

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

ELEANOR S. OCANA, as Personal
Representative of the Estate of
BENJAMIN SUAZO,

PLAINTIFF,

CAUSE NO. _____

v.

WORLDWIDE CIRCULATION, INC.;
SILVA BOWLING, INC.; DEWELL
KEITH LAFLEUR individually and
d/b/a MEGA SALES INC.;
ANDREW LONG; JASON FURDEN;
JAMES COMBS; JOSHUA BURGESS.

DEFENDANTS.

COMPLAINT FOR WRONGFUL DEATH

COMES NOW the Plaintiff Eleanor S. Ocana, as Personal Representative of the Estate Benjamin Suazo, by and through her attorneys of record, the Branch Law Firm (Turner W. Branch Esq., Richard A. Sandoval, Esq., and Richard P. Jacobs, Esq.), and for her causes of action herein state and allege as follows:

1 Plaintiff Eleanor S. Ocana (hereinafter referred to as "Plaintiff"), is a resident of the City of Rifle, State of Colorado.

2 Plaintiff, Eleanor S. Ocana, is the mother of Benjamin Suazo (hereinafter referred to as "Decedent"), and is duly appointed Personal Representative of the Estate of Decedent.

3. Decedent, Benjamin Suazo, at all times material hereto, was a resident of the City of Santa Fe, County of Santa Fe, State of New Mexico

4. Decedent, Benjamin Suazo, died on October 20, 2005 at the age of 32 years as a direct and proximate result of the negligent acts and omissions by Defendants as outlined in the Complaint.

5. Decedent, Benjamin Suazo, was the devoted father of two boys.

6. Upon information and Belief, Defendant Worldwide Circulation, Inc. (hereinafter referred to as "Defendant Worldwide") is a foreign entity with its principal place of business believed to be in St. Clair, Michigan

7. Upon information and Belief, Defendant Dewell Keith LaFleur individually and d/b/a Mega Sales, Inc. (hereinafter referred to as "Defendant Mega Sales") is a resident of Chesterfield Township, Michigan

8. Upon information and Belief, Defendant Silva Bowling, Inc. (hereinafter referred to as "Defendant Silva Bowling Alley") was at all times material hereto, a domestic corporation incorporated in and under the laws of the State of New Mexico.

9. Upon information and Belief, at all times material hereto, Defendant Andrew Long (hereinafter referred to as "Defendant Long") was an employee, agent and/or servant of Defendant Worldwide and Defendant Mega Sales, and a citizen of Michigan.

10. Upon information and Belief, at all times material hereto, Defendant Jason Furden (hereinafter referred to as "Defendant Furden") was an employee,

agent and/or servant of Defendant Worldwide and Defendant Mega Sales, and a citizen of Kansas.

11 Upon information and Belief, at all times material hereto, Defendant James Combs (hereinafter referred to as "DEEFENDANT Combs") was an employee, agent, and/or servant of Defendant Worldwide and Defendant Mega Sales, and a citizen of Michigan.

12 Upon information and Belief, at all times material hereto, Defendant Joshua Burgess (hereinafter referred to as "Defendant Burgess") was an employee, agent, and/or servant of Defendant Worldwide and Defendant Mega Sales, and a citizen of Ohio

13 Upon information and Belief, at all times material hereto, Defendant Worldwide Circulation, Inc., and Defendant Dewell Keith LaFleur d/b/a Mega Sales, Inc., employed Defendants Long, Furden, Combs, and Burgess as traveling magazine salesmen, and Defendant Dewell Keith LaFleur is the registered owner of the Cadillac Escalade and the GMC Suburban used to transport the sellers across the country.

14 All acts complained of herein occurred in the City of Santa Fe, County of Santa Fe, State of New Mexico, unless stated otherwise.

15 Jurisdiction and venue are proper with this Court pursuant to N.M.S.A. § 38-3-1 (2003)

STATEMENT OF FACTS

16 On information and belief, traveling magazine salesmen, some of which were possibly employed by Defendant Worldwide Circulation, Inc. and/or

Mega Sales, Inc., have been charged with murder in New York, Tennessee, New Jersey, South Dakota, and Indiana and assaults in numerous other states

17. On October 20, 2005, Defendants traveling salesmen LaFleur, Long, Furden, Combs, and Burgess were served alcoholic beverages by Defendant Silva Bowling Alley, located at 1352 Rufina Circle, Santa Fe, New Mexico

18. Defendant Silva Bowling Alley sold or served alcohol to Defendants when it was reasonably apparent that they were intoxicated and the Defendant Silva Bowling Alley knew from the circumstances that Defendants were intoxicated

