



family's behalf asking for answers and asking that Greenwood Baptist Children's Learning Center accept responsibility.

### **I. STATEMENT OF FACTS**

3. "Teaching [their] children with a Christian Heart" is the motto that Greenwood Baptist Children's Learning Center models their daycare after.<sup>2</sup> The Greenwood Baptist Children's Learning Center, publicizes and sells parents on the idea that their daycare is dedicated to creating a nurturing and safe learning environment for children with a foundation of Christian love and faith at the forefront. The Greenwood Baptist Church, home to the Greenwood Baptist Children's Learning Center, "exists to make disciples who Share Christ & Serve families."<sup>3</sup> The Greenwood Baptist Church touts itself as being a place who values "serv[ing] families," "strive[s] for excellence," and is a "Christ-centered" place of faith where people can build relationships and feel safe.<sup>4</sup> However, a trail of records from the state of Texas paints a very different picture.

4. The Greenwood Baptist Children's Learning Center 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; compliance with Texas's minimum standards for childcare; the use of good judgment, competency, and control; and the proper response and documentation of incidents of injury and situations placing children at risk of harm.

---

<sup>2</sup> Greenwood Baptist Children's Learning Center's Facebook Website, <https://www.facebook.com/GBClearningcenter/> (last visited March 28, 2023).

<sup>3</sup> Greenwood Baptist Church's Website, <http://gwoodbc.com/welcome/who-we-are> (last visited March 28, 2023).

<sup>4</sup> *Id.* at <http://gwoodbc.com/welcome/what-we-value> (last visited March 28, 2023).

5. On or about Tuesday, November 1, 2022, and Wednesday, November 2, 2022, Josefina Aguillon placed her three-year-old son, E.A., in the care of Greenwood Baptist Children's Learning Center for daycare. While under the care of Greenwood Baptist Children's Learning Center, E.A. was inappropriately disciplined when he was placed in a kitchen pantry with the lights off as a form of punishment, forced to sit beside a trash can unattended for an excessive period of time, and intentionally sprayed with toxic disinfectant, causing E.A. physical, emotional, and psychological harm and damages (hereinafter, "the Incidents"). Following the incidents, Greenwood Baptist Children's Learning Center chose not to immediately contact E.A.'s mother or the state of Texas to report the incidents. Josefina Aguillon and the state of Texas were not made aware of the incidents involving E.A. until November 4, 2022, several days after the incidents had occurred.

6. During an independent investigation into the incidents involving E.A. by Health and Human Services Commission, it was discovered that other children had suffered the same or similar inappropriate forms of discipline as E.A. while under the care of Greenwood Baptist Children's Learning Center, which routinely included placing children in the kitchen pantry as being the "go-to place" to put children when they were misbehaving. The investigator also found that numerous daycare staff and management either participated, were aware or observed the improper forms of discipline towards E.A. and others. Greenwood Baptist Children's Learning Center condoned the inappropriate discipline and allowed for it to be a part of their practice in raising children with a *Christian heart*. Despite the board, director, and staff being very much aware of the mistreatment children were receiving, Greenwood Baptist Children's Learning Center knowingly and intentionally ignored numerous prior reports of the exact conduct that led

to E.A.'s mistreatment—a decision that put an unimaginable number of children at direct risk of serious harm and injury while under its care and supervision. Finally, a caregiver—who witnessed all of these incidents firsthand—decided to speak out after seeing her own child fall victim to the negligence of the daycare when they wrongfully restrained her child to a chair with a seat belt as a form of punishment. The caregiver provided a written statement to the board, detailing numerous incidents of children, including E.A., being inappropriately disciplined by the director and caregivers, ultimately causing the board to act. Despite receiving past reports from parents and caregivers with concerns surrounding other incidents, it was not until they saw a comprehensive list of incidents over a short period of time, that the board had the realization that the incidents “are just adding up.” The state of Texas concluded that the allegations against Greenwood Baptist Children’s Learning Center involving E.A. were substantiated, and cited Greenwood Baptist Children’s Learning Center for violating the following childcare licensing rules of Texas:

- **746.2803(4)(D) – Positive Methods of Discipline and Guidance – Brief Supervised Separation:** Video footage showed that inappropriate discipline was used when a child *was placed in the pantry* for 3.26 minutes. Video footage from the same day also showed the same child being made to sit unsupervised *beside a big trash can in the kitchen for around 34 minutes*.
- **746.1201(1) – Responsibilities of Employees and Caregivers – Demonstrate Competency, Good Judgment, Self-control:** Video footage showed that a caregiver did not demonstrate good judgment when she *walked around children seated on the floor watching a movie spraying Lysol in the air* over their heads. *She also stopped by another caregiver who had a child in her arms and sprayed Lysol upwards* over the child’s head.
- **746.3407(12) – Mark Cleaning Supplies, Toxic Materials; Keep Separate from Good and Inaccessible to Children:** Video footage showed that a caregiver *left a can of Lysol on a table accessible to children*.

