

CAUSE NO. 23DCV342724

RAUL MAGAÑA AND MARIAH MAGAÑA, INDIVIDUALLY AND AS PARENTS AND NEXT FRIENDS OF M.M., A MINOR CHILD,	§ § § §	IN THE DISTRICT COURT OF
PLAINTIFFS,	§	
VS.	§	BELL COUNTY, TEXAS
J4T, LLC D/B/A JUST FOR TOTS #4,	§	
DEFENDANT.	§	146th _____ JUDICIAL DISTRICT

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**ORIGINAL PETITION AND JURY DEMAND**

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1. Raul Magaña and Mariah Magaña, 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, M.M., while they were working. Raul Magaña and Mariah Magaña trusted that their daughter would be safe at Just for Tots.<sup>1</sup>

2. A safe learning environment and peace of mind are what parents like Raul Magaña and Mariah Magaña pay for and expect. Instead, Raul Magaña and Mariah Magaña’s worst nightmare became a reality when their daughter M.M. suffered serious physical, emotional, and mental injuries because of the failures of Just for Tots. Raul Magaña and Mariah Magaña bring this lawsuit on their family’s behalf asking for answers and asking that Just for Tots accept responsibility.

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<sup>1</sup> Defendant J4T, LLC d/b/a Just for Tots #4 is referred to as “Just for Tots” in this Petition.

## STATEMENT OF FACTS

3. According to Just for Tots, "Caring for your child is a responsibility we take very seriously. It is our goal to provide a loving atmosphere that emphasizes the development of the whole child- mind, body, and spirit."<sup>2</sup> Just for Tots publicizes and sells working parents on the idea that this daycare has highly qualified teachers who will keep all children in their care safe "[w]ith [their] emphasis on creating a loving, healthy, and safe place for your child to feel secure, each baby's primary caregiver is a nurturing child development professional who is responsible for your baby's prime times."<sup>3</sup> However, a trail of records from the state of Texas paints a very different picture.

4. Just for Tots 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' minimum standards for childcare; the use of good judgment, competency, and control; proper response and documentation of incidents of injury; and appropriate action in the event of a medical emergency.

5. On Tuesday, June 13, 2023, Raul and Mariah Magaña placed their 10-month-old daughter M.M. in the care of Just for Tots for daycare. While under the care of Just for Tots, M.M. was aggressively handled and inappropriately disciplined causing M.M. physical, emotional, and psychological harm and damages (hereinafter, the "Incident"). A video recording of the Incident, shows M.M. sitting on the floor, playing with other children when the Just for Tots caregiver

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<sup>2</sup> *Just for Tots' Website*, <https://www.justfortotstx.com/about-us> (last visited October 26, 2023).

<sup>3</sup> *Just for Tots' Website*, <https://www.justfortotstx.com/student-life> (last visited October 10, 2023).

employee abruptly and aggressively pulls M.M. up off the floor by her left arm and places her on another part of the floor, away from the children she was playing with. M.M. immediately lets out a cry in pain. At only 10-months-old, M.M. is unable to walk, but can be seen on the video crying while attempting to crawl and seek comfort and help of her caregivers. As she attempts to crawl, her left arm lets out each time causing her to nearly hit her face on the floor with each attempt she makes. The caregiver employee can be seen walking past M.M., ignoring the fact that she is visibly in distress and pain, and failing to pick her up or provide any aid to her.

6. Following the Incident, Just for Tots chose not to immediately contact M.M.'s parents, emergency services, or the state of Texas to report the injuries and incident. M.M. was left in pain, until Just for Tots finally decided to call M.M.'s parents that late afternoon and told them that they believed M.M. was constipated because she was being very fussy. When Raul and Mariah Magaña picked up M.M., she was still crying inconsolably, and they noticed she was not moving her left arm. M.M.'s parents took her to the emergency room and an orthopedist to be when they learned M.M. was suffering from a *torus fracture of the upper end of the left radius*. As a result of the injury, M.M. was fitted with a left arm upper extremity cast.

