

STATEMENT OF FACTS

3. According to Children’s Courtyard, “Our teachers are *positive behavior experts*,” who are “given hundreds of strategies (based on current child behavior research) to redirect challenging or disruptive behaviors into positive classroom experiences.”² Children’s Courtyard publicizes and sells working parents on the idea that this daycare has highly qualified teachers, or “experts” as they call them, who will keep all children in their care safe “Dedicated. Experienced. Caring. Our educators are all these things — and more.”³ However, a trail of records from the state of Texas as well as the horrific experiences of Janese, her one-year-old daughter N.M., and other parents and children at Children’s Courtyard paints a very different picture.

4. Children’s Courtyard is responsible for qualifying, hiring, training, and supervising its employee caregivers on providing safe and proper care conducive to the welfare of the children, appropriate discipline methods, the prohibition of certain punishment methods, proper naptime conduct and procedures, the use of good judgment, competency, and control, proper response and documentation of injuries, proper supervision of children, and compliance with Texas’ minimum standards for childcare.

5. On Thursday, May 18, 2023, Janese placed her 18-month-old daughter N.M. in the care of Children’s Courtyard for daycare. It was just her second day of daycare. While under the care of Children’s Courtyard, N.M. was aggressively handled and inappropriately disciplined causing N.M. physical, emotional, and psychological harm and damages (hereinafter, the “Incident”).

² *Children’s Courtyard Website*, <https://www.childrencourtyard.com/education/positivebehaviorsupport/> (last visited September 18, 2024) (emphasis added).

³ *Id.*

6. While N.M. was at daycare, Janese checks on N.M. through the live-feed video surveillance and was horrified by what she saw was happening. As Janese was watching the live feed, she sees the Children's Courtyard employee push a little girl, causing the little girl to fall to the ground. The Children's Courtyard employee then walks away leaving the little girl crying on the floor without checking to make sure the little girl was okay after pushing her to the ground.

7. Deeply disturbed by the Children's Courtyard employee's actions toward the little girl, Janese starts recording the live-feed footage and sees N.M. crouched down, playing near a shelf:



The Children's Courtyard employee yanks N.M. up by her arms. N.M. dangles and swings, clearly startled by the abrupt and sudden yanking of her from the floor, before she is dropped onto the nap mat by the employee. Other children pick their heads up from their mats, looking on as this happens.



The Children’s Courtyard employee then yanks the nap mat with frustration causing N.M. to lose her balance while sitting and fall forward face-first onto the mat.



Without checking whether N.M. was injured from landing face-first on the mat, the Children’s Courtyard employee then aggressively grabs N.M. by her left arm. Using just one hand, the employee yanks N.M. up and tosses her on top of another child lying on the nap mat next to her.



The Children's Courtyard employee again aggressively lifts N.M. up from on top of the neighboring child, tosses her back onto her nap mat, then covers her head-to-toe with the blanket.

8. The recorded live-feed video footage next captures another child being aggressively handled by Shannon Marie Hernandez, the co-teacher in the Children's Courtyard classroom. Ms. Hernandez yanks L.D., another child in the same classroom, up by both arms, swings him across the classroom as he dangles and swings, then throws him down onto his nap mat. As L.D. is sitting on the nap mat, Ms. Hernandez yanks L.D. up by his arms and with great force, tosses him down onto the nap mat on his stomach. Ms. Hernandez then covers L.D. from head to toe with a blanket.

9. After seeing her daughter and other children being aggressively and inappropriately handled, Janese immediately pulled her daughter from the daycare and reported what she saw

on the video footage to Children's Courtyard. Children's Courtyard assured Janese that they would investigate the incident. For a week thereafter, Janese made follow-up calls and sent emails to Children's Courtyard looking for answers as to how they were going to handle the situation. After a week, Janese finally heard back from Children's Courtyard. In response, Kirstin Northington, the Director of Children's Courtyard at the time, stated that "corrective actions were taken for this incident," and that she had "addressed all issues with staff as well as set up trainings to go over positive guidance and discipline." Neither the employee involved in the inappropriate handling of N.M., nor Ms. Hernandez were terminated. To date, Plaintiffs have no confirmation, proof, or evidence that any such "trainings to go over positive guidance and discipline" were ever conducted.

10. Shockingly, Children's Courtyard did not report the incident to the state of Texas or law enforcement, despite the gravity of the situation. Instead, Janese herself reported it to the state.

11. The video footage shows that this was a common occurrence at Children's Courtyard as other children can be seen suffering from the same or similar inappropriate forms of discipline as N.M. Children's Courtyard condoned the inappropriate discipline and allowed for it to be a part of their practice.

