

D-1-GN-24-004072

CAUSE NO. \_\_\_\_\_

ALEXIS DOMINGUEZ, INDIVIDUALLY AND AS  
PARENT AND NEXT FRIEND OF L.D., A MINOR  
CHILD,

PLAINTIFFS,

VS.

W.O.S., INC. D/B/A THE CHILDREN'S  
COURTYARD, INC.,

DEFENDANT.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

53RD, DISTRICT COURT

\_\_\_\_ JUDICIAL DISTRICT

**ORIGINAL PETITION AND JURY DEMAND**

1. Alexis Dominguez, like many parents across this country and the state of Texas, is a working parent that relied on a daycare to provide a safe, caring, nurturing environment for her son, L.D., while she worked. Alexis Dominguez trusted that her son would be safe at Children's Courtyard.<sup>1</sup>

2. A safe learning environment and peace of mind are what parents like Alexis Dominguez pay for and expect. Instead, Alexis' worst nightmare became a reality when her son L.D. suffered serious physical, emotional, and mental injuries because of the failures of Children's Courtyard. Alexis brings this lawsuit on her family's behalf asking for answers and asking that Children's Courtyard accept responsibility.

<sup>1</sup> This petition refers to Defendant W.O.S., Inc. d/b/a The Children's Courtyard, Inc. as "Children's Courtyard."

## STATEMENT OF FACTS

3. According to Children’s Courtyard, “Our teachers are *positive behavior experts*,” who are “given hundreds of strategies (based on current child behavior research) to redirect challenging or disruptive behaviors into positive classroom experiences.”<sup>2</sup> Children’s Courtyard publicizes and sells working parents on the idea that this daycare has highly qualified teachers, or “experts” as they call them, who will keep all children in their care safe “Dedicated. Experienced. Caring. Our educators are all these things — and more.”<sup>3</sup> However, a trail of records from the state of Texas paints a very different picture.

4. Children’s Courtyard 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 Thursday, July 27, 2023, Alexis placed her two-year-old son L.D. in the care of Children’s Courtyard for daycare. While under the care of Children’s Courtyard, L.D. was aggressively handled and inappropriately disciplined causing L.D. physical, emotional, and psychological harm and damages (hereinafter, the “Incident”).

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<sup>2</sup> *Children’s Courtyard Website*, <https://www.childrenscourtyard.com/education/positivebehaviorsupport/> (last visited June 5, 2024) (emphasis added).

<sup>3</sup> *Id.*

6. While L.D. was at daycare, L.D.'s father, Mario Davalos, decided to check in on L.D. through the live feed video surveillance and was shocked and horrified by what he saw was happening to his son. The video footage shows L.D. lying down during naptime with the caregiver-employee sitting on the floor next to L.D. The caregiver-employee is seen smothering L.D. with a blanket from head to toe in an attempt to keep him quiet while other children were sleeping.

7. When L.D. was unable to fall asleep, the caregiver pulls the covers off L.D.'s head and repeatedly slaps L.D. on his face and head with great force as a form of discipline. L.D. is seen attempting to cover his face and head with his own hands from the repeated slaps. The caregiver-employee then covers L.D.'s entire body back up with the blanket where she proceeds to continuously smack L.D. on his back with unnecessary force causing his whole body to rock back and forth with each blow.



8. After seeing his son being inappropriately disciplined, Mario immediately headed straight to Children’s Courtyard to report what he had just witnessed through the video footage. Shockingly, Children’s Courtyard did not report the incident to the state of Texas or law enforcement, despite the gravity of the situation. Instead, Mario himself reported it to both the state and law enforcement. Even more alarming, Children’s Courtyard did not immediately terminate the caregiver-employee after what happened to L.D., instead they notified Alexis and Mario that the caregiver-employee would be suspended for one day. This was not enough assurance for Alexis and Mario that L.D. was safe in the care of Children’s Courtyard so Alexis immediately removed L.D. from their care.

