



children, supervising children at all times, ensuring no child is neglected, ensuring that the adequate child transportation safety systems are in place, maintaining compliance with Texas' minimum standards for childcare, the use of good judgment, competency, and control, proper response and documentation of incidents that place a child at risk, and transportation safety.

4. On or about Friday, February 10, 2023, Maria placed her son M.S. in the care of Firefly Dual Language Academy for daycare. While under the care of Firefly Dual Language Academy, M.S. was negligently supervised, endangering his health and life. Firefly Dual Language Academy negligently operated its facility when they left M.S. unattended in a locked van on their premises (hereinafter, "the Incident"). Firefly Dual Language Academy was transporting a van of students from a public school to the daycare center for after-school childcare. After parking the van and unloading the children, Firefly Dual Language Academy failed to account for all children exiting the vehicle to ensure that M.S. had exited the van as required by Texas law. M.S. was left unattended in the locked van for approximately three hours, he was scared, confused, and cold. While trapped in the van, M.S. banged on the window hoping someone would hear him and come help him, but no one came.

5. It wasn't until Maria arrived at Firefly Dual Language Academy to pick up her son, M.S., that Firefly Dual Language Academy realized that M.S. was missing and a search for him began. After searching the premise and failing to locate him, Firefly Dual Language Academy told Maria that they must not have picked him up from his public school, which released children *3 hours prior*. Finally, Firefly Dual Language found M.S. and brought him to Maria. However, Firefly Dual Language Academy provided false information regarding to the incident, claiming they found M.S. asleep in a restroom. M.S. was visibly upset and crying but Maria was relieved to see her

son. When Maria got M.S. in her vehicle to take him home, M.S. told Maria that he was not asleep in the restroom, rather he was *left in the locked van since the time of pick-up from the public school, which was approximately three hours prior*. Maria immediately confronted Firefly Dual Language Academy about what her son had told her. In response, Firefly Dual Language Academy offered Maria money in an attempt to silence her and sweep things under the rug.

6. Leaving a child unattended in a vehicle, with no ventilation, is negligent. The dangers of leaving children alone in a locked vehicle are well-known and preventable. Daycare facilities, like Firefly Dual Language Academy must implement an adequate safety system to ensure that every child is accounted for, and no child is left unattended inside a transportation vehicle to conform with the Minimum Standards set forth by Texas Health and Human Services and the Department of Family and Protective Services. Firefly Dual Language Academy failed to have the necessary and required transportation safety systems in place to make sure that M.S. was not a victim of inadequate supervision and placed at-risk. Texas Health and Human Services Minimum Standards for Child-Care facilities provides a list of several recommended strategies that may be implemented to ensure the safety of children in their care during transportation, which includes the following: use a list of children to verify each child by name; walk and check the inside of the vehicle, both in and under each seat; have a second person check the vehicle; have a visual reminder such as a sticker, keychain, hangtag that helps you do the walkthrough; or purchase products to install in the transportation vehicle(s) that may a noise when the vehicle is turned off and until you hit the off button at the back of the vehicle but Firefly Dual Language Academy failed to implement and follow through on any of these recommended strategies.

7. Firefly Dual Language Academy negligently operated its facility; failed to supervise the children in its care; failed to have adequate child transportation safety systems; failed to supervise its employees; neglected to provide a safe environment for a child in their care; failed to properly train and supervise employee-caregivers on safety practices while transporting children in their care; failed to ensure no child was neglected in their care; negligently hired unqualified and untrained employees; failed to supervise its employees; and neglected to account for all children under their care and supervision.

8. Firefly Dual Language Academy 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. Firefly Dual Language 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 incident and the injuries sustained by M.S. Firefly Dual Language 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 citations issued by the Texas Health and Human Services Commission from October 2018 to September 2022:

- **October 2018:**
  - Cited for failing to submit renewal background check for one caregiver.
  - Cited for failing to place safety straps on children sitting in highchairs.
  - Cited for transportation caregiver missing required transportation training.
  
- **March 2019:**
  - Cited for failing to feed infants in a safe manner.
  - Cited for failing to provide proper supervision of children.

