

CAUSE NO. _____

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| JOHN HUDMAN AND JENNIFER HUDMAN, INDIVIDUALLY AND AS PARENTS AND NEXT FRIENDS OF A.H., A MINOR CHILD, | § § § § | IN THE DISTRICT COURT OF |
| PLAINTIFFS, | § | |
| VS. | § | HARRIS COUNTY, TEXAS |
| | § | |
| HEAVENS KIDS LLC D/B/A CROSBY CHRISTIAN ACADEMY, | § § § | |
| DEFENDANT. | § | _____ JUDICIAL DISTRICT |

ORIGINAL PETITION AND JURY DEMAND

1. John Hudman and Jennifer Hudman, like many parents across this country and the state of Texas, are working parents that relied on a daycare to provide a safe, caring, nurturing environment for their daughter, A.H., while they were working. John and Jennifer Hudman trusted that their daughter would be safe while in the care of Crosby Christian Academy.¹

2. A safe learning environment and peace of mind are what parents like John and Jennifer Hudman pay for and expect. Instead, John Hudman and Jennifer Hudman’s worst nightmare became a reality when their daughter A.H. suffered serious physical, emotional, and mental injuries because of the failures of Crosby Christian Academy. John Hudman and Jennifer Hudman bring this lawsuit on their family’s behalf asking for answers and asking that Crosby Christian Academy accept responsibility.

¹ This petition refers to Defendant Heaven Kids, LLC d/b/a Crosby Christian Academy as “Crosby Christian Academy.”

I. STATEMENT OF FACTS

3. Crosby Christian Academy promises parents that their children to be the center of attention and focus.² Parents are reassured that their children will be provided “a clean, comfortable environment where he/she may play, learn and develop academically and socially with guidance and loving care while [they] are away.”³ Crosby Christian Academy promises its families that they “will make every effort to keep [their] child safe through supervision and childproofing.”⁴ Further, parents are informed that children will be re-directed appropriately to enforce positive behavior in order to create an environment where their children can “feel respected, secure, loved, important and special.”⁵

4. On or about Tuesday, March 29, 2022, John and Jennifer Hudman placed their three-year-old daughter, A.H., in the care of Crosby Christian Academy for daycare. While under the care of Crosby Christian Academy, A.H. was severely injured when the daycare failed to provide adequate supervision, childproof playing environments, and intervene and re-direct children as needed. Crosby Christian Academy permitted an unsupervised child to play with and shove a stick into A.H.’s ear, rupturing her eardrum and causing A.H. physical, emotional, and psychological harm, and damages (hereinafter, “the Incidents”).

5. During an independent investigation into the incident involving A.H. by the Texas Health and Human Services Commission, it was discovered that A.H. was injured by another child when they were permitted to play with sticks and the other child shoved the stick into A.H.’s ear,

² Cover Page, *Crosby Christian Academy Student Policy Handbook pg1* (Last Updated September 2020).

³ “General Policies & Policies Procedures,” *Crosby Christian Academy Student Policy Handbook pg3* (Last Updated September 2020).

⁴ “Medical Emergencies,” *Crosby Christian Academy Student Policy Handbook pg8* (Last Updated September 2020).

⁵ “Behavioral Goals,” *Crosby Christian Academy Student Policy Handbook pg9* (Last Updated September 2020).

rupturing her ear drum. The investigation revealed that Crosby Christian Academy did not see the incident occur because its caregivers were sitting on a bench instead of actively supervising the 2 and 3-year-old children play. Crosby Christian Academy failed to observe that the children were playing with sticks and failed to intervene to prevent injury to A.H. and other children similarly situated.

6. Despite A.H.'s screams of pain and the fact that her ear was bleeding, Crosby Christian Academy failed to treat the injury with the urgency it required and downplayed the severity of the injury to the Hudmans. A.H. had suffered a *rupture to the tympanic membrane of her right ear*, causing excruciating pain and hearing loss. Crosby Christian Academy chose not to report the incident to the state.