7. The state of Texas investigator immediately put corrective measures in place to ensure Greenwood Baptist Children's Learning Center takes the necessary steps to correct and comply with the numerous licensing violations cited.

8. The Greenwood Baptist Children's Learning Center 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 incidents and the injuries sustained by E.A. Greenwood Baptist Children's Learning Center 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.

9. The following is an overview of some of the citations issued by Texas Health and Human Services Commission from November 2017 through December 2022:

- **January 2019:**
  - o Cited for caregivers failing to complete/document training for SIDS, shaken baby, and early childhood brain development.
- **December 2019:**
  - o Cited for caregivers failing to complete/document annual training.
  - o Cited for caregivers failing to be free of other activities while supervising children, staff seen using their cell phones instead of supervising children.
  - o Cited for failing to mark cleaning supplies/toxic materials and keep from food and inaccessible to children.
- **March 2020:**
  - o Cited for failing to report a child injury requiring medical treatment.
- **November 2021:**
  - o Cited for failing to post a parent notification poster for "keeping children safe."
- **February 2022:**

- Cited for using prohibited punishments, hitting with hand or instrument, staff struck a child in the mouth for spitting.
  - **April 2022:**
    - Cited for caregivers failing to demonstrate competency, good judgment, and self control.
10. What happened to E.A. was preventable. As a direct and proximate result of the actions and omissions of Greenwood Baptist Children’s Learning Center, Plaintiffs Josefina Aguillon and E.A. sustained injuries and damages.

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

11. Discovery in this matter is intended to be conducted under Level 3 of the Texas Rules of Civil Procedure.
12. As required by the Texas Rule of Civil Procedure 47(c), Plaintiff’s 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**

13. Plaintiff Josefina Aguillon is the biological mother of Plaintiff E.A., a minor, and are citizens and residents of Midland County, Texas.
14. Defendant Greenwood Baptist Church of Midland, Texas d/b/a Greenwood Baptist Children’s Learning Center (hereinafter referred to as “Defendant”) is a Texas Corporation doing business in this State. The Defendant operates a daycare under operation license number 1539623, located at 10909 FM 307, Midland, TX 79706.

## **IV. JURISDICTION & VENUE**

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

16. Venue is proper in Midland 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**

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

18. 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 had a duty to maintain a safe environment for children in its care so as to prevent harm and injury to E.A. and other children similarly situated. 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 to 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 employ caregivers who demonstrate competency, good judgment, and self-control;
- g. Choosing to inappropriately discipline minor Plaintiff E.A.;

- h. Failing to ensure no child is abused, neglected, or exploited;
- i. Failing to properly hire, qualify, train, and supervise its employee-caregivers and staff on appropriate discipline, handling, and care for children;
- j. Failing to use only brief, supervised separation from the group based on a guideline of one minute of separation for each year of the child's age;
- k. Failing to use discipline appropriate to the child's level of understanding;
- l. Failing to ensure that expectations for a child's behavior is appropriate or the developmental level of that child;
- m. Failing to use only constructive, age-appropriate methods of discipline;
- n. Failing to use discipline directed toward teaching the child acceptable behavior and self-control;
- o. Choosing to require a child to remain silent or inactive for inappropriately long periods of time;
- p. Choosing to humiliate or ridicule children;
- q. Failing to immediately notify parents on any situation that placed their child at risk;
- r. Failing to report all incidents involving serious harm or injuries to children to the Department of Family Protective Services;
- s. Failing to complete incident reports on all incidents involving serious harm to children and incidents that place children at risk;
- t. Failure to provide parents with a copy of a completed incident report on all incidents involving injuries to their child; and



u. Choosing to employ staff who do not know or adhere to the Texas Department of Family Protective Services, Texas Minimum Standards for Child-care Centers.

19. Defendant had a duty to exercise ordinary care in caring for, supervising, and disciplining the children in its care to prevent injury to E.A. and other children similarly situated.

20. Defendant had a duty to maintain a safe environment for children in its care to prevent injury to E.A., and other children similarly situated.

