

CAUSE NO. _____

BRANDY JONES, INDIVIDUALLY AND AS NEXT
FRIEND OF M.J., A MINOR CHILD,

PLAINTIFFS,

VS.

DFMK GROUP, LLC d/b/a STAR KIDDOS
CHILDCARE CENTER,

DEFENDANT.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

ORIGINAL PETITION AND JURY DEMAND

1. Brandy Jones, Individually and As Next Friend of M.J., a minor child, like many parents across this country and the state of Texas, is a working mother that relied on a daycare to provide a safe, caring, nurturing environment for her son, M.J., while she was working. Brandy trusted that her son would be safe at Star Kiddos Childcare Center.¹

2. A safe learning environment and peace of mind are what parents like Brandy pay for and expect. Instead, her worst nightmare became a reality when her son M.J. suffered serious physical, emotional, and mental injuries because of the failures of Star Kiddos Childcare Center. Brandy brings this lawsuit on her family's behalf asking for answers and asking that Star Kiddos Childcare Center accept responsibility.

¹ Defendant DFMK Group, LLC d/b/a Star Kiddos Childcare Center is referred to as "Star Kiddos Childcare Center" in this Petition.

I. STATEMENT OF FACTS

3. Star Kiddos Childcare Center is responsible for qualifying, hiring, training, and supervising its employee-caregivers on safe and proper care conducive to the welfare of 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, adhering to the Texas Code of Transportation, 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 Wednesday, May 24, 2023, Brandy placed her 4-year-old son, M.J. in the care of Star Kiddos Childcare Center for daycare. On this day, Star Kiddos Childcare Center was responsible for transporting M.J. to and from his elementary school. While under the care of Star Kiddos Childcare Center, M.J. was negligently supervised, endangering his health and life. Star Kiddos Childcare Center negligently operated its facility and vehicle when they left M.J. unattended in their vehicle allowing him to exit the vehicle and wander into the daycare completely unsupervised (hereinafter, "the Incident").

5. Star Kiddos Childcare Center was responsible for transporting a van of students to school, including M.J., to school for that day. On the way to school, M.J. fell asleep in the daycare's van. After parking the van and unloading the children, Star Kiddos Childcare Center failed to account for all children exiting the vehicle to ensure that M.J. had exited the vehicle as

required by Texas law. Instead, the Star Kiddos Childcare Center van returned to the daycare center, leaving 4-year-old M.J. unattended in the van.

6. Approximately two hours after school drop off, M.J. woke up scared, confused, and hot. While in the van, M.J. desperately looked for ways to get out. M.J. was eventually able to exit the van and wandered into the daycare himself.

7. Although the state requires a parent to be immediately notified of a situation that placed their child at risk for injury or harm, M.J.'s mother was not notified of the incident. It wasn't until M.J.'s elementary school called Brandy to alert her that M.J. had been dropped off late that she became aware an incident had occurred. Brandy called Star Kiddos Childcare Center to inquire about the situation. Star Kiddos Childcare Center told Brandy that they did not know M.J. was left unattended in the van until he walked into the daycare and provided no excuse as to why they did not immediately alert her. Star Kiddos Childcare Center then offered Brandy two and a half weeks of paid daycare in an attempt to silence her, sweep things under the rug, and keep her from reporting the incident to the state or law enforcement. Brandy refused their offer and reported the incident to the state and law enforcement.

8. Despite admitting they were unaware that M.J. was left in the van until M.J. walked into the daycare, Star Kiddos Childcare Center falsified an incident report that stated that *they were aware* M.J. had fallen asleep in the van but were unable to alert Brandy by the time M.J.'s school called her.

9. Leaving a child unattended in a vehicle is negligent. The dangers of leaving children alone in a vehicle are well-known and preventable. When operating a vehicle, the driver has a duty to

protect all passengers on board and ensure they are safe. Leaving a child passenger unattended in a vehicle that is turned off without any ventilation is a failure of that duty.