7. The state of Texas concluded that the Crosby Christian Academy, despite knowing that A.H.'s injury from the incident required medical treatment, failed to report it the incident to the state accordingly. As a result, Crosby Christian Academy was cited for violating the following childcare licensing rule of Texas:

- **746.305(a)(2) – AP Report Child Injury Requiring Medical Treatment by a Health-Care Professional or Hospitalization.**

8. Crosby Christian Academy 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 A. H. Crosby Christian Academy 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 additional citations issued by Texas Health and Human Services Commission from August 2017 through August 2023:

- **August 2017:**
 - Cited for failing to properly supervise children.
- **September 2017:**
 - Cited for failing to properly supervise children.
- **July 2018:**
 - Cited for failing to properly supervise children.
 - Cited for failing to know the group they are responsible for.
- **August 2019:**
 - o Cited for failing to complete proper background checks for employees.
- **August 2020:**
 - Cited for failing to properly supervise children.
 - Cited for failing to report injury requiring medical treatment.
- **September 2020:**
 - Cited for failing to complete required annual training.
- **January 2021:**
 - Cited for failing to demonstrate competency, good judgment, and self-control.
- **April 2021:**
 - Cited for caregivers failing to be free of other activities while supervising children.
- **September 2021:**
 - Cited for failing to complete proper background checks for employees.
- **June 2022:**
 - Cited for use of director failing to use appropriate discipline practices with children.
- **August 2022:**
 - Cited for failing to complete proper background checks for employees.
 - Cited for failing to complete the required annual training.
- **February 2023:**

- Cited for failing to demonstrate good judgment when supervising children.
- Cited for failure to provide adequate supervision for children in care.

- **August 2023:**
 - o Cited for failing to report a situation placing children at risk.
 - o Cited for failing to complete required annual training.

10. What happened to A.H. was preventable. As a direct and proximate result of the actions and omissions of Crosby Christian Academy, Plaintiffs 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), 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.

III. PARTIES

13. Plaintiff John Hudman and Jennifer Hudman are the biological parents of Plaintiff A.H., a minor, and are citizens and residents of Harris County, Texas.

14. Defendant Heavens Kids, LLC d/b/a Crosby Christian Academy (hereinafter referred to as "Defendant") is a Texas Corporation doing business in this State. Defendant may be served with process by serving its registered agent, Velma R. Ellison, 5519 F.M. 2100, Crosby, TX 77532.

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 Harris 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 A.H. 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. Failing to ensure that expectations for a child's behavior is appropriate or the developmental level of that child;

- h. Failing to report all incidents involving serious harm or injuries to children to the Department of Family Protective Services; and
 - i. 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 and supervising the children in its care to prevent injury to A.H. and other children similarly situated.
20. Defendant had a duty to maintain a safe environment for children in its care to prevent injury to A.H., and other children similarly situated.
21. Defendant breached the duty of care by failing to: care for children; adequately supervise children; maintain a safe environment for children; intervene as to prevent injury to children; and 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 – Negligence Per Se

23. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.
24. 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.
25. In the forgoing claims of negligence per se, Plaintiffs were, at all times, members of the class that the statutes were designed to protect.
26. Defendant's violation of the statutes was the proximate cause of the incident in question.

Count Three – Gross Negligence

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

28. 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).

29. 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.

30. 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

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

32. Defendant is the owner, operator, and/or possessor of the daycare premises located at 5507 FM 2100 Rd, Crosby, Texas 77532, operation license number 839909.

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

34. 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.

35. Defendant owed Plaintiffs a legal duty to ensure A.H.'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 intervene in an activity that

posed a risk to a child's safety; and by failing to immediately inform the state entity of injuries A.H. sustained.

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

VI. RESONDEAT SUPERIOR

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

38. 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

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

40. As a direct and proximate cause of Defendant's negligent acts and/or omissions, Plaintiffs John Hudman and Jennifer Hudman, individually, and as a Parents and Next Friends of Plaintiff A.H., 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.

41. 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

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

43. 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.

44. 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

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

IX. U.S. LIFE TABLES

46. 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 27, 2023.

Respectfully submitted,

THE BUTTON LAW FIRM

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