- Cited for failing to comply with child/caregiver ratio.
  - Cited for failing to comply with building grounds maintenance as trash was left exposed in classrooms causing an offensive odor of feces and urine.
  - Cited for failing to properly dispose of soiled diapers in a sanitary manner.
- **May 2019:**
- Cited for failing to comply with annual fire inspection.
  - Cited for failing to comply with safety precautions to keep electrical outlets covered.
  - Cited for failing to wash hands after each diaper change.
  - Cited for failing to maintain the diaper changing table in a clean and sanitary manner.
- **July 2019:**
- Re-cited for failing to comply with annual fire inspection.
  - Re-cited for failing to wash hands after each diaper change.
- **October 2019:**
- Cited for failing to keep floors, ceilings, and walls in good repair and clean.
  - Cited for failing to safely maintain the daycare's transportation vehicles.
  - Cited for the daycare's driver failing to have a current driver's license.
  - Cited for failing to comply with child/caregiver ratio.
  - Cited for failing to do sheltering drills for lock down.
- **September 2020:**
- Cited for transportation caregiver missing required transportation training.
  - Cited for failing to comply with a caregiver's responsibility of each child.
  - Cited for a caregiver's failure to know the group of children they are responsible for.
  - Cited for failing to keep toxic cleaning supplies inaccessible to children.
  - Cited for failing to comply with maintenance of the outdoor fence that had several gaps where a child could easily walk out of the operation.
- **February 2021:**
- Cited for a caregiver not being aware of all the children she was responsible for.
  - Cited for failing to ensure the center is operating in compliance with the minimum standards.
  - Cited for failing to comply with child/caregiver ratio.
  - Cited for neglectful supervision when a child left the premises unsupervised.
  - Cited for failing to complete an incident report for a situation in which a child was placed at risk.
  - Cited for failing to report or notify the Child Care Regulation of an incident that placed a child at high risk.

- **March 2022:**
  - o Cited for failing to report the correct number of employees.
- **July 2022:**
  - o Cited for failing to make substitutions to their food menu.
  - o Cited due to the use zone for the play structure on the playground did not extend 6 feet in all directions of the structure as required.
  - o Cited for having a structure on the playground that is utilized by the children with no loose fill surfacing to prevent injuries.
- **September 2022:**
  - o Re-cited due to the use zone for the play structure on the playground did not extend 6 feet in all directions of the structure as required.
  - o Re-cited for having a structure on the playground that is utilized by the children with no loose fill surfacing to prevent injuries.

10. What happened to M.S. was preventable. As a direct and proximate result of the actions and/or omissions of Firefly Dual Language Academy, Plaintiffs sustained injuries and damages.

### **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.

### **PARTIES**

13. Plaintiff Maria Jimenez is the biological mother of Plaintiff M.S., a minor, and are citizens and residents of Harris County, Texas.

14. Defendant Firefly Dual Language Academy, LLC (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, United States Corporation Agents, Inc., located at 9900 Spectrum Drive, Austin, Texas 78717, or wherever they may be found.

### **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.

### **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 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 maintain a safe environment for children;

- e. Failing to properly hire, qualify, train, and supervise its employee-caregivers trusted with the care of minor Plaintiff M.S.;
  - f. Failing to have the adequate child transportation safety systems in place;
  - g. Failing to account for all children under their care and supervision;
  - h. Choosing to continue to employ an unqualified, untrained, and unsupervised caregiver;
  - i. Failing to ensure caregiver employees demonstrate competency, good judgment, and self-control;
  - j. Failing to record and report serious injuries sustained by a child in its care; and
  - k. Failing to adhere to the Texas Minimum Standards for Childcare.
19. 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 M.S. and other children similarly situated.
20. Defendant had a duty to maintain a safe environment for children in its care so as to prevent injury to M.S., and other children similarly situated.
21. Defendant had a duty to hire, training, and supervise caregiver employees to ensure that children in their care were safe to prevent injury to M.S., 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 have the adequate child transportation safety systems in place; failing to ensure the safety of all children during transportation; failing to account for all children exiting the vehicle before leaving the vehicle unattended; failing to properly train, hire, and supervise its employees; and failing to maintain a safe environment for children.

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 and Protective Services, Minimum Standards for Child-Care.

26. 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.

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

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

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

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

30. 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).

31. 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.

32. 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**

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

34. Defendant was the owner, operator, and/or possessor of the daycare premises located at 8510 Almeda Genoa Rd, #404, Houston, TX 77075 operation license number 1620245, during the time of this incident.

35. At the time of the Incident, M.S. 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.

36. 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.

37. Defendant owed Plaintiffs a legal duty to ensure M.S.’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 M.S., failing to train and supervise its caregiver employees on how to supervise children, and by failing to respond to a medical emergency.

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

**RESPONDEAT SUPERIOR**

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

40. 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's 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

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

42. As a direct and proximate cause of Defendant's negligent acts and/or omissions, Plaintiff Maria Jimenez, individually, and as Next Friend of Plaintiff M.S., 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.

43. 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**

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

45. 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.

46. 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**

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

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

48. 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: October 11, 2023.

Respectfully submitted,

**THE BUTTON LAW FIRM**

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### **Automated Certificate of eService**

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Russell Button on behalf of Russell Button  
Bar No. 24077428  
service@buttonlawfirm.com  
Envelope ID: 80502501  
Filing Code Description: Petition  
Filing Description: PLAINTIFFS' ORIGINAL PETITION  
Status as of 10/12/2023 8:08 AM CST

Associated Case Party: MARIA JIMENEZ, INDIVIDUALLY AND AS NEXT FRIEND OF M.S., A MINOR CHILD

<b>Name</b>	<b>BarNumber</b>	<b>Email</b>	<b>TimestampSubmitted</b>	<b>Status</b>
Russell Button		service@buttonlawfirm.com	10/11/2023 5:58:17 PM	SENT