10. Daycare facilities, like Star Kiddos Childcare Center 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. Star Kiddos Childcare Center failed to have the necessary and required transportation safety systems in place to make sure that M.J. 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 Star Kiddos Childcare Center failed to implement and follow through on any of these recommended strategies.

11. Star Kiddos Childcare Center negligently operated its facility and vehicle; failed to maintain and operate its vehicle in a safe and secure manner to ensure that occupants were safe, secure, and protected from all elements including, without limitation, the dangers of Mother Nature; 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.

12. Star Kiddos Childcare Center 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 Star Kiddos Childcare Center were *substantiated*, citing Star Kiddos Childcare Center for violating the following childcare licensing rules of Texas:

746.5625(d)(1) – Electronic Child Safety Alarm – Driver or designated employee verify all children accounted for: *It was determined during the investigation the driver did not ensure and verify all children were accounted for when dropping off the children at school and as a result a child was left on the bus.*

746.5625(d)(2) – Electronic Child Safety Alarm – Driver or designated employee conduct walk-through and visual check of vehicle: *It was determined during the investigation a walkthrough was not made throughout the vehicle, to ensure all children were dropped off at school.*

746.307(b)(4) – Parental Communication – Situation that placed a child at risk: *It was determined during the investigation the operation did not notify parent of their child being left on the school bus.*

746.5625(c) – Electronic Child Safety Alarm – Used at all times when transporting a child in care: *It was determined during the investigation the safety alarm on the bus was turned off.*

13. Star Kiddos Childcare Center 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.J. Star Kiddos Childcare Center 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.

14. In fact, Star Kiddos Childcare Center even had a difficult time in receiving its full license to operate as a child-care center during its initial inception due to their inability to adhere to the minimum standards set by the Texas Health and Human Services childcare licensing division and for failing their initial inspections.

15. The following is an overview of some of the citations issued by the Texas Health and Human Services Commission from October 2020 to October 2023:

- **October 2020:**

- Cited for failing to abide by safe sleeping practices for infants under 12 months.
- Cited for failing to know how many children were in a classroom – a caregiver was unaware of the number of children in her classroom.
- Cited for failing to use safety straps – a table that held children in bucket seats did not have safety straps as required. Eight children were seen by a state investigator sitting at the table unbuckled.

- **February 2021:**

- Cited for a caregiver not being aware of the number of children she was responsible for in her classroom.
- Re-cited for a caregiver not being aware of the number of children she was responsible for in her classroom.
- Cited for failing to comply with child/caregiver ratio requirements.

- **April 2021:**

- Cited for failing to comply with child/caregiver ratio requirements.
- Re-cited for failing to comply with child/caregiver ratio requirements.
- Cited for a caregiver not being aware of the number of children she was responsible for in her classroom.
- Cited for a caregiver not knowing the names and ages of all the children in her classroom.

- Cited for failing to have required personnel records on caregivers employed.
 - Cited for failing to have complete and updated records on current children enrolled.
 - Cited for failing to properly supervise children in care – a child was left in a classroom alone while the class was outside with the caregiver in charge.
- **May 2021**
- Re-cited for failing to comply with child/caregiver ratio requirements.
 - Cited for two caregivers not knowing the ages of all the children in their classroom.
 - Re-cited for a caregiver not knowing the ages of the children in her classroom.
 - Cited for failing to safely feed a four-month-old infant.
 - Cited for failing to abide by safe sleeping practices for infants – a four-month-old infant was asleep with a propped bottle in a restrictive device.
 - Cited for failing to have a complete background check on a caregiver – a caregiver was allowed to have direct access to children without a complete background check.
 - Cited for failing to abide by safe sleeping practices for infants younger than 12 months.
 - Cited for failing to have adequate lighting during naptime.
- **July 2021**
- Cited for a caregiver not knowing the number of the children in her classroom that she is responsible for.
 - Cited for failing to have updated written feeding instructions as required every 30 days.
 - Cited for failing to use required safety straps – a nine-month-old infant was in a chair with unfastened straps.
- **October 2021**
- Cited for failing to have complete and updated files on children enrolled.
 - Cited for failing to have complete required personnel records on current employees.
- **November 2021**
- Cited for failing to demonstrate competency, good judgement, and self-control – operation staff were seen grabbing a child's wrist during an argument.
 - Cited for failing to have caregivers with required annual training on guidance and discipline.
 - Cited for failing to not use food as a reward – a caregiver admitted that she would use food as a bargain chip to get children to comply.
 - Cited for failing to use positive methods of discipline and guidance – operation staff were seen mimicking a child's behavior during an argument.