19. After drinking heavily, Defendant traveling salesmen attacked Decedent Benjamin Suazo in the parking lot of Defendant Silva Bowling Alley

20. The Defendant traveling salesmen then got back into their GMC Suburban and as they were departing the Defendant Silva Bowling Alley, drove over Benjamin Suazo while he lay on the ground, killing him

21. Based upon information and belief, Defendant Furden was the driver of the GMC Suburban.

The Defendant traveling salesmen, Defendants LaFleur, Long, Furden, Combs, and Burgess, were later apprehended in Santa Fe and charged with murder, conspiracy to commit murder, tampering with evidence, and driving while intoxicated.

Benjamin Suazo was pronounced dead on arrival at St. Vincent Regional Medical Center.

24. Based upon information and Belief, Defendant Silva Bowling Alley has had over three hundred eighty-seven (387) 911 calls in the three years prior to this incident.

25. Despite these past occurrences, Defendant Silva Bowling Alley had only one security guard on duty who never went out into the parking lot until after Decedent was lying beaten on the ground.

26. Defendant Silva Bowling Alley's security officer failed to protect or provide proper medical attention to Decedent prior to being run over by the vehicle, and failed to prevent his death.

COUNT I
NEGLIGENCE AS TO DEFENDANT SILVA BOWLING INC.

27. Plaintiff re-alleges paragraphs 1 through 26 of this Complaint as set forth fully herein.

28. Due to the negligent acts and/or omissions of Defendant Silva Bowling Inc., Decedent sustained severe injuries resulting in his tragic and untimely death.

29. The negligent acts and/or omissions of Defendant that are the direct and proximate cause of the personal injuries and ensuing death sustained of Decedent, Benjamin Suazo, include, but are not limited to

- a. Failing to provide a safe premises;
- b. Failing to provide adequate security;
- c. Failing to properly train its employees
- d. Failing to properly hire competent employees;

e. Failure to provide adequate supervision of its employees;
f. Failing to protect or warn decedent of a known danger;
g. Negligently serving alcoholic beverages; and
h. Violation of state statutes and regulations regarding the sale of alcoholic beverages.

30. As a direct and proximate result of Defendant's failure to use ordinary care, Decedent sustained fatal injuries.

31. As a further direct and proximate result of Defendant's failure to use ordinary care, Decedent suffered severe physical, emotional, and psychological pain and suffering between the time of the initial injuries and his tragic and untimely death, all in an amount not presently determinable, but to be proven at the time of trial.

32. As a further direct and proximate result of the Defendant's failure to use ordinary care, Decedent and his Estate have suffered past and future loss of financial support, loss of recreational activities and loss of enjoyment of life

33. The injuries relating to Decedent and his Estate, past, present and future were, are and will be due to the acts and omissions of Defendants

COUNT II
NEGLIGENCE AS TO DEFENDANT WORLD WIDE CIRCULATION

34. Plaintiff re-alleges paragraphs 1 through 33 of this Complaint as set forth fully herein.

Due to the negligent acts and/or omissions of Defendant World Wide Circulation, Decedent sustained severe injuries resulting in his tragic and untimely death.

The negligent acts and/or omissions of Defendant that are the direct and proximate cause of the personal injuries and ensuing death sustained of Decedent, Benjamin Suazo, include, but are not limited to:

- a. Failing to properly train its employees;
 - b. Failing to properly hire competent employees;
 - c. Failure to provide adequate supervision of its employees; and
37. As a direct and proximate result of Defendants failure to use ordinary care, Decedent sustained fatal injuries with permanent damages.

As a further direct and proximate result of Defendant's failure to use ordinary care, Decedent suffered severe physical, emotional, and psychological pain and suffering between the time of the initial injuries and his tragic and untimely death, all in an amount not presently determinable, but to be proven at the time of trial.

As a further direct and proximate result of the Defendant's failure to use ordinary care, Decedent and his Estate have suffered past and future loss of financial support, loss of recreational activities and loss of enjoyment of life.

The injuries relating to Decedent and his Estate, past, present and future were, are and will be due to the acts and omissions of Defendants.

COUNT III
RESPONDEAT SUPERIOR AS TO:

DEFENDANT WORLDWIDE AND DEFENDANT MEGA SALES

41 Plaintiff re-alleges paragraphs through 40 of this Complaint as set forth fully herein

At all times material hereto, Defendants Long, Furden, Combs, and Burgess were employees, agents, and/or servants of Defendant Worldwide and Defendant Mega Sales, acting within the course and scope of their employment

43. At all times material hereto, the acts and/or omissions by Defendants Long, Furden, Combs, and Burgess, while carrying out Defendant Worldwide and Defendant Mega Sales business, were reasonable and foreseeable.

