

DC30-CV2024-1068

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

ERICK GARDEA AND ALEXIS GARDEA, INDIVIDUALLY AND AS NEXT FRIENDS OF M.G., A MINOR CHILD,	§ § § § § § § § § § §	IN THE DISTRICT COURT OF
PLAINTIFFS,	§	
VS.	§	WICHITA COUNTY, TEXAS
TADPOLE CHILDREN'S ACADEMY DAYCARE AND CHELSEE THOMAS,	§ § § § § § § § § § §	
DEFENDANTS.	§	____ JUDICIAL DISTRICT

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**ORIGINAL PETITION AND JURY DEMAND**

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1. Erick Gardea and Alexis Gardea, Individually and As Next Friends of M.G., a minor child, like many parents across this country and the state of Texas, are working parents that relied on a daycare to provide a safe, caring, nurturing environment for their son, M.G., while they were working. Erick and Alexis trusted that their son would be safe at Tadpole Children's Academy Daycare, and with owner Chelsee Thomas, for daycare.<sup>1</sup>
2. A safe learning environment and peace of mind are what parents like Erick and Alexis pay for and expect. Instead, their worst nightmare became a reality when their son M.G. suffered serious physical, emotional, and mental injuries because of the failures of Tadpole Children's Academy and Chelsee Thomas. Erick and Alexis bring this lawsuit on their family's behalf asking for answers and asking that Tadpole Children's Academy and Chelsee Thomas accept responsibility.

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<sup>1</sup> This Petition refers to Defendant Tadpole Children's Academy Daycare as "Tadpole Children's Academy."

## I. STATEMENT OF FACTS

3. Tadpole Children's Academy is responsible for qualifying, hiring, training, and supervising its employee-caregivers on safe and proper care conducive to the welfare of children, supervising children at all times, ensuring no child is neglected, ensuring that the adequate child transportation safety systems are in place, maintaining compliance with Texas' minimum standards for childcare, adhering to the Texas Code of Transportation; the use of good judgment, competency, and control, proper response and documentation of incidents that place a child at risk, and transportation safety.

4. On Friday, September 22, 2023, Erick, and Alexis placed their 5-year-old son, M.G., in the care of Tadpole Children's Academy for daycare. While in the care of Tadpole Children's Academy, M.G. was negligently supervised, endangering his health and life. Tadpole Children's Academy negligently operated its facility and vehicle when they left M.G. unattended in their van allowing him to exit the van and wander a parking garage completely unsupervised (hereinafter, "the Incident"). Tadpole Children's Academy was responsible for transporting a van of students from a public school, including M.G., to the daycare center for after-school childcare.

5. After parking the van and unloading the children, Tadpole Children's Academy failed to account for all children exiting the vehicle to ensure that M.G. had exited the van as required by Texas law. Instead, the Tadpole Children's Academy van returned to a shared parking garage *across the street* from the daycare, leaving 5-year-old M.G. unattended in the van.

6. While in the van, M.G. desperately looked for ways to get out. M.G. was scared, crying, and hyperventilating causing himself physical, emotional, and mental exhaustion. M.G. exited

the van and made it to locked glass doors of the garage and banged on them until he was found by a good Samaritan. The good Samaritan then brought him across the street to Tadpole Children's Academy. Although the state requires a parent to be immediately notified of a situation that placed their child at risk for injury or harm, M.G.'s mother was not notified of the incident until she arrived at Tadpole Children's Academy to pick M.G. up for the day. It was at that time the director admitted to M.G.'s Mom that M.G. had fallen asleep in the van and the bus driver did not ensure he was off the bus before she exited.

7. Leaving a child unattended in a vehicle is negligent. The dangers of leaving children alone in a vehicle are well-known and preventable. When operating a vehicle, the driver has a duty to protect all passengers on board and ensure they are safe. Leaving a child passenger unattended in a vehicle that is turned off without any ventilation is a failure of that duty.

