

CC-23-05293-B
CAUSE NO. _____

ADRIENNE BREWER, INDIVIDUALLY AND AS §
NEXT FRIEND OF M.B.Z, A MINOR CHILD; §
BRITNEY TORRES, INDIVIDUALLY AND AS NEXT §
FRIEND OF E.T., A MINOR CHILD; COURTNEY §
CROSS, INDIVIDUALLY AND AS NEXT FRIEND OF §
M.S., A MINOR CHILD; EKATERINA JONES, §
INDIVIDUALLY AND AS NEXT FRIEND OF R.J. AND §
Z.J., MINOR CHILDREN; AND JANET GONZALEZ, §
INDIVIDUALLY AND AS NEXT FRIEND OF J.M.L.G., §
A MINOR CHILD, §

IN THE COUNTY COURT

PLAINTIFFS, §

VS. §

CHILDREN’S LEARNING ADVENTURE OF TEXAS §
LLC D/B/A CHILDREN’S LEARNING ADVENTURE §
CHILD CARE CENTER; AND TONYA RUSH, §

DEFENDANTS. §

AT LAW NO. _____

DALLAS COUNTY, TEXAS

PLAINTIFFS’ ORIGINAL PETITION AND JURY DEMAND

1. Plaintiffs Adrienne Brewer, Britney Torres, Courtney Cross, Ekaterina Jones, and Janet Gonzalez, like many parents across this country and the state of Texas, are working parents that relied on a daycare to provide a safe, caring, and nurturing environment for their children while

they were working. These parents trusted that their children would be safe at Children's Learning Adventure.¹

2. These parents trusted that they selected the right daycare that would provide a safe learning environment for their children when they enrolled them at Children's Learning Adventure. A safe learning environment and peace of mind are what parents like Adrienne Brewer, Britney Torres, Courtney Cross, Ekaterina Jones, and Janet Gonzalez pay for and expect. Instead, their worst nightmare became a reality when their children suffered serious physical, emotional, and mental injuries because of the failures of Children's Learning Adventure. Plaintiffs bring this lawsuit on behalf of their families, asking that Children's Learning Adventure accept responsibility.

STATEMENT OF FACTS

3. Children's Learning Adventure claims it "provides the best in day care and early childhood education for families throughout Dallas, Plano, Willow Bend, Frisco, The Colony and beyond."² It advertises itself as "the industry leader in early learning and child education with years of experience," being the "first early childcare provider to create a role at every center dedicated solely to the training and success of its teachers," and claiming its teachers receive extensive training in of curriculum implementation, health and safety, classroom management, and brain development research.³ However, a trail of records from the state of Texas paints a very different picture.

¹ This Petition refers to Defendant Children's Learning Adventure of Texas, LLC d/b/a Children's Learning Adventure Child Care Center as "Children's Learning Adventure."

² Children's Learning Adventure's Website, <https://www.childrenslearningadventure.com/index.php/locations/TX/dallas-fort-worth/west-plano> (last visited August 11, 2023).

³ *Id.*

4. In late March 2022, Pandora's box was opened when four-year-old J.M.L.G. made an outcry to his mother Janet Gonzalez about his Children's Learning Adventure teacher, Ms. Tonya Rush, using a wooden spoon to "pop" him on his buttocks when he was misbehaving. Ms. Gonzalez turned to Children's Learning Adventure for answers. It was discovered that J.M.L.G. was not the only child subjected to inappropriate, unsafe, and illegal discipline methods. Numerous children, ages three to four years old, including M.B.Z, E.T., M.S., R.J., and Z.J. were subjected to being hit with objects and ridiculed by the Children's Learning Adventure teacher.

5. When Ms. Rush was finally confronted by management of Children's Learning Adventure with the allegations of hitting children with an instrument, she abruptly quit her job. Rather than notifying parents of the allegations and true reason that the teacher was leaving, Children's Learning Adventure sent an email to parents in the classroom simply notifying them that the teacher was leaving the daycare, extending well wishes to her in her next chapter. For the parents that knew the truth of the matter, this email was unnerving because Children's Learning Adventure was leaving the parents of the children in this classroom completely in the dark as to what happened.

