



## I. STATEMENT OF FACTS

3. LMNOP Children's Academy proclaims they provide "the **highest level** of education **and care in a safe environment** focused on each child's individual needs."<sup>2</sup> LMNOP Children's Academy, publicizes and sells parents on the idea that their daycare is dedicated to creating a nurturing and safe learning environment for the children in their care. According to their website, LMNOP Children's Academy is "designed to provide safety, inspiration, and a world of opportunities for children to discover"<sup>3</sup> and "an organizational culture guided by principles of respect, endless encouragement, and positive relationships."<sup>4</sup> However, a trail of records from the state of Texas paints a very different picture.

4. LMNOP Children's Academy 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'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; and appropriate action in the event of a medical emergency.

5. On November 15, 2023, April Marin placed her two-year-old son, N.M., in the care of LMNOP Children's Academy for daycare. LMNOP Children's Academy improperly supervised and improperly disciplined N.W. when he was forcefully placed on a cot for a nap. LMNOP

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<sup>2</sup> LMNOP Children's Academy's Website, <https://lmnopacademy.com/> (last visited April 09, 2024).

<sup>3</sup> LMNOP Children's Academy's Website, <https://lmnopacademy.com/about-us/> (last visited April 09, 2024).

<sup>4</sup> *Id.*

Children's Academy's employee yanked N.M.'s cot towards her while N.M. was in an unstable position, causing N.M. to fall forward and hit his head and mouth against the cot.

6. Upon impact N.M.'s teeth went straight through his bottom lip resulting in significant bleeding and leaving behind a large hole. N.M. also received a black eye. These injuries caused N.M. physical, emotional, and psychological harm, and damages.



7. Following the incident, LMNOP Children's Academy's employee chose not to immediately contact N.M.'s mother or notify daycare administration of the N.M.'s severe injuries. It wasn't until hours after that an LMNOP Children's Academy employee finally reported to daycare administration an incident had occurred. However, instead of telling the truth about what took place, the LMNOP Children's Academy employee attempted to cover up the incident by stating N.M. bit his lip while eating pretzels during snack time. To falsely corroborate this story, LMNOP Children's Academy's employee had an additional LMNOP Children's Academy employee falsify an incident report as to what happened despite that employee not being anywhere in the vicinity at the time of the incident.

8. N.M.'s mother was told the false story about her son biting his lip when she arrived to pick him up. N.M.'s mother saw the severity of the injury and believed his injuries were inconsistent with the incident report and immediately took him to urgent care. N.M.'s mother went back to the daycare the next day to see video footage where the truth finally came out.

9. Video footage revealed there was no incident at snack time and instead showed that at naptime, LMNOP Children's Academy's employee was visibly frustrated while putting Nolan down for a nap when she dropped him on the cot and then yanked the cot towards her where he fell forward and sustained severe injuries.

10. LMNOP Children's Academy 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 N.M. and concluded that the allegations against LMNOP Children's Academy were substantiated, citing LMNOP Children's Academy for violating the following childcare licensing rules of Texas:

- **746.1201(1) General responsibilities – demonstrate competency, good judgement, and self-control in the presence of children and when performing assigned responsibilities:** The child can be seen laying on his knees with his bottom in the air while on the cot. The caregiver is seen pulling the cot towards her which caused the child to fall forward and injure his mouth. The caregiver did not report the incident to office staff.
- **746.2805 Discipline and Guidance – Harsh, cruel, or unusual punishment:** The video footage shows the caregiver roughly placing the child on his cot for a nap.

11. LMNOP Children's Academy 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 incidents and the injuries sustained by N.M. LMNOP Children’s Academy 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.

12. The following is an overview of some of the citations issued by Texas Health and Human Services Commission from March 2019 through March 2023:

- **March 2019:**
  - o Cited for failing to notify parents of injury to children.
- **July 2020:**
  - o Cited for caregivers failing to complete annual training on required content.
- **October 2020:**
  - o Cited for caregivers failing to demonstrate competency, good judgement, and self-control.
- **July 2021:**
  - o Cited for caregivers failing to complete required first aid and rescue breathing training.
- **January 2022:**
  - o Cited for caregivers using corporal punishment as a form of discipline.
- **January 2022:**
  - o Cited for failing to complete proper background check.
- **March 2022:**
  - o Cited for failing to keep toxic materials out of reach of children.
- **April 2022:**
  - o Cited for failing to report a situation placing a child at risk.
- **April 2022:**
  - o Cited for failing to properly supervise children in care.
- **May 2022:**

- Cited for failing to complete proper background check.
- **May 2022:**
  - Cited for caregivers using improper discipline related to food, naps, or toilet training.
- **May 2022:**
  - Cited for caregivers failing to emotionally relate to children.
- **May 2022:**
  - Cited for caregivers failing to complete required first aid and rescue breathing training.
- **March 2023:**
  - Cited for caregivers failing to demonstrate competence, good judgement, and self-control.

13. What happened to N.M. was preventable. As a direct and proximate result of the actions and omissions of LMNOP Children’s Academy, Plaintiffs April Marin and N.M. sustained injuries and damages.

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

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

15. As required by the Texas Rule of Civil Procedure 47(c), Plaintiff’s 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**

16. Plaintiff April Marin is the biological mother of Plaintiff N.M., a minor, and are citizens and residents of Denton County, Texas.

17. Defendant Merit Venture LLC DBA LMNOP Children’s Academy (hereinafter referred to as “Defendant”) is a Texas Limited Liability Company doing business in this State. Defendant can be served with process by serving its registered agent, Kevin Cantrell, at 101 S. Coit Rd, Ste 36-332, Richardson, TX 75080.

