



## STATEMENT OF FACTS

3. According to Discover Me Montessori, "Our highly-qualified teachers are licensed as well as certified in Montessori methodology."<sup>2</sup> Discovery Me Montessori solicits and sells working parents on the idea that this daycare has highly qualified teachers who would keep all children in their care safe. However, a trail of records from the state of Texas paints a very different picture.

4. Discovery Me Montessori 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 a child is not served a food identified on the child's food allergy emergency plan, maintaining compliance with Texas' minimum standards for childcare, the use of good judgment, competency, and control, proper response and documentation of incidents of injury, and appropriate action in the event of a medical emergency.

5. On or about Monday, July 25, 2022, the Johnsons placed their daughter C.N-J. in the care of Discover Me Montessori for daycare. While under the care of Discover Me Montessori, C.N-J. was negligently supervised, endangering her health and life. Discover Me Montessori negligently operated its facility when they fed C.N-J. a snack containing peanuts, a food that C.N-J. is severely allergic to (hereinafter, "the Incident"). The Johnsons gave notice to Discover Me Montessori about C.N-J.'s allergies upon C.N-J.'s enrollment at Discover Me Montessori, a year prior to the incident, and the admission forms documented the list of her food allergies.

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<sup>2</sup> *Discover Me Montessori's website, <https://jonesmontessoriacademy.com/> (last visited April 26, 2023).*

6. Immediately after C.N-J. ate her snack containing peanuts, she had a reaction, and it caused her body to go into anaphylaxis. C.N-J. became visibly distressed, was crying, sneezing, developed itchy hives and her eyes swelled shut. Discover Me Montessori, chose not to contact emergency medical services right away and instead contacted the Johnsons to notify them that C.N-J. was having an allergic reaction. The Johnsons reminded Discover Me Montessori about C.N-J.'s peanut allergy and it was then that they learned that Discover Me Montessori failed to communicate C.N-J.'s allergy information to the caregivers in charge of C.N-J.'s care and failed to follow the food allergy emergency plan as required by the minimum standards for child care in Texas. An EpiPen was located in C.N-J.'s backpack but was inaccurately administered. Emergency medical services were called and C.N-J. was transported to the hospital for treatment.

7. Discover Me Montessori failed to train and supervise employee-caregivers on responding to medical emergencies and proper administration of medication which could have cost C.N-J. her life. Given that C.N-J. required immediate medical treatment by a healthcare professional or hospitalization, Discover Me Montessori was required to call for emergency medical services immediately in order to comply with this State's minimum standards for childcare but instead chose to prolong the call to emergency medical services while they attempted and failed to administer the EpiPen medication, all while C.N-J. was clearly in distress.

8. Discover Me Montessori 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. 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 C.N-J. and concluded that the allegations involving C.N-J. against Discovery Me Montessori were substantiated, citing Discovery Me Montessori for violating the following childcare licensing rules of Texas:

- **746.1003(1) – Director Responsibilities – Operate in Compliance.** *Upon C.N-J.'s re-enrollment, the admission forms were not reviewed, and allergy information was not communicated to the caregiver. As a result, C.N-J. was given food that resulted in an allergic reaction.*
- **746.3805(a)(2) – Administering Medication – As Amended in Writing by Child's Health Care Professional.** *Based on information obtained through the investigation it was determined that emergency medication was not administered by staff accurately.*
- **746.401(10) – Required Postings – Child's Food Allergies.** *Based on information obtained the operation did not include all the allergies on their required posting of one child that were listed on their enrollment paperwork.*
- **746.3807(1) – Storage of Medication – Inaccessible to Children.** *Based on information obtained through the investigation it was found that medication was stored in a child's backpack on the floor in the classroom.*
- **746.3301(i) – Nutrition and Food Service – Must not serve identified foods to allergic child.** *Based on the investigation it was found that a child with a documented food allergy was served food including the allergen.*

9. Discover Me Montessori 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 C.N-J. Discover Me Montessori 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.