8. Daycare facilities, like Tadpole Children's Academy must implement an adequate safety system to ensure that every child is accounted for, and no child is left unattended inside a transportation vehicle to conform with the Minimum Standards set forth by Texas Health and Human Services and the Department of Family and Protective Services. Tadpole Children's Academy failed to have the necessary and required transportation safety systems in place to make sure that M.G. was not a victim of inadequate supervision and placed at-risk. Texas Health and Human Services Minimum Standards for Child-Care facilities provides a list of several recommended strategies that may be implemented to ensure the safety of children in their care during transportation, which includes the following: use a list of children to verify each child by name; walk and check the inside of the vehicle, both in and under each seat; have a second person check the vehicle; have a visual reminder such as a sticker, keychain, hangtag that helps

you do the walkthrough; or purchase products to install in the transportation vehicle(s) that may a noise when the vehicle is turned off and until you hit the off button at the back of the vehicle but Tadpole Children's Academy failed to implement and follow through on any of these recommended strategies.

9. Tadpole Children's Academy negligently operated its facility and vehicle; failed to maintain and operate its vehicle in a safe and secure manner to ensure that occupants were safe, secure, and protected from all elements including, without limitation, the dangers of Mother Nature; failed to supervise the children in its care; failed to have adequate child transportation safety systems; failed to supervise its employees; neglected to provide a safe environment for a child in their care; failed to properly train and supervise employee-caregivers on safety practices while transporting children in their care; failed to ensure no child was neglected in their care; negligently hired unqualified and untrained employees; failed to supervise its employees; and neglected to account for all children under their care and supervision.

10. Tadpole Children's Academy is required to follow strict minimum guidelines set forth by the State of Texas through the Department of Family and Protective Services. These minimum standard guidelines carry the force of the law. The Texas Health and Human Services Commission Child-Care Licensing Division and the Texas Department of Family and Protective Services conducted an independent investigation into the incident involving Plaintiffs and concluded that the allegations against Tadpole Children's Academy were *substantiated*, citing Tadpole Children's Academy for violating the following childcare licensing rules of Texas:

**746.1201(4) – AP Responsibilities of employees and caregivers – ensure no child is abused, neglected, or exploited:** *It was determined throughout the course of the DFPS investigation that a child in care was neglectfully supervised.*

**746.5605 (4) – AP Safety Precautions for Loading and Unloading Children – No Child Unattended:** *It was determined that a child in care was left unattended in a vehicle owned and operated by the operation.*

**746.707 – Incident/illness Report Form shared with Parent -** *The incident report was not signed by the parent.*

**746.5625(a) – Electronic Child Safety Alarm – is equipped in each vehicle:** *It was determined during the investigation the vehicle used to transport the children in care did not have an electronic child safety alarm installed.*

11. Tadpole Children’s Academy has been cited by the state of Texas numerous times for failing to ensure that the operation and its caregivers meet the minimum standards, laws, and regulations in place to keep kids safe. A history of citations, inspections, investigations, and deficiencies from the state show the same conduct and failure to act that led to the incident and the injuries sustained by M.G. Tadpole Children’s Academy has a clear recent history of failing to qualify, train and supervise employees, failing to follow the minimum standards, and failing to properly care for children.

12. In fact, Tadpole Children’s Academy has been cited by the state of Texas for a situation nearly identical to the incident involving M.G just a year and a half before M.G. was left sleeping in Tadpole Children’s Academy’s van. In February of 2022, Tadpole Children’s Academy left a 6-year-old boy alone, unsupervised, and sleeping in the day van locked in the van’s garage. Like the incident involving M.G., the 6-year-old was rescued by a good Samaritan and returned to the daycare. Tadpole Children’s Academy knew or should have known that its consistent and continued failures to provide adequate supervision to children on their daycare van would cause injury and damages to M.G. Despite having the same situation occur in February of 2022, Tadpole Children’s academy failed to properly train and supervise its employees on proper van safety and supervision. The same failures led to the incident and injuries sustained by M.G.

13. The following is an overview of some of the citations issued by the Texas Health and Human Services Commission from July 2019 to June 2023:

- **July 2019:**
  - o Cited for failing to provide proper supervision of children.
  
- **August 2021:**
  - o Cited for several present safety hazards regarding the building and facility, including a dangerous sink, broken and unfinished walls, dirty fans, unsafe tables, and standing water at the front door.
  
- **February 2022:**
  - o Cited for failing to have and follow safety precautions for loading and unloading children and leaving a child unattended.
  