#### **IV. JURISDICTION & VENUE**

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

19. Venue is proper in Dallas 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**

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

21. 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 had a duty to maintain a safe environment for children in its care so as to prevent harm and injury to N.M. 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 maintain a safe environment for children;
- e. Choosing to inappropriately discipline minor Plaintiff N.M.;
- f. Failing to employ caregivers who demonstrate competency, good judgment, and self-control;
- g. Failing to ensure no child is abused, neglected, or exploited;
- h. Failing to properly hire, qualify, train, and supervise its employee-caregivers and staff on appropriate discipline, handling, and care for children;
- i. Failing to use discipline appropriate to the child's level of understanding;
- j. Failing to ensure that expectations for a child's behavior is appropriate or the developmental level of that child;
- k. Failing to use only constructive, age-appropriate methods of discipline;
- l. Failing to use discipline directed toward teaching the child acceptable behavior and self-control;
- m. Failing to immediately notify parents on any situation that placed their child at risk;
- n. Failing to report all incidents involving serious harm or injuries to children to the Department of Family Protective Services;
- o. Failing to complete a truthful and accurate incident report on all incidents involving serious harm to children and incidents that place children at risk;
- p. Failure to provide parents with a copy of a completed incident report on all incidents involving injuries to their child; and
- q. Choosing to employ staff who do not know or adhere to the Texas Department of Family Protective Services, Texas Minimum Standards for Child-care Centers.



- r. Failing to adhere to the Texas minimum standards for childcare
22. Defendant had a duty to exercise ordinary care in caring for, supervising, and disciplining the children in its care to prevent injury to N.M. and other children similarly situated.
23. Defendant had a duty to maintain a safe environment for children in its care to prevent injury to N.M., and other children similarly situated.
24. 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, so as to prevent injury to N.M., and other children similarly situated.
25. 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 a truthful and 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.
26. 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**

27. Plaintiffs incorporate by reference the preceding paragraphs as if stated fully herein.
28. Defendant failed to exercise the mandatory standard of care in violation of the Texas Department of Family Protective Services, Minimum Standards for Child-Care Centers.
29. In the forgoing claims of negligence per se, Plaintiffs were, at all times, members of the class that the statutes were designed to protect.

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

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

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

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

33. 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 the term is defined in Texas Civil Practices and Remedies Code §41.001(11).

34. 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.

35. 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**

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

37. Defendant is the owner, operator, and/or possessor of the daycare premises located at 2808 Trinity Square Dr., Carrollton, Texas 75006, operation license number 1146926.

38. At the time of the incident, N.M. was a minor placed in the care of Defendant and was thus an "invitee" to whom Defendant owed a duty to exercise ordinary care.

39. Plaintiff's 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.

40. Defendant owed Plaintiff's a legal duty to ensure N.M.'s safety in maintaining proper care over the children, ensuring discipline over the children is appropriate, ensuring the 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 failing to hire, train and supervise its employee-caregivers and management, by permitting several of its employee-caregivers and management to inappropriately discipline children, by ignoring past reports of concerns by parents, by failing to immediately notify parents of incidents, and by failing to create corresponding incident reports and immediately inform the state entity of injuries N.M. sustained.

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

#### **VI. RESONDEAT SUPERIOR**

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

43. 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 their 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*.

#### **VII. DAMAGES**

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

45. As a direct and proximate cause of Defendant's negligent acts and/or omissions, Plaintiff April Marin, individually, and as a Parent and Next Friend of Plaintiff N.M., a minor child, suffered damages and injuries that include, but are not limited to:

- a. Physical pain and suffering in the past;
- b. Physical pain and suffering, in reasonable probability, sustained in the future;
- c. Disfigurement in the past;
- d. Disfigurement, in reasonable probability, sustained in the future;
- e. Mental anguish in the past;
- f. Mental anguish, in reasonable probability, sustained in the future;
- g. Fear and anxiety in the past;
- h. Fear and anxiety, in reasonable probability, sustained in the future;
- i. Inconvenience in the past;
- j. Inconvenience, in reasonable probability, sustained in the future;
- k. Reasonable and necessary medical expenses in the past;
- l. Reasonable and necessary medical expenses, in reasonable probability, sustained in the future;
- m. Loss of wages in the past;
- n. Loss of wages, in reasonable probability, sustained in the future;
- o. Loss of wage-earning capacity in the past;
- p. Loss of wage-earning capacity, in reasonable probability, sustained in the future;
- q. Physical impairment in the past;
- r. Physical impairment, in reasonable probability, sustained in the future;

- s. Loss of normal enjoyment of the pleasure of life in the past;
- t. Loss of the normal enjoyment of the pleasure of life, in reasonable probability, sustained in the future;
- u. Costs of suit; and
- v. All other relief, in law and equity, to which Plaintiffs may be entitled.

46. 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**

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

48. 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.

49. 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.

#### **VIII. JURY TRIAL**

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

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

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

**X. 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 17, 2024.

Respectfully submitted,

**THE BUTTON LAW FIRM**

*/s/ Russell T. Button*

Russell T. Button

Texas Bar No. 24077428

russell@buttonlawfirm.com

Ashley D. Knarr

Texas Bar No. 24102030

ashley@buttonlawfirm.com

T: 214-88-2216

F: 214-481-8667

Email for Service:

service@buttonlawfirm.com

**ATTORNEYS FOR PLAINTIFFS**