

I. STATEMENT OF FACTS

3. “Lily Pad Learning Center – Where Education and Kindness Come First” is the motto Lily Pad Learning Center stands by and communicates to the families who trust them with the safety and care of their children.² They are “committed to providing ... famil[ies] ... a safe and fulfilling educational environment for each and every child.”³ Lily Pad Learning Center touts itself for having qualified teachers who are caring, hard-working, and dedicated educators.⁴ Lily Pad Learning Center’s Parent Handbook assures parents that they meet and/or exceed all state and local regulatory laws. However, a trail of violations from the State of Missouri, along with the incidents described herein, communicate a very different message.

4. Lily Pad Learning Center 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 Missouri’s minimum standards for childcare; the use of good judgment, competency, and control; and the proper response and documentation of incidents of injury and situations placing children at risk of harm.

5. On or about Friday, January 13, 2023, Jamiyl Thomas placed his one-year-old daughter, Winter Thomas, in the care of Lily Pad Learning Center for daycare. While under the care of Lily Pad Learning Center, Winter, was aggressively handled and inappropriately disciplined when she was force-fed to the point of choking and vomiting causing Winter physical, emotional, and psychological harm and damages (hereinafter, “the Incidents”). Surveillance footage shows

² *Lily Pad Learning Center’s Facebook Website*, <https://www.facebook.com/lplc453> (last visited March 19, 2023).

³ “*Introduction Mission Statement*,” Lily Pad Learning Center’s Parent Handbook pg3.

⁴ “*Our Staff*,” Lily Pad Learning Center’s Parent Handbook pg5.

Winter sitting on a dining table and food being shoved into her mouth with such force that her head would bob back. Winter began to cry from the food being shoved into her mouth and would gag and spit the food out, but it was forced into her mouth again. As she sat crying, the caregiver employee berates Winter and tells her "I don't care." The food is continuously forced into her mouth in huge quantities for such a small child without allowing her the opportunity to properly chew and ingest it that she begins to choke and vomits. The caregiver employee then grabs Winter by both cheeks and squeezes them and yells at Winter to "Stop that!" Her vomit is then smeared across her face and the food she threw up is once again shoved into her mouth.



Winter can then be seen choking and visibly in distress from the amount of food in her mouth. The caregiver employee roughly thrusts Winter's head forward and Winter throws up all over the dining table. Winter is then grabbed forcefully from under her arms and taken out of the chair she is sitting on and slammed onto a diaper changing table where her face is wiped clean from

the vomit. Winter is then aggressively grabbed by the back of her neck and under her arm and placed in a jumper all while she continues to cry and told to "Shut up!"



Once the caregiver employee cleans up Winter's vomit from the dining table, she returns to Winter and snatches her with such fury from the jumper that her legs get stuck to the seat and she yanks Winter's body from the seat and slams her body down on the diaper changing table with such force.



Once again, Winter begins to cry, and the caregiver employee yells "I don't care," at her. After a diaper change, Winter is forcefully sat by a wall out of camera view and told to "Sit! I'm tired of your attitude today." A short time later, she is handed a milk bottle out of camera view and the caregiver employee bends down telling her to drink it, then a loud cry is heard from Winter but due to her being seated out of camera view, it is unclear what was done to her to trigger the loud cry she lets out. The caregiver employee is then seen walking away from Winter with the milk in her hand telling Winter "I'm not in the mood with you." The entire ordeal goes on for nearly 33

minutes all while other Lily Pad Learning Center employees stood by and observed Winter being mistreated.



6. The video footage shows that this was a common occurrence at Lily Pad Learning Center as other children can be seen suffering from the same or similar inappropriate forms of discipline as Winter, which included forceful feeding, yelling, aggressively grabbing children, and expressing negative behaviors toward the children.

7. Following the incidents, Lily Pad Learning Center chose not to immediately contact Winter's parents or the state of Missouri to report what had occurred. The caregiver employees can be seen on camera discussing scratches and bruising to Winter's face and arm and taking pictures of these injuries that she clearly sustained as a result of the mistreatment and force used on her. When Jamiyl Thomas arrived to pick up Winter, he was told that they "found" a bruise under Winter's arm and that she was sick and threw up, failing to provide him with accurate

details of how Winter sustained these injuries, why she threw up, or providing him copies of the photos they took of Winter. The incident report Jamyil was given by Lily Pad Learning Center was full of false information and contradictory to what was observed in the surveillance footage. The incident report stated that "Winter threw up a bunch of old milk" and that they are "unsure where the bruise came from." It also states that to console Winter, they gave her "Hugs." A second incident report was written to deceitfully explain away the scratches to her face and neck, stating "When Winter and another child was playing, I notice both of them was hitting at each other." It wasn't until Winter's parents continued to question the bruises on Winter's body that they were finally told the truth, four days later. It was at that point that Jamyil Thomas contacted law enforcement to report the incident involving Winter and a report was made to the state of Missouri.