12. Despite Children's Courtyard's claims that corrective measures would be taken to provide training for their employees on positive guidance and discipline, *nothing changed*. The Children's Courtyard employees continued mistreating and using inappropriate discipline methods on the children in their care. Children's Courtyard knowingly and intentionally continued to ignore the mistreatment, putting the children under their care and supervision at direct risk of serious harm and injury. In fact, **just two months later**, on July 27, 2023, the same Children's Courtyard employee seen by Janese inappropriately handling and disciplining L.D. is

once again observed mistreating the same little boy. It was only after the state investigated that July Incident, that Children’s Courtyard employee was *finally* terminated.

13. Children’s Courtyard negligently operated its facility and endangered the safety and well-being of N.M., and other children similarly situated; failed to properly supervise the children in its care; failed to provide a safe environment for the children in their care; failed to ensure no child was inappropriately disciplined or neglected; negligently hired unqualified and untrained employees; failed to supervise its employees; and left N.M. and numerous other children in the hands of incompetent and irresponsible caregivers.

14. Children’s Courtyard is required to follow strict minimum guidelines set for by the State of Texas through the Department of Family and Protective Services. These minimum standard guidelines carry the force of the law. Children’s Courtyard 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. An independent investigation into the Incident by the Texas Health and Human Services Commission Child-Care Licensing into the May Incident is being conducted. 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 N.M. Children’s Courtyard 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.

15. The following is an overview of some of the citations issued by the Texas Health and Human Services Commission from October 2018 through March 2023, the years leading up to the May Incident involving N.M.:

- October 2018:
 - Cited for failing to ensure safe sleep practices when a child was left to fall asleep in a restrictive device.
 - Cited for failing to have required first-aid kits in all four of the daycare vans used to transport children.
 - Cited for failing to maintain complete health and immunization records for several children enrolled.

- February 2019:
 - Cited for failing properly supervise children in care when 2 children were forgotten and left unattended on the playground.

- May 2019:
 - Cited for failing properly supervise children in care.

- June 2019:
 - Cited for failing to ensure employees demonstrate competency, good judgment, and self-control.
 - Cited for failing to ensure employees hold and comfort an infant child when the infant was injured and upset as the result of the employee's own conduct.

- October 2019:
 - Cited for failing to keep floors, ceilings and walls in good repair and clean.
 - Cited for failing to maintain a safe premises when two outlet covers were broken.
 - Cited for failing to ensure the outdoor play area met required safety standards.

- November 2019:
 - Cited for failing to ensure that employees demonstrate competency, good judgment, and self-control.
 - Cited for failing to report an incident to licensing that placed a child at risk.

- October 2020:
 - Cited for failing properly supervise children in care when a child was found alone and wandering outside of the building unsupervised.

- June 2021:
 - Cited for failing properly supervise children.
 - Cited for failing to notify parents of a situation that placed a child at risk.

- September 2021:
 - Cited for failing to ensure proper supervision of children.
 - Cited for failing to notify parents of a situation that placed a child at risk.

- February 2022:
 - Cited for failing to use appropriate methods of discipline when employees pulled children by one arm, pushed down by their heads on a mat and handled them in a rough manner.
- March 2022:
 - Cited for failing to maintain the appropriate child-to-caregiver ratio on multiple occasions.
- May 2022:
 - Cited for failing to ensure employees and director have the required up-to-date training on pediatric first aid.
 - Cited for failing to ensure employees have the required current First Aid and CPR training.
- March 2023:
 - Cited for failing to maintain a complete health and immunization file for children in care.
 - Cited for failing to maintain available electronic records for inspection.
 - Cited for failing to conduct the annual required sanitation health inspection.
 - Cited for failing to keep hazardous and toxic cleaning products inaccessible to children.

16. Following the May Incident, Children’s Courtyard continued to fail to meet the minimum requirements for childcare in Texas receiving dozens of citations for various deficiencies through present day.

- **July 2023:**
 - **Cited for failing to ensure no child is abused, neglected, or exploited when two months after the May 2023 incident, Shannon Marie Hernandez inappropriately disciplines L.D.**
 - **Cited for allowing an employee whose behavior threatens children to remain present when Children’s Courtyard permitted Shannon Marie Hernandez to remain with children for an additional 3 hours after learning the employee posed a risk to the children’s safety.**
 - **Cited for failing to self-report the incident involving L.D. to licensing.**
 - **Cited for failing to ensure proper naptime safety procedures were in place when Shannon Marie Hernandez covered L.D.’s head with a blanket.**
 - **Cited for failing to ensure that employees do not use prohibited punishment methods when employees used yelling, hitting, and pulling on children for discipline.**

- August 2023:
 - Cited for using prohibited and inappropriate forms of discipline toward children.
 - Cited for failing to report an incident to licensing that placed children at risk.
 - Cited for interfering with a state investigation when an incident video was deleted by the center before allowing the state to view it.
 - Cited for failing to keep floors, ceilings, and walls in good repair and clean.
 - Cited for failing to have a current annual fire inspection.

