

CAUSE NO. 471-03633-2023

PAUL AND CAROL BUTERA, INDIVIDUALLY AND	§	IN THE DISTRICT COURT OF
AS PARENTS AND NEXT FRIENDS OF B.B., A	§	
MINOR CHILD,	§	
	§	
PLAINTIFFS,	§	
	§	COLLIN COUNTY, TEXAS
VS.	§	
	§	
LIFE TIME DIGITAL, LLC D/B/A LIFE TIME FITNESS,	§	
	§	
DEFENDANT.	§	_____ JUDICIAL DISTRICT

ORIGINAL PETITION AND JURY DEMAND

1. Paul and Carol Butera, like many others across this country and the state of Texas, live an active life and maintain their fitness through use of a fitness gym in their community. Paul and Carol Butera, like many parents across this country and the state of Texas that utilize a fitness facility, relied on the childcare service provided at their fitness facility to provide a safe, caring, and nurturing environment for their son, B.B., while they were exercising. Paul and Carol Butera trusted that their son would be safe while in the care of Life Time Fitness' childcare center.¹

2. A safe caring environment and peace of mind are what parents like Paul and Carol pay for and expect. Instead, Paul and Carol Butera's worst nightmares became a reality when their son B.B. suffered serious physical, emotional, and mental injuries because of the failures of Life

¹ This petition refers to Defendant Life Time Digital, LLC d/b/a Life Time Fitness in Frisco, Texas.

Time Fitness' childcare service. Paul and Carol Butera bring this lawsuit on their family's behalf asking for answers and asking that Life Time Fitness accept responsibility.

I. STATEMENT OF FACTS

3. With Life Time Fitness' premium prices, members, like the Butera Family, are led to believe they are receiving the highest level of quality and care. "[A] safe, social, and enriching environment" where kids "stay active and have fun" is what Life Time Fitness promises its families when they pay for their children to attend and be cared for in their Life Time Fitness childcare center.² Life Time Fitness offers its members up to two and half hours of daily child care at an added cost while parents use the club.³ Life Time Fitness invites families to "enjoy active fun together" while they "encourage kids to explore, create and learn with a variety of enrichment activities."⁴ Life Time Fitness advertises to use "educational, fitness and music-based activities" to allow toddlers to "play, create, [and] build" while "let[ting] their imaginations run wild."⁵ However, no parent could have ever fathomed that Life Time Fitness would allow one child's wild imagination to threaten and harm another child's safety and well-being.

4. Life Time Fitness is responsible for qualifying, hiring, training, and supervising its employee caregivers on providing safe and proper care conducive to the welfare and safety of the children in their care. Parents reasonably expect that when they leave their child in the care of a childcare program they pay for, that the childcare program will provide the supervision

² *Life Time Fitness' Website*, <https://www.lifetime.life/kids-family-fun/child-care.html> (last visited June 28, 2023).

³ *Id.*, <https://www.lifetime.life/life-time-locations/tx-frisco/kids-family.html> (last visited June 28, 2023).

⁴ *Id.*, <https://www.lifetime.life/kids-family-fun/child-care.html> (last visited June 28, 2023).

⁵ *Id.*

necessary to ensure their child's safety and well-being and that caregivers will position themselves to maintain auditory and visual awareness of each child's activity to allow them to intervene when necessary to ensure the safety of each child.

5. On Sunday, June 26, 2022, Paul and Carol Butera placed their two and four-year-old sons, in the care of Life Time Fitness' childcare center during their visit to the club in Frisco, TX. While under the care of Life Time Fitness' childcare program, their two-year-old son, B.B, was physically, emotionally, and psychologically injured when caregivers responsible for his well-being and safety allowed another child to strip B.B. down of his clothing and assault him by repeatedly hitting and punching him in the genitals as he cried out for help. Not a single staff member responded to B.B.'s cries for help.