10. The following is an overview of some of the citations issued by the Texas Health and Human Services Commission from April 2021 to August 2022:

- April 2021:
  - o Cited for failure to complete proper background checks when a caregiver was allowed direct contact with children prior to confirming eligibility.
- June 2021:
  - o Cited for failure to comply with child/caregiver ratio.
  - o Cited for failure to notify parents about an injury to a child.
  - o Cited for failure to ensure employees in charge have access to records.
- November 2021:
  - o Cited for improper supervision of a child.
  - o Cited for failure to document an incident report.
  - o Cited for improper background check determination eligibility.
  - o Cited for failure to have verification of annual health inspection.
- August 2022:
  - o Cited for failure to ensure a child's medication was in its original container and properly labeled.

11. What happened to C.N-J. was preventable. As a direct and proximate result of the actions and/or omissions of Discovery Me Montessori, Plaintiffs Rachard Nailon-Johnson, Mollie Nailon-Johnson Estrada, and C.N-J. sustained injuries and damages.

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

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

13. 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**

14. Plaintiffs Rachard Nailon-Johnson and Mollie Nailon-Johnson are the biological parents of Plaintiff C.N-J., a minor, and are citizens and residents of Tarrant County, Texas.

15. Defendant Jones Montessori Academy, LLC d/b/a Discover Me Montessori (hereinafter referred to as "Defendant") is a limited liability company doing business in the State of Texas, its state of formation. Defendant may be served with process by serving its registered agent, Chad Jones, located at 8436 Ladina Place, Fort Worth, Texas 76131, or wherever they may be found.

### **JURISDICTION & VENUE**

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

17. Venue is proper in Tarrant 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**

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

19. 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. Failing to properly hire, qualify, train, and supervise its employee-caregivers trusted with the care of minor Plaintiff C.N-J.;
- g. Failing to administer medication properly;
- h. Failing to communicate allergy information to all caregivers in charge of children's care;
- i. Failing to make allergen information visible through postings;
- j. Failing to ensure a child is not given a food for which the child has a documented allergen;
- k. Choosing to continue to employ an unqualified, untrained, and unsupervised caregiver;
- l. Failing to appropriately respond in an emergency situation;
- 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.

20. Defendant had a duty to exercise ordinary care in caring for and supervising the children in its care so as to prevent injury to Plaintiff C.N-J. and other children similarly situated.

21. Defendant had a duty to maintain a safe environment for children in its care so as to prevent injury to C.N-J., and other children similarly situated.

22. Defendant had a duty to hire, training, and supervise caregiver employees to ensure that children in their care were safe, so as to prevent injury to C.N-J., and other children similarly situated.

23. Defendant breached the duty of care by failing to care for the children, failing to supervise the children, failing to communicate allergy information to all caregivers in charge of children's care, failing to make allergen information visible through postings throughout the classroom, failing to ensure a child is not given a food for which they have a documented allergen, failing to properly administer a child's medication, failing to properly train, hire, and supervise its employees, failing to maintain a safe environment for children, failing to immediately call for medical attention after a minor child in their care sustained serious injuries.

24. 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**

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

26. 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.



27. 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.

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

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

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

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

31. 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).

32. 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.

33. 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**

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

35. Defendant is the owner, operator, and/or possessor of the daycare premises located at 6029 Plum Street, Watauga, TX 76148, operation license number 1675591.

36. At the time of the Incident, C.N-J. 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.

37. 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.

38. Defendant owed Plaintiffs a legal duty to ensure C.N-J.'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. Defendant breached these duties by failing to maintain a safe environment for C.N-J., failing to train and supervise its caregiver employees on how to supervise children, and by failing to respond to a medical emergency.

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

#### **RESPONDEAT SUPERIOR**

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

41. 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**

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

43. As a direct and proximate cause of Defendant's negligent acts and/or omissions, Plaintiff Rachard Nailon-Johnson and Mollie Nailon-Johnson, individually, and as Parents and Next

Friends of Plaintiff C.N-J., 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.

44. 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**

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

46. 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.

47. 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**

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

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

49. 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: May 1, 2023.

Respectfully submitted,

**THE BUTTON LAW FIRM**

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Filing Code Description: Petition  
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Associated Case Party: RACHARD NAILON-JOHNSON AND MOLLIE NAILON-JOHNSON, INDIVIDUALLY AND AS NEXT FRIENDS OF C.N-J., A MINOR CHILD

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Russell Button		service@buttonlawfirm.com	5/1/2023 2:03:48 PM	SENT