- September 2023
 - Cited for failing to console or comfort a toddler child who was upset.
 - Cited for failing to keep floors, ceilings, and walls in good repair and clean.
 - Cited for allowing a child under two years old to have screen time as an activity.
 - Cited for using a vehicle to transport children that does not have a current inspection or registration.

- October 2023:
 - Cited **twice** when caregivers were found using their personal cell phone while caring for children.
 - Cited when a caregiver was observed using a prohibited punishment on children.
 - Cited for caregivers not promptly changing children's diapers and causing diaper rash on the children.
 - Cited for failing to properly supervise children in their care.

- November 2023:
 - Cited for failing to maintain the minimum child-to-caregiver ratio.
 - Cited for three caregivers failing to have the required First Aid training.
 - Cited for three caregivers failing to have the required CPR training.
 - Cited for failing to keep hazardous objects away from children that may cause choking in infants and toddlers.
 - Cited for failing to have the required proof meeting the educational requirements.
 - Cited for failing to have updated immunization records for children in care.
 - Cited for failing to post children's food allergies information in the kitchen where food is prepared.

- December 2023:
 - Cited for failing to keep the garbage cans inaccessible to children.
 - Cited for failing to test the carbon monoxide system monthly.
 - Cited for failing to console or comfort a toddler child who was upset.
 - Cited for failing to test the smoke detectors monthly as required to do so.
 - Cited for caregiver failing to wash her hands after changing a diaper.
 - Cited for caregiver failing to wash a child's hands after diaper change.

- Cited for failing to cover an electrical outlet in a classroom.
- January 2024:
 - Cited for failing to have the required emergency allergy plan for a child diagnosed with a food allergy.
 - Cited for failing to have updated immunization records for children in care.
 - Cited for failing to have the statements of 2 caregivers showing that they attended abuse/neglect training.
 - Cited for failing to serve the required amount of snack components to the children for snack time.
 - Cited for failing to properly dispose of medication that is expired.
 - Cited for a caregiver failing to know the number of children they were responsible for.
 - Cited for failing to properly store a child's allergy medication.
 - Cited for caregiver failing to wash a child's hands after diaper change.
- May 2024:
 - Cited for failing to conduct the required annual health inspection.
 - Cited for failing to ensure three employees complete the required annual training hours.
 - Cited for failing to label the nap mats with the children's names.
- July 2024:
 - **Cited for failing to ensure employees demonstrate competency, good judgment, and self-control when employees were seen on camera yanking children by one arm, pulling them onto mats to intentionally cause them to fall, slamming them onto their mats, and roughly covering them with nap linens.**
 - **Cited for the director failing to report to licensing a situation that placed a child at risk.**
 - **Cited for failing to ensure employees use appropriate forms of discipline when employees were seen using prohibited forms of punishment including grabbing, pulling, slamming onto nap mats, and intentionally causing a child to fall.**
- August 2024:
 - Cited for failing to provide adequate supervision to children when a child was forgotten and left on the playground.
 - Cited for failing to provide parents an incident report documenting a known failure to provide adequate supervision incident
 - Cited for the director failing to ensure that the daycare operate in compliance with the minimum standards in handling the discovery of the inadequate supervision incident.

17. What happened to N.M. was preventable. As a direct and proximate result of the actions and omissions of Children’s Courtyard, Plaintiffs Janese Milivojevic and N.M. sustained injuries and damages.

DISCOVERY CONTROL PLAN & CLAIM FOR RELIEF

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

19. 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.

PARTIES

20. Plaintiff Janese Milivojevic is the biological mother of Plaintiff N.M., a minor, and are citizens and residents of Travis County, Texas.

21. Defendant W.O.S., Inc. d/b/a The Children’s Courtyard (herein referred to as “Defendant” or “Children’s Courtyard”) is a corporation doing business in the State of Texas, its state of formation. Defendant may be served with process by serving its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, located at 211 E. 7th Street, Suite 620, Austin, Texas 78701 or wherever they may be found.