8. During an independent investigation into the incidents conducted by Missouri Department of Elementary and Secondary Education Office of Childhood - Child Care Compliance, it was discovered that numerous daycare staff were aware or observed the improper forms of discipline towards Winter and other children, with one caregiver being in the same room, witnessing all of these incidents firsthand, and deciding not to intervene or speak out and instead allowing the mistreatment of Winter and other children to continue. Lily Pad Learning Center condoned the inappropriate discipline and allowed for it to be a part of their practice. Despite being aware of the mistreatment of children, Lily Pad Learning Center knowingly and intentionally ignored the mistreatment and allowed it to continue, putting the children under their care and supervision at direct risk of serious harm and injury. The state of Missouri concluded that the allegations involving Winter against Lily Pad Learning Center were substantiated, and cited Lily Pad Learning Center for violating the following childcare licensing rules of Missouri:

- **5 CSR 25-500.182(1)(C)7:** Physical punishment including, but not limited to, spanking, slapping, shaking, biting, or pulling hair shall be prohibited.
- **5 CSR 25-500.182(1)(C)8:** No discipline technique which is humiliating, threatening, or frightening to children shall be used. Children shall not be shamed, ridiculed, or spoken to harshly, abusively, or with profanity.
- **5 CSR 25-500.182(1)(C)9:** Punishment or threat of punishment shall not be associated with food, rest, or toilet training.

- **5 CSR 25-500.192(5)(A):** In case of accident or injury to a child, the provider shall notify the parent(s) immediately. If the child requires emergency medical care, the provider shall follow the parent's(s') written instructions.
9. The state of Missouri investigator immediately put corrective measures in place to ensure Lily Pad Learning Center takes the necessary steps to correct and comply with the numerous licensing violations cited.
10. The Lily Pad Learning Center has been cited by the state of Missouri 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 Winter. Lily Pad Learning 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.
11. The following is an overview of some of the citations issued by Missouri Department of Elementary and Secondary Education Office of Childhood - Child Care, from August 2019 through January 2023:
- **August 2019:**
 - Cited for failing to be organized according to policies and procedures in that job responsibilities and lines of administrative authority are not clearly established.
 - Cited for not submitting written policies and procedures.
 - Cited for no evidence of a sanitation inspection being met.
 - Cited for failing to submit the description of childcare practices including discipline and guidance policies.
 - Cited for failing to submit written policies.
 - Cited for failing to conduct criminal background checks for four of their staff members.

- **January 2021:**
 - Cited for paint on wall peeling in infant room and a large section of drywall missing near preschool bathroom.
 - Cited for failure to conduct routine fire drills.
 - Cited for changing pad in infant room being ripped with sharp edges.
 - Cited for caregiver not completing required sleep training in past 3 years.
 - Cited for failing to submit medical examination reports for three staff members.
 - Cited for failing to complete TB risk assessment for three staff members.
 - Cited for missing parent work schedule in child record.

- **June 2021:**
 - Cited for children exceeding ages permitted by license.
 - Cited for hazardous items being accessible to children in the two-year old and infant/toddler rooms.
 - Cited for paint on the walls being chipped and drywall exposed.
 - Cited for dirt and debris under four cribs in the infant/toddler area.
 - Cited for failing to conduct background screening for all but one caregiver employee.
 - Cited for failing to maintain immunization reports on file for child.
 - Cited for missing child's address in records.
 - Cited for missing parent work address in records.
 - Cited for failing to obtain emergency contacts in child record.

- **July 2021:**
 - Cited for children exceeding ages permitted by license.
 - Cited *twice* for paint on wall chipped and drywall exposed in infant room.

- **December 2021:**
 - Cited for failure to conduct TB risk assessment for caregiver employee.
 - Cited for missing parent work phone number in child record.
 - Cited for failing to obtain emergency contacts in child record.
 - Cited for missing parent work address in records.

- **May 2022:**
 - Cited for not having an approved director on staff.
 - Cited for failing to maintain a safe and suitable premises—did not have any preventable barriers between parking lot and outdoor playground fence.
 - Cited for outdoor play area not adjoining property and for gate not latching.
 - Cited for failing to maintain a disaster and tornado drill record.
 - Cited for failing to maintain a fire drill record.
 - Cited a *second time* for not having an approved director on staff.