21. Defendant had a duty to hire, train, and supervise caregiver-employees and staff to ensure that children were not subjected to inappropriate discipline and prohibited forms of punishment, so as to prevent injury to E.A., and other children similarly situated.

22. 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 maintain a safe environment for children; and failing to hire, train, and supervise qualified caregivers and staff to care for children; failing to create an incident report for an incident involving serious harm or risk to children; and failing to immediately notify parents of any situation placing their child at risk or causing harm.

23. 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**

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

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

26. In the forgoing claims of negligence per se, Plaintiffs were, at all times, members of the class that the statutes were designed to protect.

27. Defendant's violation of the statutes was the proximate cause of the incident in question.

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

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

29. 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 the term is defined in Texas Civil Practices and Remedies Code §41.001(11).

30. 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.

31. 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**

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

33. Defendant is the owner, operator, and/or possessor of the daycare premises located at 10909 FM 307, Midland, Texas 79706, operation license number 1539623.

34. At the time of the incident, E.A. was a minor placed in the care of Defendant and was thus an "invitee" to whom Defendant owed a duty to exercise ordinary care.

35. Plaintiff's 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.

36. Defendant owed Plaintiff's a legal duty to ensure E.A.'s safety in maintaining proper care over the children, ensuring discipline over the children is appropriate, ensuring the 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 failing to hire, train and supervise its employee-caregivers and management, by permitting several of its employee-caregivers and management to inappropriately discipline children, by ignoring past reports of concerns by parents, by failing to immediately notify parents of incidents, and by failing to create corresponding incident reports and immediately inform the state entity of injuries E.A. sustained.

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

#### **VI. RESONDEAT SUPERIOR**

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

39. 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 their 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*.

#### **VII. DAMAGES**

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

41. As a direct and proximate cause of Defendant's negligent acts and/or omissions, Plaintiff Josefina Aguillon, individually, and as a Parent and Next Friend of Plaintiff E.A., 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, sustain in the future;
- c. Mental anguish in the past;
- d. Mental anguish, in reasonable probability, sustained in the future;
- e. Fear and anxiety in the past;
- f. Fear and anxiety, in reasonable probability, sustained in the future;
- g. Inconvenience in the past;
- h. Inconvenience, in reasonable probability, sustained in the future;
- i. Reasonable and necessary medical expenses in the past;
- j. Reasonable and necessary medical expenses, in reasonable probability, sustained in the future;
- k. Loss of wages in the past;
- l. Loss of wages, in reasonable probability, sustained in the future;
- m. Loss of wage-earning capacity in the past;
- n. Loss of wage-earning capacity, in reasonable probability, sustained in the future;
- o. Physical impairment in the past;
- p. Physical impairment, in reasonable probability, sustained in the future;
- q. Loss of normal enjoyment of the pleasure of life in the past;

- r. Loss of the normal enjoyment of the pleasure of life, in reasonable probability, sustained in the future;
  - s. Costs of suit; and
  - t. All other relief, in law and equity, to which Plaintiffs may be entitled.
42. Plaintiff's 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**

43. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.
44. 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.
45. 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.

### **VIII. JURY TRIAL**

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

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

47. 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 25, 2023.

Respectfully submitted,

#### **THE BUTTON LAW FIRM**

*/s/ Russell T. Button*

Russell T. Button

Texas Bar No. 24077428

russell@buttonlawfirm.com

Ashley D. Washington

Texas Bar No. 24102030

ashley@buttonlawfirm.com

Donal McRoberts

Texas Bar No. 24073308

donal@buttonlawfirm.com

4315 W. Lovers Lane, Suite A

Dallas, Texas 75209

T: 214-88-2216

F: 214-481-8667

Email for Service:

service@buttonlawfirm.com

**ATTORNEYS FOR PLAINTIFFS**

### **Automated Certificate of eService**

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Russell Button on behalf of Russell Button

Bar No. 24077428

service@buttonlawfirm.com

Envelope ID: 76002730

Filing Code Description: Petition

Filing Description: ORIGINAL PETITION AND JURY DEMAND

Status as of 5/25/2023 1:27 PM CST

Associated Case Party: JOSEFINA AGUILLON, INDIVIDUALLY AND AS PARENT AND NEXT FRIEND OF E.A., A MINOR CHILD

<b>Name</b>	<b>BarNumber</b>	<b>Email</b>	<b>TimestampSubmitted</b>	<b>Status</b>
Russell Button		service@buttonlawfirm.com	5/25/2023 12:10:20 PM	SENT