44. As a direct and proximate result of Defendants' failure to use ordinary care, Decedent sustained fatal injuries.

As a further direct and proximate result of Defendants' failure to use ordinary care, Decedent suffered severe physical, emotional, and psychological pain and suffering between the time of the initial injuries and his tragic and untimely death, all in an amount not presently determinable, but to be proven at the time of trial.

As a further direct and proximate result of the Defendants' failure to use ordinary care, Decedent and his Estate have suffered past and future loss of financial support, loss of recreational activities and loss of enjoyment of life

The injuries relating to Decedent and his Estate, past, present and future were, are and will be due to the acts and omissions of Defendants, without any contributing negligence on the part of the Decedent.

FOURTH CAUSE OF ACTION FOR WRONGFUL DEATH
AS TO ALL DEFENDANTS

48. Plaintiff incorporates by reference as fully set forth herein each and every allegation contained in Paragraphs 1 through 47 of this Complaint

49. As a direct and proximate cause of the negligent acts of the Defendants, Benjamin Suazo died.

50. This action is brought pursuant to the New Mexico Wrongful Death Statute, N.M.S.A. 41-2-1

51. This action is brought by Plaintiff to recover, on behalf of Benjamin Suazo, all damages legally available under said New Mexico Wrongful Death Act.

FIFTH CAUSE OF ACTION BATTERY
AS TO DEFENDANTS LAFLEUR, LONG, FURDEN, COMBS, AND BURGESS

52. Plaintiff incorporates by reference as fully set forth herein each and every allegation contained in Paragraphs 1 through 51 of this Complaint

53. Defendants intentionally touched or applied force to Decedent by striking him with their fists, hands, and feet

54. Defendants acted in a rude, insolent or angry manner.

55. As a direct and proximate result of Defendants' conduct, Decedent sustained fatal injuries with permanent damages

SIXTH CAUSE OF ACTION NEGLIGENCE PER SE TO DEFENDANTS
LAFLEUR, LONG, FURDEN, COMBS, AND BURGESS

56. Plaintiff incorporates by reference as fully set forth herein each and every allegation contained in Paragraphs 1 through 55 of this Complaint.

57. Defendants LaFleur, Long, Furden, Combs, and Burgess actions violated several criminal statutes including but not limited to those for assault battery, driving while intoxicated, careless driving, and reckless driving

58. Violation of these statutes constitutes negligence per se

59. As a direct and proximate result of Defendants' failure to use ordinary care, Decedent sustained fatal injuries.

**SEVENTH CAUSE OF ACTION: PUNITIVE DAMAGES
AS TO ALL DEFENDANTS**

60. Plaintiff re-alleges paragraphs 1 through 59 of this Complaint as set forth fully herein.

61. The acts and omissions complained of in the Counts stated above are, upon information and belief, believed to be of such an egregious nature, in reckless, wanton and total disregard to the rights of the Plaintiff, that in addition to actual damages ascertained and demonstrated by a preponderance of the evidence, that punitive damages or exemplary damages to punish and deter this type of act and omission from occurring in the future may well be appropriate

**EIGHTH CAUSE OF ACTION VIOLATION
OF NMSA § 41-1-1 (DRAM SHOP ACTION)
TO DEFENDANT SILVA BOWLING ALLEY, INC.**

62. Plaintiff incorporates by reference as fully set forth herein each and every allegation contained in Paragraphs 1 through 61 of this Complaint

63. Defendant Silva Bowling Alley Inc. sold or served alcohol to Defendants who were intoxicated

Defendant Silva Bowling Alley Inc. sold or served alcohol to Defendants when it was reasonably apparent that they were intoxicated and Defendant Silva Bowling Alley knew from the circumstances that Defendants were intoxicated.

Defendant Silva Bowling Alley Inc.'s conduct constituted gross negligence and reckless disregard.

As a direct and proximate result of Defendant's violation of §41-1-1 Decedent was severely beaten and killed

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for Judgment against the Defendants and in favor of the Plaintiff for damages in an amount to be proven at the time of trial, for compensatory damages, for costs associated with the bringing of this cause of action, for loss of earnings, loss of earning capacity, loss of consortium incidental expenses, for pre-judgment interest and post-judgment interest, for punitive damages and for such other and further relief as the Court deems just and proper.

Respectfully submitted,
BRANCH LAW FIRM

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