- **March 2022:**
  - o Cited for failing to meet safety requirements for cribs using snug fitting, firm, flat mattresses.
  - o Cited for using the wrong type of mattress cover on a crib mattress used by an infant 12 months or younger.
  - o Cited for failing to use safety straps when placing a child in a restrictive device.
  - o cited for leaving a child in a restrictive device for more than 15 minutes.
  - o Cited for failing to have properly executed food allergy emergency plan for a child with documented allergies.
  - o Cited for failing to have a posted activity plan for each childcare group.
  
- **October 2022:**
  - o Cited for being out of ration during naptime.
  - o Cited for failing to have an annual fire inspection done.
  
- **June 2023:**
  - o Cited for caregivers using personal electronic devices such as a cell phone while in charge of the care and supervision of children.

14. What happened to M.G. was preventable. As a direct and proximate result of the actions and/or omissions of Tadpole Children’s Academy, Plaintiffs sustained injuries and damages.

## **II. DISCOVERY CONTROL PLAN & CLAIM FOR RELIEF**

15. Discovery in this matter is intended to be conducted under Level 3 of the Texas Rules of Civil Procedure.

16. As required by the Texas Rule of Civil Procedure 47(c), Plaintiffs' counsel states that Plaintiffs seek monetary relief over \$1,000,000.00; however, the amount of monetary relief awarded will ultimately be determined by a jury.

### **III. PARTIES**

17. Plaintiffs Erick Gardea and Alexis Gardea are the biological parents of Plaintiff M.G., a minor, and are citizens and residents of Wichita County, Texas.

18. Defendant Tadpole Children's Academy Daycare (hereinafter referred to as "Defendant") is a sole proprietorship business doing business in the State of Texas, its state of formation. Defendant may be served with process by serving its owner, Chelsee Thomas, at 17299 W FM 171, Wichita Falls, Texas 76305-2252, or wherever they may be found.

19. Defendant Chelsee Thomas is an individual, resident of Wichita County, Texas, and the owner of the sole proprietorship Tadpole Children's Academy Daycare who may be served with process at 17299 W FM 171, Wichita Falls, Texas 76305-2252, or wherever they may be found.

### **IV. JURISDICTION & VENUE**

20. The Court has subject matter jurisdiction over this lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

21. Venue is proper in Wichita County, Texas, under Texas Civil Practices and Remedies Code Section 15.002(a) because this is the county where all or part of the events or omissions giving rise to the claim occurred.

### **V. CAUSES OF ACTION**

#### **Count One – Negligence**

22. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

23. The occurrence made the basis of this suit, reflected in the above paragraphs, and the resulting injuries and damages of Plaintiffs were proximately caused by the negligent conduct of the Defendants. Defendants were negligent by breaching the duty that was owed to Plaintiffs, to exercise ordinary care in one or more of the following acts or omissions, constituting negligence:

- a. Failing to exercise the care that was necessary under the circumstances;
- b. Failing to do what a reasonable daycare would have done under the circumstances;
- c. Failing to do what a reasonable driver would have done under the circumstances;
- d. Failing properly supervise the children in their care;
- e. Failing to maintain a safe environment for children;
- f. Failing to properly hire, qualify, train, and supervise its employee-caregivers trusted with the care of minor Plaintiff M.G.;
- g. Failing to have the adequate child transportation safety systems in place;
- h. Failing to ensure all occupants exited the vehicle before turning it off and exiting the vehicle;
- i. Failing to protect occupants from all elements, including without limitation, the dangers of mother nature;
- j. Failing to ensure that occupants of the vehicle were safe;
- k. Failing to ensure occupants were secure;
- l. Choosing to operate a vehicle without awareness of occupants;
- m. Failing to account for all children under their care and supervision;



- n. Choosing to continue to employ an unqualified, untrained, and unsupervised caregiver;
  - o. Failing to ensure caregiver employees demonstrate competency, good judgment, and self-control;
  - p. Failing to record and report serious injuries sustained by a child in its care;
  - q. Failing to adhere to the Texas Transportation code; and
  - r. Failing to adhere to the Texas Minimum Standards for Childcare.
24. Defendants had a duty to exercise ordinary care in caring for and supervising the children in its care so as to prevent injury to Plaintiff M.G. and other children similarly situated.
25. Defendants had a duty to maintain a safe environment for children in its care so as to prevent injury to M.G., and other children similarly situated.
26. Defendants had a duty to hire, training, and supervise caregiver employees to ensure that children in their care were safe to prevent injury to M.G., and other children similarly situated.
27. Defendants breached the duty of care by failing to care for the children; failing to supervise the children; failing to have the adequate child transportation safety systems in place; failing to ensure the safety of all children during transportation; failing to account for all children exiting the vehicle before leaving the vehicle unattended; failing to properly train, hire, and supervise its employees; and failing to maintain a safe environment for children.
28. Defendants' negligent acts and/or omissions, and breach of duties, directly and proximately caused injury to Plaintiffs, which resulted in significant damages.