7. When Raul and Mariah Magaña questioned Just for Tots on how this happened to their daughter, Just for Tots initially gave them several false explanations. First, they were told that another child fell on M.M. and that was how she was injured. Then, they were told that M.M. caused her own injury. Just for Tots then sent Raul and Mariah Magaña a condensed video clip that only showed the aftermath of the Incident, when M.M. was crying from the pain and attempting to crawl but failed to send Raul and Mariah Magaña the full clip of the Incident that showed M.M. being aggressively handled by the Just for Tots caregiver employee. Raul and

Mariah Magaña sensed Just for Tots was not being truthful with them on how M.M. was injured and requested to meet in person with the daycare. It was during Raul and Mariah's meeting with Just for Tots that they were finally told the truth about how M.M. sustained the injury to her arm. It was at that point that Raul and Mariah Magaña contacted law enforcement to report the Incident involving M.M. and a report was made to the state of Texas.

8. An independent investigation into the Incident by the Texas Health and Human Services Commission Child-Care Licensing Division and the Texas Department of Family and Protective Services was performed, concluding that the allegations involving M.M. against Just for Tots were *substantiated*, citing Just for Tots for violating the following childcare licensing rules of Texas:

- a. **746.1201(1):** Responsibilities of Employees and Caregivers – Demonstrate Competency, Good Judgment, Self-Control.

9. Just for Tots 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.M. Just for Tots 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.

10. The following is an overview of some of the citations issued by the Texas Health and Human Services Commission from November 2018 through September 2023:

- November 2018
  - o Cited for failing to report an injury to a child that required medical treatment.
- March 2019:

- Cited for using prohibited and inappropriate forms of discipline toward children.
  - Cited for failing to complete background checks for 3 caregiver employees prior to being present at the operation.
- July 2019
  - Cited for failing to have children wash their hands prior to eating.
  - Cited for failing to properly sanitize the diaper changing area.
  - Cited for employees failing to wash their hands after changing children's diapers.
- August 2019:
  - Cited for failing to report an incident that placed a child at risk to the state of Texas.
  - Cited for employees failing to wash their hands after changing children's diapers.
- January 2020:
  - Cited for failing to keep the building in repair and free of hazardous equipment.
  - Cited for failing to complete the required annual training for caregivers caring for children under 24 months old.
  - Cited for failing to complete the required annual transportation safety training for each employee responsible for transporting children.
  - Cited for failing to account for a child during loading and unloading during transportation service.
  - Cited for caregiver employees failing to know what children they are responsible for.
  - Cited for failing to have a list of the children being transported during the daycare's transportation services.
  - Cited for failing to report an incident that placed a child at risk to the state of Texas.
  - Cited for the director's failure to ensure employees comply with the state's minimum standards for childcare.
- October 2020:
  - Cited for failing to complete background checks for 2 caregiver employees prior to being present at the operation.
  - Cited for failing to conduct the shelter, lock down, and fire drills as required by the state of Texas.
  - Cited for failing to keep the building and grounds clean and in good repair.
- November 2020:
  - Cited for failing to keep the building and grounds clean and in good repair.
- October 2021:
  - Cited for failing to complete the required annual transportation safety training for each employee responsible for transporting children.
- January 2022:

- Cited for failing to complete and provide an incident report within the required time frame.
- June 2022:
  - Cited for failing to have child safety alarms in the daycare's transportation vehicles.
  - Cited for failing to complete a background check for a caregiver employee prior to being present at the operation.
  - Cited for failing to keep cleaning supplies and toxic materials inaccessible to children.
  - Cited for caregiver employees failing to know what children they are responsible for.
  - Cited for failing to arrange the napping equipment so the caregiver employees can adequately supervise the children at all times.
  - Cited for 7 caregiver employees failing to complete the required annual training.
- June 2023:
  - Cited for failing to have crib bed sheets that fit snugly and do not present an entanglement hazard.
  - Cited for having children sleeping on torn mats.
- September 2023:
  - Cited for failing to have crib bed sheets that fit snugly and do not present an entanglement hazard.

