

28. Due in whole or in part to Union Pacific's violation of the above statutes and regulations, Decedent lost his life and suffered pre-death pain and suffering.

29. Due in whole or in part to Union Pacific's negligence, Decedent and his family lost their source of income, fringe benefits, and will continue to suffer from that loss of income and fringe benefits into the future, the exact amount of which Plaintiff is unable to accurately estimate and determine at this time.

## **V. DAMAGES**

30. Union Pacific's negligence was a direct and proximate cause of the Decedent's death and the damages to Plaintiff and the Decedent's survivors.

31. As a direct and proximate result of the Defendants' negligence, Plaintiff has suffered damages and Plaintiff is entitled to compensatory damages for the injuries caused by Union Pacific, including but not limited to compensation for loss of training, nurturing, education and guidance of the Decedent to his minor children; loss of past and future income; and loss of services, protection, care and assistance provided by the Decedent.

32. As a direct and proximate result of the Defendants' negligence, Plaintiff has incurred funeral and burial expenses and suffered the loss of future earnings and net accumulations, including future pension and retirement benefits.

33. Plaintiff is entitled to compensatory damages for the severe pain, suffering, and agony Decedent suffered before his death.

**VI. DEMAND FOR JURY TRIAL AND RIGHT TO AMEND**

34. Plaintiff demands a trial by jury.

35. Plaintiff specifically reserves the right to amend this Complaint.

**VII. PRAYER**

WHEREFORE, Plaintiffs demand judgment against Defendant Union Pacific Railroad Company on the causes of action set forth herein, and to award Plaintiff damages, costs, and interest allowable by law, trial by jury and any further relief deemed appropriate by the Court.

Respectfully submitted,

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