



Forney. Karla Calderon Estrada and Paul Andrew Estrada bring this lawsuit on their family's behalf asking for answers and asking that Boardwalk Private Preschool Forney accept responsibility.

### **STATEMENT OF FACTS**

3. According to Boardwalk Private Preschool Forney, "We provide a safe and innovative environment that promotes community and a love for learning to help students achieve academic and social success in school and life."<sup>2</sup> Boardwalk Private Preschool Forney solicits and sells working parents on the idea that this daycare is dedicated to creating a worry-free and safe and environment for their children. "We understand that our parents are busy, working parents so we find ways to make life easier and hassle-free for our parents."<sup>3</sup> However, a trail of records from the state of Texas paints a very different picture.

4. Boardwalk Private Preschool Forney 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, having appropriate visual and/or auditory awareness of each child, maintaining 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 or about Monday, October 17, 2022, Karla Calderon Estrada and Paul Andrew Estrada placed their daughter D.E. in the care of Boardwalk Private Preschool Forney for daycare. While

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<sup>2</sup> Boardwalk Private Preschool Forney's website, <https://boardwalkforney.com/about-us/> (last visited April 5, 2023).

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under the care of Boardwalk Private Preschool Forney, D.E. was negligently supervised, endangering her health and safety. Boardwalk Private Preschool Forney failed to properly supervise the children in its care when they allowed D.E. to enter a bathroom, unsupervised by an adult, while she was playing with other children. As the children were playing, the bathroom door shut on D.E.'s right hand and fingers resulting in serious bodily injuries and damages to D.E (hereinafter, "the Incident").

6. Following the incident, Boardwalk Private Preschool Forney, chose not to contact emergency medical services and instead contacted Mr. and Mrs. Estrada to notify them that D.E. suffered a "small" cut on her finger, downplaying the severity of the injury, and when Mr. and Mrs. Estrada requested photos be sent to them of the injury, Boardwalk Private Preschool Forney refused to send them the photos. As D.E. was in pain and bleeding, Boardwalk Private Preschool Forney still failed to contact emergency medical services. When Mr. and Mrs. Estrada arrived, the severity of D.E.'s injuries were obvious, she was still bleeding. They immediately rushed D.E. to the emergency room where she underwent surgery and was placed in a cast. Boardwalk Private Preschool Forney failed to train and supervise employee caregivers on how to respond to medical emergencies. Given that D.E. clearly required immediate medical treatment by a healthcare professional or hospitalization, Boardwalk Private Preschool Forney was required to call for emergency medical services in order to comply with the State's minimum standards for childcare.

7. Boardwalk Private Preschool Forney failed to supervise D.E. Supervision is an essential component of the prevention of harm. Supervision requires knowing the ongoing activity of

each child, having appropriate visual and/or auditory awareness, physical proximity, and knowledge of activity requirements and each child's needs.

8. Boardwalk Private Preschool Forney 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. Texas Health and Human Services Commission has previously issued citations to Boardwalk Private Preschool Forney for their failure to properly supervise the children in its care, one of which was issued only two months prior to the incident involving D.E.

9. What happened to D.E. was preventable. As a direct and proximate result of the actions and/or omissions of Boardwalk Private Preschool Forney, Plaintiffs Karla Calderon Estrada, Paul Andrew Estrada, and D.E. sustained injuries and damages.

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

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

11. 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**

12. Plaintiffs Karla Calderon Estrada and Paul Andrew Estrada are the biological parents of Plaintiff D.E., a minor, and are citizens and residents of Kaufman County, Texas.

13. Defendant Boardwalk Education Company, LLC d/b/a Boardwalk Private Preschool Forney (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, Willie Briscoe, located at 12700 Park Central Drive, Suite 520, Dallas, Texas 75251, or wherever they may be found.

### **JURISDICTION & VENUE**

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

15. Venue is proper in Kaufman 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**

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

17. 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. Failing to properly hire, qualify, train, and supervise its employee-caregivers trusted with the care of minor Plaintiff D.E.;
  - g. Failing to have appropriate visual and/or auditory awareness of each child;
  - h. Choosing to continue to employ an unqualified, untrained, and unsupervised caregiver;
  - i. Failing to appropriately respond in an emergency situation;
  - j. Failing to ensure caregiver employees demonstrate competency, good judgment, and self-control;
  - k. Failing to record and report serious injuries sustained by a child in its care; and
  - l. Failing to adhere to the Texas Minimum Standards for Childcare.
18. 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 D.E. and other children similarly situated.
19. Defendant had a duty to maintain a safe environment for children in its care so as to prevent injury to D.E., and other children similarly situated.
20. Defendant had a duty to hire, training, and supervise caregiver employees to ensure that children in their care were safe, so as to prevent injury to D.E., and other children similarly situated.
21. Defendant breached the duty of care by failing to care for the children, failing to supervise the children, failing to have appropriate visual and/or auditory awareness of each child, failing to properly train, hire, and supervise its employees, failing to maintain a safe environment for children, failing to call for medical attention after a minor child in their care sustained serious injuries.

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 and Protective Services, Minimum Standards for Child-Care.

25. 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.

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

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

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

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

29. 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).

30. 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.

31. 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**

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

33. Defendant is the owner, operator, and/or possessor of the daycare premises located at 1003 Travis Ranch Boulevard, Forney, Texas 75126, operation license number 1729033.

34. At the time of the Incident, D.E. 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.

35. 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.

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

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

#### **RESPONDEAT SUPERIOR**

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

39. 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

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

41. As a direct and proximate cause of Defendant's negligent acts and/or omissions, Plaintiff Karla Calderon Estrada and Paul Andrew Estrada, individually, and as Parents and Next Friends of Plaintiff D.E., 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. Disfigurement 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.

42. 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**

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

44. 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.

45. 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**

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

**U.S. LIFE TABLES**

47. 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: April 21, 2023.

Respectfully submitted,

**THE BUTTON LAW FIRM**

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**ATTORNEYS FOR PLAINTIFFS**

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Envelope ID: 74915324  
Filing Code Description: Petition  
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Associated Case Party: KARLA CALDERON ESTRADA AND PAUL ANDREW ESTRADA, INDIVIDUALLY AND AS NEXT FRIENDS OF D.E., A MINOR CHILD

<b>Name</b>	<b>BarNumber</b>	<b>Email</b>	<b>TimestampSubmitted</b>	<b>Status</b>
Russell Button		service@buttonlawfirm.com	4/21/2023 5:02:46 PM	SENT