### **Count Two – Negligence Per Se**

29. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.
30. Defendants failed to exercise the mandatory standard of care in violation of the Texas Department of Family and Protective Services, Minimum Standards for Child-Care.
31. Defendants' conduct described herein constitutes an unexcused breach of duty imposed by the Texas Transportation Code and Texas Penal Code. Plaintiffs would show the Court that Defendants were negligent per se in that Defendants' conduct violated Texas Transportation Code Section 521.022, Texas Transportation Code Section 546.005(1), Texas Transportation Code Section 546.005(2), and Texas Penal Code Section 22.10.
32. In the foregoing claims of negligence per se, Plaintiffs were, at all times, members of the class that the statutes the Defendants violated were designed to protect.
33. Defendants' violation of the statutes was the proximate cause of the Incident in question.
34. As a result of the Defendant's acts and/or omissions in violating the statutes, Plaintiffs sustained damages.

### **Count Three – Gross Negligence**

35. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.
36. Defendants' conduct was more than momentary thoughtlessness or inadvertence. Rather, the acts and/or omissions by Defendants in the preceding paragraphs constitute gross negligence as that term is defined in Texas Civil Practices and Remedies Code §41.001(11).
37. Defendants' conduct involved an extreme degree of risk, considering the probability and magnitude of potential harm to the Plaintiffs. Defendants had actual, subjective awareness of the risk involved, but, nevertheless, proceeded in conscious indifference to the rights, safety, or welfare of Plaintiffs or of others similarly situated.

38. The above acts and/or omissions were singularly and cumulatively the proximate cause of the occurrence in question and the resulting injuries and damage sustained by Plaintiffs.

#### **Count Four – Negligent Activity**

39. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

40. Defendants were the owner, operator, and/or possessor of the daycare premises located at 921 Scott Ave, Wichita Falls, TX 76301 operation license number 1475806, during the time of this incident.

41. At the time of the Incident, M.G. was a minor child placed in the care of Defendants and was thus an “invitee” to whom Defendants owed a duty to exercise ordinary care.

42. Plaintiffs’ injuries were the direct and contemporaneous result of Defendants’ ongoing negligent activity on the premises at the time of the injuries and damages sustained.

43. Defendants owed Plaintiffs a legal duty to ensure M.G.’s safety in maintaining proper care over the children, ensuring that employees are necessarily hired, trained, supervised, and terminated in order to maintain a safe environment for children, and ensuring that serious injuries are recorded and reported and on responding to medical emergencies. Defendants breached these duties by failing to maintain a safe environment for M.G., failing to train and supervise its caregiver employees on how to supervise children, and by failing to respond to a medical emergency.

44. Such negligent activity on the part of the Defendants proximately caused the injuries and other damages suffered by Plaintiffs.

#### **Count Five – Negligent Hiring, Supervision, Retention, and Entrustment**

45. Plaintiffs incorporates by reference the preceding paragraphs as if stated fully herein.

46. Defendants are responsible for the acts and/or omissions of its respective agents, employees, servants, ostensible agents, and/or representatives through the theories of employment, agency, *respondeat superior*, ostensible agency, apparent agency, actual agency, and/or other agency and/or vicarious responsibility theories.

47. Defendants entrusted its vehicle to its employee. Defendants' employee was an incompetent or reckless operator of the vehicle. Defendants' employee was negligent on the occasion in question.