11. What happened to M.M. was preventable. As a direct and proximate result of the actions and omissions of Just for Tots, Plaintiffs Raul Magaña, Mariah Magaña and M.M. sustained injuries and damages.

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

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

13. 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**

14. Plaintiffs Raul Magaña and Mariah Magaña are the biological parents of Plaintiff M.M., a minor, and are citizens and residents of Bell County, Texas.

15. Defendant J4T, LLC d/b/a Just for Tots #4 (herein referred to as “Defendant” or “Just for Tots”) 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, Victor L. Quinones, located at 1033 Onondaga Way, Belton, Texas 76513, or wherever they may be found.

## **JURISDICTION & VENUE**

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

17. Venue is proper in Bell 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**

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

19. 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 intervene to ensure a child's safety;
  - e. Failing to maintain a safe environment for children;
  - f. Choosing to inappropriately discipline minor Plaintiff M.M.;
  - g. Failing to ensure that expectations for a child's behavior is appropriate or the developmental level of that child;
  - h. Failing to use only constructive, age-appropriate methods of discipline;
  - i. Failing to use safe lifting and moving methods of children;
  - j. Failing to properly hire, qualify, train, and supervise its employee-caregivers trusted with the care of minor Plaintiff M.M.;
  - k. Failing to appropriately respond in an emergency situation;
  - l. Failing to use positive methods of discipline and guidance with the children in its care;
  - m. Failing to ensure caregiver employees demonstrate competency, good judgment, and self-control;
  - n. Failing to record and report serious injuries sustained by a child in its care; and
  - o. Failing to adhere to the Texas Minimum Standards for Childcare.
20. Defendant had a duty to exercise ordinary care in caring for, supervising, and disciplining the children in its care so as to prevent injury to Plaintiff M.M. and other children similarly situated.
21. Defendant had a duty to maintain a safe environment for children in its care so as to prevent injury to M.M., and other children similarly situated.

22. Defendant had a duty to hire, train, and supervise caregiver employees to ensure that children were not subjected to inappropriate discipline, so as to prevent injury to M.M., and other children similarly situated.

23. 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 properly train, hire, and supervise its employees; failing to maintain a safe environment for children; failing to immediately terminate an employee who excessively disciplined and harmed a child; failing to call for medical attention after a minor child in their care sustained injuries; failing to create an incident report for an incident involving serious injury to a child; and failing to report to the relevant state agency an incident involving serious injury to a child.

24. 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**

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

26. 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.

27. 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.

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

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

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

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

31. 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).

32. 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.

33. 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**

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

35. Defendant is the owner, operator, and/or possessor of the daycare premises located at 3903 W. Stan Schlueter Loop, Ste 202, Killeen, Texas 76549, operation license number 1541442.

36. At the time of the Incident, M.M. 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.

37. 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.

38. Defendant owed Plaintiffs a legal duty to ensure M.M.'s safety in maintaining proper care over the children; ensuring discipline over the children is appropriate; 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.

Defendant breached these duties by permitting one of its employee-caregivers to inappropriately discipline children, by allowing that caregiver to remain on staff after the Incident, and by failing to create a corresponding incident report and inform the appropriate state entity of the injuries M.M. sustained.

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

### **RESPONDEAT SUPERIOR**

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

41. 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 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**

42. Plaintiff incorporates by reference the preceding paragraphs as if stated fully herein.

43. As a direct and proximate cause of Defendant's negligent acts and/or omissions, Plaintiff Raul Magaña and Mariah Magaña, individually, and as Parents and Next Friends of Plaintiff M.M., 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.
44. 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**

45. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.
46. 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.

47. 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**

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

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

49. 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: November 14, 2023

Respectfully submitted,

**THE BUTTON LAW FIRM**

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