9. 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 L.D. against Children’s Courtyard were *substantiated*, citing against Children’s Courtyard for violating the following childcare licensing rules of Texas:

- **746.1201(4): Responsibilities of Employees and Caregivers – Ensure No Child Abused, Neglected, or Exploited** – *There was sufficient evidence to support that physical abuse and neglectful supervision occurred.*
- **746.3703(a): People Whose Behavior/Health Threatens Children Not Present** – *The operation allowed a caregiver to remain with children for an additional 3 hours after learning the caregiver posed a risk to the children’s safety.*

- **746.305(a)(6): Report Situation Placing Children at Risk** – *The operation did not self-report an incident that placed children at risk.*
- **746.2909(5): Arrangement of Napping Equipment** – *A child's head was covered by the caregiver during naptime.*
- **746.2805: Prohibited Punishments – No Harsh, Cruel, or Unusual** – *Prohibited punishment, including yelling, hitting, and pulling on children was used for discipline.*

10. Children's Courtyard 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 L.D. Children's Courtyard 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 the Texas Health and Human Services Commission from June 2019 through May 2024:

- February 2019
  - Cited for failing properly supervise children in care when 2 children were left unattended on the playground.
- May 2019
  - Cited for failing properly supervise children in care.
- June 2019
  - Cited for failing to demonstrate competency, good judgment, self-control when a caregiver stepped over an infant resulting in the child being hit on the head.

- Cited for failing to hold and comfort an infant child when the infant was upset.
- October 2019
  - Cited for failing to keep floors, ceilings and walls in good repair and clean.
  - Cited for failing to replace two outlet covers that were broken.
  - Cited for failing to have the required height of the playground fence.
- November 2019
  - Cited for failing to demonstrate competency, good judgment, self-control.
  - Cited for failing to report an incident to licensing that placed a child at risk.
- October 2020
  - Cited for failing properly supervise children in care when a child was found outside of the building unsupervised.
- June 2021:
  - Cited for failing properly supervise children in care when a child was left unsupervised.
  - Cited for failing to notify parents of a situation that placed a child at risk.
- February 2022:
  - Cited for failing to use positive methods of discipline when caregivers were pulled by one arm, pushed down by their heads on a mat and handled in a rough manner.
- March 2022:
  - Cited when an investigation found that the operation was not adhering to the child/caregiver ration on multiple occasions.
- May 2022:
  - Cited for failing to provide proof of a caregiver's meeting the educational requirement.
  - Cited for caregiver failing to have current First Aid and CPR training.
- March 2023:
  - Cited for failing to conduct the annual required health inspection.
  - Cited for failing to keep hazardous and toxic cleaning products inaccessible to children.
- August 2023:
  - Cited for using prohibited and inappropriate forms of discipline toward children.
  - Cited for failing to report an incident to licensing that placed children at risk.
  - Cited for interfering with a state investigation when an incident video was deleted by the center before allowing the state to view it.

- Cited for failing to keep floors, ceilings, and walls in good repair and clean.
- Cited for failing to have a current annual fire inspection.
- September 2023
  - Cited for failing to console or comfort a toddler child who was upset.
  - Cited for failing to keep floors, ceilings, and walls in good repair and clean.
  - Cited for allowing a child under two years old to have screen time as an activity.
  - Cited for using a vehicle to transport children that does not have a current inspection or registration.
- October 2023:
  - Cited **twice** when caregivers were found using their personal cell phone while caring for children.
  - Cited when a caregiver was observed using a prohibited punishment on children.
  - Cited for caregivers not promptly changing children's diapers and causing diaper rash on the children.
  - Cited for failing to properly supervise children in their care.
- November 2023:
  - Cited for not adhering to the child/caregiver ratio.
  - Cited for three caregivers failing to have the required First Aid training.
  - Cited for three caregivers failing to have the required CPR training.
  - Cited for failing to keep hazardous objects away from children that may cause choking in infants and toddlers.
  - Cited for failing to have the required proof meeting the educational requirements.
  - Cited for failing to have updated immunization records for children in care.
  - Cited for failing to post children's food allergies information in the kitchen where food is prepared.
- December 2023:
  - Cited for failing to keep the garbage cans inaccessible to children.
  - Cited for failing to test the carbon monoxide system monthly as required to do so.
  - Cited for failing to console or comfort a toddler child who was upset.
  - Cited for failing to test the smoke detectors monthly as required to do so.
  - Cited for caregiver failing to wash her hands after changing a diaper.
  - Cited for caregiver failing to wash a child's hands after diaper change.
  - Cited for failing to cover an electrical outlet in a classroom.
- January 2024:

- Cited for failing to have the required emergency allergy plan for a child diagnosed with a food allergy.
  - Cited for failing to have updated immunization records for children in care.
  - Cited for failing to have the statements of 2 caregivers showing that they attended abuse/neglect training.
  - Cited for failing to serve the required amount of snack components to the children for snack time.
  - Cited for failing to properly dispose of medication that is expired.
  - Cited for a caregiver failing to know the number of children they were responsible for.
  - Cited for failing to properly store a child's allergy medication.
  - Cited for caregiver failing to wash a child's hands after diaper change.
- May 2024:
- Cited for failing to conduct the required annual health inspection.
  - Cited for caregivers failing to complete the required annual training hours.
  - Cited for failing to label the nap mats with the children's names.

12. What happened to L.D. was preventable. As a direct and proximate result of the actions and omissions of Children's Courtyard, Plaintiffs Alexis Dominguez and L.D. sustained injuries and damages.

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

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

14. 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**

15. Plaintiff Alexis Dominguez is the biological mother of Plaintiff L.D., a minor, and are citizens and residents of León, Mexico.



16. Defendant W.O.S., Inc. d/b/a The Children's Courtyard, Inc. (herein referred to as "Defendant" or "Children's Courtyard") is a corporation doing business in the State of Texas, its state of formation. Defendant may be served with process by serving its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, located at 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701 or wherever they may be found.

### **JURISDICTION & VENUE**

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

18. Venue is proper in Travis 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**

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

20. 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 L.D.;
  - 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 methods of putting children for nap;
  - j. Failing to properly hire, qualify, train, and supervise its employee-caregivers trusted with the care of minor Plaintiff L.D.;
  - 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.
21. 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 L.D. and other children similarly situated.
22. Defendant had a duty to maintain a safe environment for children in its care so as to prevent injury to L.D., and other children similarly situated.

23. 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 L.D., and other children similarly situated.

24. 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.

25. 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**

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

27. 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.

28. 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.

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

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

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

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

32. 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).

33. 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.

34. 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**

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

36. Defendant is the owner, operator, and/or possessor of the daycare premises located at 5914 W. William Cannon Drive, Austin, Texas 78749, operation license number 819473.

37. At the time of the Incident, L.D. 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.

38. 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.

39. Defendant owed Plaintiffs a legal duty to ensure L.D.'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 L.D. sustained.

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

### **RESPONDEAT SUPERIOR**

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

42. 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**

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

44. As a direct and proximate cause of Defendant's negligent acts and/or omissions, Plaintiff Alexis Dominguez, individually, and as Parent and Next Friend of Plaintiff L.D., 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.
45. 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**

46. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.
47. 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.

48. 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**

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

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

50. 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: July 2, 2024.

Respectfully submitted,

**THE BUTTON LAW FIRM**

By: /s/Russell T. Button

Russell T. Button

Texas Bar No. 24077428

russell@buttonlawfirm.com

Ashley D. Knarr

Texas Bar No. 24102030

Ashley@buttonawfirm.com

4315 W. Lovers Lane, Suite A

Dallas, Texas 75209

T: 214-888-2216

F: 214-481-8667

Email for Service:

service@buttonlawfirm.com

**ATTORNEYS FOR PLAINTIFFS**



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Bar No. 24077428

service@buttonlawfirm.com

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Russell Button		service@buttonlawfirm.com	7/2/2024 9:22:40 AM	SENT