6. Children's Learning Adventure 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 Discovery Children's Academy were substantiated, citing Children's Learning Adventure for violating the following childcare licensing rules of Texas:

746.2805(1) – Prohibited Punishment – Threat of Corporal Punishment: *A caregiver was telling children she would call their parents to have parents "pop" them.*

746.2805(4) – Prohibited Punishment – Hit a Child with Object: *A caregiver hit children with a spoon or stick as a form of discipline.*

746.2805(6) – Prohibited Punishment – Yelling: *A caregiver yelled at children as a form of discipline.*

7. The investigation conducted by the state of Texas revealed that multiple children in care had reported being hit by the same Children’s Learning Adventure teacher with a wooden spoon and/or stick as a form of punishment. Through the investigation by the state, it was discovered that after receiving complaints from multiple parents, the Children’s Learning Adventure Director found the wooden spoon that belongs to a “home living center” play area kitchen set in the classroom.

8. When questioned, Ms. Rush admitted to threatening the children, stating that their parents would “pop” them when they got home if they misbehave, purposely using fear and intimidation tactics as a form of discipline. She further reported to the state investigator that she went to management several times asking for help as the kids in her classroom were difficult to control. According to Ms. Rush, she had been asking the Children’s Learning Adventure Director for help and additional assistance in the classroom, complaining there were too many children in her class, and she felt like she had no other option. Reportedly, on at least one occasion, Ms. Rush was the only caregiver responsible for a group of 15, three-year-old children. Rather than add a caregiver or staff member to the classroom, Children’s Learning Adventure chose to leave the teacher in question as the only employee in charge of this group of children and *increase* the number of children placed in her classroom. Ms. Rush reports that when she would voice her concerns regarding her ability to control and supervise the children in her class,

she would be laughed at. In addition, she claims to not have had any formal training for her job at Children’s Learning Adventure. Nor does she possess any type of degree or certification in childcare.

9. Ms. Rush also admitted to having a history of bipolar depression with thoughts of hurting herself, often needing to reach out to religious advisors and help hotlines *during her lunch break* at Children’s Learning Adventure to calm herself down before being present again with children, and even beginning therapy as a result of feeling overwhelmed with her position at the daycare – clearly indicating that this was an unfit caregiver who was improperly and inadequately vetted and supervised by Children’s Learning Adventure during the time of her employment.

10. Children’s Learning Adventure is responsible for qualifying, hiring, training, and supervising its caregiver employees on providing safe and proper care conducive to the welfare of children, appropriate discipline methods, the prohibition of certain punishment methods, compliance with Texas’ minimum standards for childcare, the use of good judgment, competency, and control, and the proper response and documentation of incidents of injury and situations that place children at risk.

11. Children’s Learning Adventure’s Director was aware that this class was busier than others and had “more challenging children,” than other classrooms. The Director was also aware of numerous reports prepared by Ms. Rush regarding incidents involving children being out of control. On more than one occasion, the Director personally heard the teacher in question use a “high pitch voice” in disciplining the children and trying to regain control of them, sometimes hearing this tone of voice from all the way in the daycare’s office. Other Children’s Learning Adventure employees reported that Ms. Rush’s screams could often be heard from the front

reception desk of the daycare. Yet, Ms. Rush was never redirected by Children’s Learning Adventure management regarding her voice level or tone with the children.

12. Children’s Learning Adventure negligently operated its facility, failed to ensure its employees were qualified individuals, failed to train its employees on proper methods of discipline and guidance, and failed to supervise the conduct of its employees. What happened to M.B.Z., E.T., M.S., R.J., Z.J., and J.M.L.G. was preventable. As a direct and proximate result of the actions and omissions of Children’s Learning Adventure, Plaintiffs sustained injuries and damages.

DISCOVERY CONTROL PLAN & CLAIM FOR RELIEF

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

14. 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

15. Plaintiff Adrienne Brewer is the mother of Plaintiff M.B.Z., a minor, and are citizens and residents of Plano, Collin County, Texas.

16. Plaintiff Britney Torres is the mother of Plaintiff E.T., a minor, and are citizens and residents of Plano, Collin County, Texas.

17. Plaintiff Courtney Cross is the mother of Plaintiff of M.S., a minor, and are citizens and residents of Princeton, Collin County, Texas.

18. Plaintiff Ekaterina Jones is the mother of Plaintiffs R.J. and Z.J., minor children, and are citizens and residents of Richardson, Dallas County, Texas.

19. Plaintiff Janet Gonzalez is the mother of Plaintiff J.M.L.G., a minor, and are citizens and residents of Plano, Collin County, Texas.