JURISDICTION & VENUE

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

23. Venue is proper in Travis 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.

CAUSES OF ACTION

Count One – Negligence

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

25. 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 Defendant. Defendant was 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 properly supervise the children in their care;
- d. Failing to intervene to ensure a child's safety;
- e. Failing to maintain a safe environment for children;
- f. Choosing to inappropriately discipline minor Plaintiff N.M.;
- g. Failing to ensure that expectations for a child's behavior is appropriate or the developmental level of that child;
- h. Failing to use only constructive, age-appropriate methods of discipline;
- i. Failing to use safe methods of putting children for nap;
- j. Failing to properly hire, qualify, train, and supervise its employee-caregivers trusted with the care of minor Plaintiff N.M.;
- k. Failing to appropriately respond in an emergency situation;
- l. Failing to use positive methods of discipline and guidance with the children in its care;

- m. Failing to ensure caregiver employees demonstrate competency, good judgment, and self-control;
 - n. Failing to record and report serious injuries sustained by a child in its care; and
 - o. Failing to adhere to the Texas Minimum Standards for Childcare.
26. Defendant had a duty to exercise ordinary care in caring for, supervising, and disciplining the children in its care so as to prevent injury to Plaintiff N.M. and other children similarly situated.
27. Defendant had a duty to maintain a safe environment for children in its care so as to prevent injury to N.M., and other children similarly situated.
28. Defendant had a duty to hire, train, and supervise caregiver employees to ensure that children were not subjected to inappropriate discipline, so as to prevent injury to N.M., and other children similarly situated.
29. Defendant breached the duty of care by failing to care for the children; failing to supervise the children; failing to appropriately discipline the children; failing to properly train, hire, and supervise its employees; failing to maintain a safe environment for children; failing to immediately terminate an employee who excessively disciplined and harmed a child; failing to call for medical attention after a minor child in their care sustained injuries; failing to create an incident report for an incident involving serious injury to a child; and failing to report to the relevant state agency an incident involving serious injury to a child.
30. Defendant's 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

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

32. Defendant failed to exercise the mandatory standard of care in violation of the Texas Department of Family and Protective Services, Minimum Standards for Child-Care.

33. In the foregoing claims of negligence per se, Plaintiffs were, at all times, members of the class that the statutes the Defendant violated were designed to protect.

34. Defendant's violation of the statutes was the proximate cause of the Incident in question.

35. As a result of the Defendant's acts and/or omissions in violating the statutes, Plaintiffs sustained damages.

Count Three – Gross Negligence

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

37. Defendant's conduct was more than momentary thoughtlessness or inadvertence. Rather, the acts and/or omissions by Defendant in the preceding paragraphs constitute gross negligence as that term is defined in Texas Civil Practices and Remedies Code §41.001(11).

38. Defendant's conduct involved an extreme degree of risk, considering the probability and magnitude of potential harm to the Plaintiffs. Defendant 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.

39. 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

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

41. Defendant is the owner, operator, and/or possessor of the daycare premises located at 5914 W. William Cannon Drive, Austin, Texas 78749, operation license number 819473.

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

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

44. Defendant owed Plaintiffs a legal duty to ensure N.M.’s safety in maintaining proper care over the children; ensuring discipline over the children is appropriate; 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. Defendant breached these duties by permitting one of its employee-caregivers to inappropriately discipline children, by allowing that caregiver to remain on staff after the Incident, and by failing to create a corresponding incident report and inform the appropriate state entity of the injuries N.M. sustained.

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

RESPONDEAT SUPERIOR

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

47. The negligence, carelessness, and callousness of Defendant’s employees proximately caused the damage and losses suffered by Plaintiffs as a result of the injury. At all times material to this action, Defendant employees were acting in the course and scope of their employment. Accordingly, Defendant may be held responsible for its employees’ negligence under the doctrine of respondeat superior.

DAMAGES

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

49. As a direct and proximate cause of Defendant's negligent acts and/or omissions, Plaintiff Janese Milivojevic, individually, and as Parent and Next Friend of Plaintiff N.M., 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.

50. 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.

EXEMPLARY DAMAGES

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

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

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

JURY TRIAL

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

U.S. LIFE TABLES

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

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendant be cited to appear and answer herein and upon final hearing hereof, they take, have and recover, of and

from said Defendant, 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: September 23, 2024.

Respectfully submitted,

THE BUTTON LAW FIRM

By: /s/Russell T. Button

Russell T. Button

Texas Bar No. 24077428

russell@buttonlawfirm.com

Ashley D. Knarr

Texas Bar No. 24102030

Ashley@buttonawfirm.com

4315 W. Lovers Lane, Suite A

Dallas, Texas 75209

T: 214-888-2216

F: 214-481-8667

Email for Service:

service@buttonlawfirm.com

ATTORNEYS FOR PLAINTIFFS

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Russell Button on behalf of Russell Button
Bar No. 24077428
service@buttonlawfirm.com
Envelope ID: 92352028
Filing Code Description: Petition
Filing Description: ORIGINAL PETITION AND JURY DEMAND
Status as of 9/26/2024 9:53 AM CST

Associated Case Party: JANESE MILIVOJEVIC

Name	BarNumber	Email	TimestampSubmitted	Status
Russell Button		service@buttonlawfirm.com	9/23/2024 4:41:50 PM	SENT