48. Defendants are independently liable for their own acts and omissions, which constitute negligence as that term is defined by law. Defendants owed a duty to Plaintiffs to hire, train, and supervise qualified employees to operate their vehicles, especially when transporting children. Defendants did not possess and comply with reasonable care ordinarily possessed and used by similar entities engaged in the same type of service in the same or in a similar locality. The acts and/or omissions include, but are not limited to, the following:

- a. Negligently hiring its employee(s);
- b. Negligently entrusting the vehicle to its employee(s);
- c. Negligently qualifying its employee(s);
- d. Negligently retaining its employee(s);
- e. Failing to adequately train its employee(s);
- f. Failing to adequately supervise its employee(s);
- g. Failing to adequately monitor its employee(s); and
- h. Failing to have adequate policies and procedures.

49. Defendants' negligence was the proximate cause of Plaintiffs' injuries.

50. Plaintiffs seek unliquidated damages within the jurisdictional limits of this court.

**VI. RESPONDEAT SUPERIOR, VICARIOUS LIABILITY, AGENCY, OSTENSIBLE**

51. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

52. Whenever in this Petition it is alleged that Defendants' employee did any act or thing, it is meant that she, as an officer, agent, servant, employee, or representative of Defendants did such act and/or that at the time such was done, it was done with the full authorization or ratification of Defendants, or it was done in the normal and routine course and scope of employment or agency of each of Defendants' officers, agents, servants, employees, or representatives.

53. Pleading in the alternative, if necessary, and without waiving any claims, defenses, and/or causes of action, Plaintiffs aver that Defendants are legally responsible for the conduct of its employees under the legal doctrine of *respondeat superior*, agency, and/or ostensible agency because Defendants' employee was at all times hereto an agent, ostensible agent, servant, and/or employee of Defendants. The negligence and carelessness of Defendants' employees proximately caused Plaintiffs' damages and losses as a result of the injuries to Plaintiffs. As a result, thereof, Defendants are liable for all negligence of its employees.

**VII. DAMAGES**

54. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

55. As a direct and proximate cause of Defendants' negligent acts and/or omissions, Plaintiffs Erick and Alexis Gardea, individually, and as Next Friend of Plaintiff M.G., a minor child, suffered damages and injuries that include, but are not limited to:

- a. Physical pain and suffering in the past;

- b. Physical pain and suffering, in reasonable probability, sustained in the future;
- c. Mental anguish in the past;
- d. Mental anguish, in reasonable probability, sustained in the future;
- e. Reasonable and necessary medical expenses in the past;
- f. Reasonable and necessary medical expenses, in reasonable probability, sustained in the future;
- g. Loss of wages in the past;
- h. Loss of wages, in reasonable probability, sustained in the future;
- i. Loss of wage-earning capacity in the past;
- j. Loss of wage-earning capacity, in reasonable probability, sustained in the future;
- k. Physical impairment in the past;
- l. Physical impairment, in reasonable probability, sustained in the future;
- m. Loss of the normal enjoyment of the pleasure of life in the past;
- n. Loss of the normal enjoyment of the pleasure of life, in reasonable probability, sustained in the future;
- o. Costs of suit; and
- p. All other relief, in law and equity, to which Plaintiffs may be entitled.

56. Plaintiffs' damages clearly exceed the minimum jurisdictional requirements for this Court. Plaintiffs, therefore, seek compensation by the Court and jury for their damages, in an amount to be determined by the jury.

### **VIII. EXEMPLARY DAMAGES**

57. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.

58. Plaintiffs would further show that the acts and/or omissions of the Defendants complained of herein were committed knowingly, willfully, intentionally, with actual awareness, and with the specific and predetermined intention of enriching said Defendants at the expense of Plaintiffs.

59. The grossly negligent conduct of Defendants, as described herein, constitutes conduct for which the law allows the imposition of exemplary damages. Accordingly, Plaintiffs seek the award of exemplary damages against Defendants pursuant to Chapter 41 of the Texas Civil Practices and Remedies Code.

#### **IX. JURY TRIAL**

60. Plaintiffs demand a jury trial and have tendered the appropriate fee with the filing of this Original Petition.

#### **X. U.S. LIFE TABLES**

61. Notice is hereby given that Plaintiffs intend to use the U.S. Life Tables as prepared by the Department of Health and Human Services.

#### **XI. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein and upon final hearing hereof, they take, have and recover, of and from said Defendants, the above damages, exemplary damages, costs of court, pre-judgment interest, post-judgment interest, and for such other and further relief to which they may show themselves justly entitled.

Dated: May 24, 2024.

Respectfully submitted,

**THE BUTTON LAW FIRM**

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