- Cited for failing to document/maintain verification of safe sleep training for caregiver employee.
 - Cited for failing to conduct facility orientation for three caregiver employees.
 - Cited for two employees not meeting the required 12 clock hours of training per calendar year.
 - Cited for not having medical examinations reports on file for four caregiver employees.
 - Cited for failing to include TB risk assessment for five caregiver employees.
 - Cited for hiring a caregiver employee whose medical examination report was older than 12 mo. before individual's start date.
 - Cited for providing medication to child without length of time the medication may be given specified.
 - Cited for failure to conduct a criminal background check for caregiver employee.
- **June 2022:**
- Cited for not having medical examinations reports on file for four caregiver employees.
 - Cited for hiring a caregiver employee whose medical examination report was older than 12 mo. before individual's start date.
- **January 2023:**
- Cited for leaving a child unattended on the diapering table.
 - Cited for failing to meet the handwashing requirements after changing a child's diaper.
 - Cited for failing to thoroughly clean and disinfect the diapering table after every use.
 - Cited for failing to use only constructive, age-appropriate methods of discipline.

12. What happened to Winter was preventable. As a direct and proximate result of the actions and omissions of Lily Pad Learning Center, Plaintiffs Jamyil Thomas and Winter Thomas sustained injuries and damages.

II. PARTIES

13. Plaintiff Jamyil Thomas is the biological father of Plaintiff Winter Thomas, a minor, and are citizens and residents of St. Louis County, Missouri.

14. Defendant Lily Pad Learning Center #2, LLC, d/b/a Lily Pad Learning Center (hereinafter referred to as "Defendant") is a limited liability company doing business in the State of Missouri, its state of formation. Lily Pad Learning Center #2, LLC, d/b/a Lily Pad Learning Center operates a daycare under DVN 002779006, located at 453 Candle Light Ln, Hazelwood, MO 63042. Defendant may be served with process by serving its registered agent, Mathis, Marifian & Richter, PC, located at 230 S. Bemiston Avenue, Suite 730, St. Louis, MO 63105, or wherever they may be found.

III. JURISDICTION & VENUE

15. Per RSMO 508.010, venue is proper in this Court and jurisdiction is proper.

IV. ALLEGATIONS OF NEGLIGENCE AGAINST DEFENDANT LILY PAD LEARNING CENTER

16. 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.

17. Defendant had a duty to maintain a safe environment for children in its care so as to prevent harm and injury to Winter Thomas 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 ensure that expectations for a child's behavior is appropriate or the developmental level of that child;
 - g. Failing to employ caregivers who demonstrate competency, good judgment, and self-control;
 - h. Failing to ensure no child is abused, neglected, or exploited;
 - i. Failing to properly hire, qualify, train, and supervise its employee-caregivers and staff on appropriate discipline, handling, and care for children;
 - j. Failing to use discipline appropriate to the child's level of understanding;
 - k. Failing to use only constructive, age-appropriate methods of discipline;
 - l. Choosing to use a prohibited discipline technique that is humiliating, threatening, or frightening to children such as shaming, ridiculing, speaking harshly, abusively, and with profanity;
 - m. Failing to immediately notify parents on any situation that placed their child at risk;
 - n. Failing to use firm, positive statements or redirections of behavior with infants and toddlers;
 - o. Failing to complete accurate incident reports on all incidents involving serious harm to children and incidents that place children at risk;
 - p. Failing to adhere to the Missouri Minimum Standards for Childcare.
18. Defendant had a duty to exercise ordinary care in caring for, supervising, and disciplining the children in its care to prevent injury to Winter and other children similarly situated.

19. Defendant had a duty to maintain a safe environment for children in its care to prevent injury to Winter and other children similarly situated.

20. Defendant had a duty to hire, train, and supervise caregiver-employees and staff to ensure that children were not subjected to inappropriate discipline and prohibited forms of punishment, to prevent injury to Winter 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 appropriately discipline the children; failing to maintain a safe environment for children; and failing to hire, train, and supervise qualified caregivers and staff to care for children; failing to create an accurate incident report for an incident involving serious harm or risk to children; and failing to immediately notify parents of any situation placing their child at risk or causing harm.

22. The foregoing conduct of Defendant directly caused or directly contributed to cause damage to Winter in the following ways:

- a. Physical pain and suffering;
- b. Mental and emotional distress;
- c. Inconvenience;
- d. Fear and anxiety;
- e. Reasonable and necessary medical expenses;
- f. Loss of normal enjoyment of the pleasure of life;
- g. Costs of suit; and
- h. All other relief, in law and equity, to which Plaintiffs may be entitled.