6. Instead, B.B.'s four-year-old brother returned to the room from participating in another activity to hear his little brother crying out in distress. It was B.B.'s brother who responded to his cries for help, and it was B.B.'s brother who stopped the terrible assault from continuing any further. The location in where B.B. was found by his brother was in an area of the play structure where direct sightline was obstructed by a divider. B.B.'s brother found him there, unsupervised and left to defend himself against a bigger and older child, lying there naked and crying out for help. It was B.B.'s four-year-old brother who sought out the help of the unresponsive caregivers, getting them to finally take notice and provide aide to his little brother, putting an end to the torture he endured by another child. Paul and Carol were then notified by the caregivers to come to the childcare area. As they approached, they could hear the screams and cries of B.B. from outside in the hall.

7. After seeing their son, B.B., in distress and his genitals red and inflamed without any clear explanation of what truly occurred, Paul and Carol notified the Frisco Police Department to respond. Life Time Fitness refused to allow Paul and Carol access to view the surveillance video footage of the incident. Instead, Paul and Carol did not learn the details of what occurred until the Frisco Police Department viewed the footage and informed them of what they observed.

8. Life Time Fitness is responsible for hiring and training qualified caregivers who are attentive to the needs of children in their care. Life Time Fitness' failure to hire and train qualified caregivers created an environment that allowed for a child to be seriously injured while in their care. Life Time Fitness failed to maintain its promise to families to provide a "safe, social, and enriching environment" for the children in their care.⁶

9. What happened to B.B. was preventable. As a direct and proximate result of the actions and omissions of Life Time Fitness, Plaintiffs Paul Butera, Carol Butera, and B.B. sustained injuries and damages.

II. DISCOVERY CONTROL PLAN & CLAIM FOR RELIEF

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

11. 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

⁶ *Id.*

12. Plaintiffs Paul and Carol Butera are the biological parents of Plaintiff B.B., a minor, and are citizens and residents of Collin County, Texas.

13. Defendant Life Time Digital, LLC, d/b/a Life Time Fitness (hereinafter referred to as "Defendant") is a Minnesota Corporation doing business in this State. Defendant may be served with process by serving its registered agent, Cogency Global, Inc., 1601 Elm Street, Suite 4360, Dallas, Texas 752001.

IV. JURISDICTION & VENUE

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

15. Venue is proper in Collin 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

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

17. 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 B.B. 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 childcare provider 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 ensure no child is abused or neglected;
 - g. Failing to respond and provide aide to a child in distress;
 - h. Failing to properly hire, qualify, train, and supervise its employee-caregivers and staff on providing appropriate level of supervision to ensure safety of children; and
 - i. Failing to maintain auditory and visual awareness of the children in their care.
18. Defendant had a duty to exercise ordinary care in caring for and supervising the children in its care to prevent injury to B.B. and other children similarly situated.
19. Defendant had a duty to maintain a safe environment for children in its care to prevent injury to B.B., and other children similarly situated.
20. Defendant had a duty to hire, train, and supervise caregiver-employees and staff to ensure that children were not subjected to abuse or neglect, so as to prevent injury to B.B., and other children similarly situated.
21. Defendant breached the duty of care by failing to care for the children; failing to supervise 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.
22. 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 – Gross Negligence

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

24. 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).

25. 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.

26. 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 Three – Negligent Activity

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

28. Defendant is the owner, operator, and/or possessor of the Life Time Fitness premises located at 4900 Throne Hall Drive, Frisco, TX 75033.

29. At the time of the incident, Paul Butera, Carol Butera, and B.B. were paying members of Defendant's facility, and B.B. was a minor placed in the care of Defendant and was thus an "invitee" to whom Defendant owed a duty to exercise ordinary care.

30. 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.

31. Defendant owed Plaintiffs a legal duty to ensure B.B.'s safety in maintaining proper care over the children, 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 failing to supervise children in their care, and by failing to provide aide to a child who is being injured or at risk of being injured.

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

VI. RESONDEAT SUPERIOR

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

34. 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

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

36. As a direct and proximate cause of Defendant's negligent acts and/or omissions, Plaintiffs Paul and Carol Butera, individually, and as Parents and Next Friends of Plaintiff B.B., 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.
37. 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

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

39. 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.

40. 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

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

IX. U.S. LIFE TABLES

42. 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: July 11, 2023.

Respectfully submitted,

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