- Cited for failing to properly supervise children – a child was seen leaving a classroom without proper adult supervision.
- **December 2021**
 - Cited for failing to be free of activities – operational staff were observed texting during an inspection.
 - Cited for failing to properly supervise children – a child was seen running out of a classroom without proper adult supervision.
 - Cited for failing to abide by screentime activity requirements – a child was observed playing Fortnite on their hand-held device.
- **May 2022**
 - Cited for failing to have a current annual fire inspection – the last inspection was from October of 2020.
 - Cited for failing to have statements of current child health forms from a medical professional.
 - Cited for failing to have a current annual sanitation inspection – the last inspection was from April of 2020.
- **November of 2022**
 - Cited for failing to have a current food menu posted at the daycare.
- **October 2023:**
 - Cited for failing to have a current fire inspection on file – the last fire marshal inspection occurred in June of 2022.

16. What happened to M.J. was preventable. As a direct and proximate result of the actions and/or omissions of Star Kiddos Childcare Center, Plaintiffs sustained injuries and damages.

II. DISCOVERY CONTROL PLAN & CLAIM FOR RELIEF

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

18. 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

19. Plaintiff Brandy Jones is the biological mother of Plaintiff M.J., a minor, and are citizens and residents of Harris County, Texas.

20. Defendant DFMK Group, LLC d/b/a Star Kiddos Childcare Center (hereinafter referred to as "Defendant") is a limited liability company doing business in the State of Texas, its state of formation. Defendant operates a daycare center, Star Kiddos Childcare Center, located at 1855 Barker Cypress Road, Suite 200, Houston, TX 77084. Defendant may be served with process by serving its registered agent, Miguel Kahale, at 2609 Patna Dr. Katy, TX 77493, or wherever they may be found.

IV. JURISDICTION & VENUE

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

22. 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

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

24. 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 to do what a reasonable driver would have done under the circumstances;
- d. Failing properly supervise the children in their care;
- e. Failing to maintain a safe environment for children;
- f. Failing to properly hire, qualify, train, and supervise its employee-caregivers trusted with the care of minor Plaintiff M.J.;
- g. Failing to have the adequate child transportation safety systems in place;
- h. Failing to ensure all occupants exited the vehicle before turning it off and exiting the vehicle;
- i. Failing to protect occupants from all elements, including without limitation, the dangers of mother nature;
- j. Failing to ensure that occupants of the vehicle were safe;
- k. Failing to ensure occupants were secure;
- l. Choosing to operate a vehicle without awareness of occupants;
- m. Failing to account for all children under their care and supervision;
- n. Choosing to continue to employ an unqualified, untrained, and unsupervised caregiver;

- o. Failing to ensure caregiver employees demonstrate competency, good judgment, and self-control;
 - p. Failing to record and report serious injuries sustained by a child in its care;
 - q. Failing to adhere to the Texas Transportation code; and
 - r. Failing to adhere to the Texas Minimum Standards for Childcare.
25. 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.J. and other children similarly situated.
26. Defendant had a duty to maintain a safe environment for children in its care so as to prevent injury to M.J., and other children similarly situated.
27. 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.J., and other children similarly situated.
28. 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.
29. 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

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

32. Defendant's conduct described herein constitutes an unexcused breach of duty imposed by the Texas Transportation Code and Texas Penal Code. Plaintiffs would show the Court that Defendant was negligent per se in that Defendant's conduct violated Texas Transportation Code Section 521.022, Texas Transportation Code Section 546.005(1), Texas Transportation Code Section 546.005(2), and Texas Penal Code Section 22.10.