20. Defendant Children’s Learning Adventure of Texas LLC d/b/a Children’s Learning Adventure (herein referred to as “Defendant Children’s Learning Adventure”) is a limited liability company doing business in the State of Texas. Defendant may be served with process by serving its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

21. Defendant Tonya Rush is an individual and resident of Dallas County, Texas. Defendant Rush may be served with process at her residence, 2445 Jonesboro Avenue, Dallas, Texas 75228, or wherever she 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 Dallas County, Texas, under Texas Civil Practices and Remedies Code Section 15.002(a) because this is the county in which a defendant resides at the time the cause of action accrued.

CAUSES OF ACTION AGAINST DEFENDANTS

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 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 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 that expectations for a child's behavior is appropriate for the developmental level of that child;
- g. Failing to employ caregivers who demonstrate competency, good judgment, and self-control;
- 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 constructive, age-appropriate methods of discipline,
- k. Choosing to use a prohibited discipline technique that is humiliating, threatening, or frightening to children such as shaming, ridiculing, speaking harshly, abuse, physical striking with objects, and profanity;
- l. Failing to immediately notify parents of a situation that placed their child at risk;

- m. Failing to use firm, positive statements or redirections of behavior with children;
 - n. Failing to record and report serious injuries sustained by children in its care; and
 - o. Failing to adhere to the Texas Minimum Standards for Childcare.
26. Defendants had a duty to exercise ordinary care in caring for, supervising, and disciplining the children in its care so as to prevent injury to Plaintiffs and other children similarly situated.
27. Defendants had a duty to maintain a safe environment for children in its care so as to prevent injury to Plaintiffs, and other children similarly situated.
28. Defendants 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, to prevent injury to Plaintiffs and other children similarly situated.
29. Defendants breached the duty of care by failing to care for the children, failing to supervise the children, failing to appropriately discipline children, failing to maintain a safe environment for children, failing to hire, train, and supervise qualified caregivers and staff to care for children, and failing to immediately notify parents of a situation placing their children at risk or causing harm to them.
30. 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

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

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. Defendants' violation of the statutes was the proximate cause of the Incident in question.

35. As a result of the Defendants' 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. 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).

38. 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.

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 Children's Learning Adventure is the owner, operator, and/or possessor of the daycare premises located at 6095 Chapel Hill Blvd., Plano, Texas 75093, operation license number 154192. Defendant Rush was an employee of Defendant Children's Learning Adventure.

42. At the time of the incident, Plaintiffs were minor children placed in the care of Defendant and thus were “invitees” to whom Defendants owed a duty to exercise ordinary care.

43. 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.

44. Defendants owed Plaintiffs a legal duty to ensure their safety in maintaining proper care over the children, ensuring proper supervision, ensuring proper discipline methods, ensuring that employees are necessarily hired, trained, supervised, and terminated in order to maintain a safe environment for children, 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 Plaintiffs, failing to train and supervise its caregiver employees on how to supervise children, and by failing to train and supervise its caregivers on proper forms of discipline.

45. Such negligent activity on the part of the Defendants 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 Children’s Learning Adventure’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 Children’s Learning Adventure employees were acting in the course and scope of their employment. Accordingly, Defendant Children’s Learning Adventure 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 Defendants' negligent acts and/or omissions, Plaintiffs 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. Disfigurement, in reasonable probability, sustained in the past;
 - f. Disfigurement, in reasonable probability, sustained in the future;
 - g. Reasonable and necessary medical expenses in the past;
 - h. Reasonable and necessary medical expenses, in reasonable probability, sustained in the future;
 - i. Loss of wages in the past;
 - j. Loss of wages, in reasonable probability, sustained in the future;
 - k. Loss of wage-earning capacity in the past;
 - l. Loss of wage-earning capacity, in reasonable probability, sustained in the future;
 - m. Physical impairment in the past;
 - n. Physical impairment, in reasonable probability, sustained in the future;
 - o. Loss of the normal enjoyment of the pleasure of life in the past;
 - p. Loss of the normal enjoyment of the pleasure of life, in reasonable probability, sustained in the future;

q. Costs of suit; and

r. 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 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.

53. 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.

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 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: August 15, 2023.

Respectfully submitted,

THE BUTTON LAW FIRM

By: /s/Russell T. Button

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Russell Button		service@buttonlawfirm.com	8/15/2023 5:12:20 PM	SENT