23. Defendant's negligent acts and/or omissions, and breach of duties, directly and proximately caused injury to Plaintiffs, which resulted in significant damages.

**V. ALLEGATIONS OF NEGLIGENT HIRING/TRAINING AGAINST
DEFENDANT LILY PAD LEARNING CENTER**

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.

25. Defendant had a duty to qualify, hire, and train its employees to maintain a safe environment for children in its care so as to prevent harm and injury to Winter 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 train employee-caregivers on how to properly supervise the children in their care;
- d. Failing to train employees on intervention to ensure a child's safety;
- e. Failing to maintain a safe environment for children;
- f. Failing to train its employee-caregivers to ensure that expectations for a child's behavior is appropriate or the developmental level of that child;

- g. Failing to train its employee-caregivers on the use of only constructive, age-appropriate methods of discipline;
 - h. Failing to train its employee-caregivers to use only brief, supervised separation from the group based on a guideline of one minute of separation for each year of the child's age;
 - i. Failing to train its employee-caregivers on the use of prohibited physical punishment;
 - j. Failing to train its employee-caregivers on the use of firm, positive statements or redirections of behavior with infants and toddlers;
 - k. Failing to train its employee-caregivers on the use of prohibited discipline techniques that are humiliating, threatening, or frightening to children such as shaming, ridiculing, speaking harshly, abusively, and with profanity;
 - l. Failing to properly hire, qualify, and train its employee-caregivers trusted with the care of minor Plaintiff Winter Thomas;
 - m. Choosing to continue to employ an unqualified and untrained employee-caregivers; and
 - n. Failing to adhere to the Missouri Minimum Standards for Childcare.
26. Defendant had a duty to qualify and train caregiver employees to ensure that children were not subjected to inappropriate discipline, to prevent injury to Winter Thomas, and other children similarly situated.

27. Defendant breached the duty of care by failing to properly qualify, hire, and train its employees, and failing to immediately terminate an employee who excessively disciplined and harmed a child.

28. The foregoing conduct of Defendant directly caused or directly contributed to cause damage to Winter in the following ways:

- a. Physical pain and suffering;
 - b. Mental and emotional distress;
 - c. Inconvenience;
 - d. Fear and anxiety;
 - e. Reasonable and necessary medical expenses; and
 - f. Loss of enjoyment of the pleasure of life.
29. Defendant's negligent acts and/or omissions, and breach of duties, directly and proximately caused injury to Plaintiffs, which resulted in significant damages.

**VI. ALLEGATIONS OF NEGLIGENT SUPERVISION AGAINST
DEFENDANT LILY PAD LEARNING CENTER**

30. 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.

31. Defendant had a duty to supervise its employees to maintain a safe environment for children in its care to prevent harm and injury to Winter 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 maintain a safe environment for children;
- d. Failing to supervise its employee-caregivers to ensure only constructive, age-appropriate methods of discipline are used;
- e. Failing to supervise its employee-caregivers to ensure the use of only brief, supervised separation from the group based on a guideline of one minute of separation for each year of the child's age;
- f. Failing to supervise its employee-caregivers to ensure that no prohibited physical punishment is used;
- g. Failing to supervise its employee-caregivers to ensure the use of only firm, positive statements or redirections of behavior with infants and toddlers;
- h. Failing to supervise its employee-caregivers to ensure that no prohibited discipline technique that is humiliating, threatening, or frightening to children such as shaming, ridiculing, speaking harshly, abusively, and with profanity is used;
- i. Failing to properly supervise its employee-caregivers trusted with the care of minor Plaintiff Winter Thomas;
- j. Choosing to continue to employ unsupervised caregiver employees; and
- k. Failing to adhere to the Missouri Minimum Standards for Childcare.

32. Defendant had a duty to supervise caregiver employees to ensure that children were not subjected to inappropriate discipline or mistreatment, to prevent injury to Winter, and other children similarly situated.

33. Defendant breached the duty of care by failing to supervise its employees, failing to maintain a safe environment for children, and failing to immediately terminate an employee who excessively disciplined and harmed a child.

34. The foregoing conduct of Defendant directly caused or directly contributed to cause damage to Winter in the following ways:

- a. Physical pain and suffering;
- b. Mental and emotional distress;
- c. Inconvenience;
- d. Fear and anxiety;
- e. Reasonable and necessary medical expenses; and
- f. Loss of enjoyment of the pleasure of life.

35. Defendant's negligent acts and/or omissions, and breach of duties, directly and proximately caused injury to Plaintiffs, which resulted in significant damages.

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: _____

Respectfully submitted,

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*Attorneys for Plaintiffs - Requests for
pro hac vice forthcoming*