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

35. As a result of the Defendant's 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. 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).

38. 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.

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 was the owner, operator, and/or possessor of the daycare premises located at 1855 Barker Cypress Road, Suite 200, Houston, TX 77084, operation license number 1713284, during the time of this incident.

42. At the time of the Incident, M.J. 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.

43. 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.

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

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

Count Five – Negligent Hiring, Supervision, Retention, and Entrustment

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

47. Defendant is responsible for the acts and/or omissions of its respective agents, employees, servants, ostensible agents, and/or representatives through the theories of

employment, agency, *respondeat superior*, ostensible agency, apparent agency, actual agency, and/or other agency and/or vicarious responsibility theories.

48. Defendant entrusted its vehicle to its employee. Defendant's employee was an incompetent or reckless operator of the vehicle. Defendant's employee was negligent on the occasion in question.

49. Defendant is independently liable for their own acts and omissions, which constitute negligence as that term is defined by law. Defendant owed a duty to Plaintiffs to hire, train, and supervise qualified employees to operate their vehicles, especially when transporting children. Defendant did not possess and comply with reasonable care ordinarily possessed and used by similar entities engaged in the same type of service in the same or in a similar locality. The acts and/or omissions include, but are not limited to, the following:

- a. Negligently hiring its employee(s);
- b. Negligently entrusting the vehicle to its employee(s);
- c. Negligently qualifying its employee(s);
- d. Negligently retaining its employee(s);
- e. Failing to adequately train its employee(s);
- f. Failing to adequately supervise its employee(s);
- g. Failing to adequately monitor its employee(s); and
- h. Failing to have adequate policies and procedures.

50. Defendant's negligence was the proximate cause of Plaintiffs' injuries.

51. Plaintiffs seek unliquidated damages within the jurisdictional limits of this court.

VI. RESPONDEAT SUPERIOR VICARIOUS LIABILITY, AGENCY, OSTENSIBLE

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

53. Whenever in this Petition it is alleged that Defendant's employee did any act or thing, it is meant that she, as an officer, agent, servant, employee, or representative of Defendant did such act and/or that at the time such was done, it was done with the full authorization or ratification of Defendant, or it was done in the normal and routine course and scope of employment or agency of each of Defendant's officers, agents, servants, employees, or representatives.

54. Pleading in the alternative, if necessary, and without waiving any claims, defenses, and/or causes of action, Plaintiffs aver that Defendant is legally responsible for the conduct of its employees under the legal doctrine of *respondeat superior*, agency, and/or ostensible agency because Defendant's employee was at all times hereto an agent, ostensible agent, servant, and/or employee of Defendant. The negligence and carelessness of Defendant's employees proximately caused Plaintiffs' damages and losses as a result of the injuries to Plaintiffs. As a result, thereof, Defendant is liable for all negligence of its employees.

VII. DAMAGES

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

56. As a direct and proximate cause of Defendant's negligent acts and/or omissions, Plaintiff Brandy Jones, individually, and as Next Friend of Plaintiff M.J., 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.
57. 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.

VIII. EXEMPLARY DAMAGES

58. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.
59. 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.

60. 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.

IX. JURY TRIAL

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

X. U.S. LIFE TABLES

62. Notice is hereby given that Plaintiffs intend to use the U.S. Life Tables as prepared by the Department of Health and Human Services.

XI. 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 1, 2024.

Respectfully submitted,

THE BUTTON LAW FIRM

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