

20-CV-0428

CAUSE NO. _____

**CELESTE HERNANDEZ,
Individually and AS NEXT FRIEND
OF A.S.**

Plaintiffs

VS.

**JACK KUEHL AND SANTA FE
SPORTS FORMERLY KNOWN AS
DANA'S DANCE AND
GYMNASTICS dba DANAS
GYMNASTIC BOOSTER CLUB**

Defendants

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IN THE DISTRICT COURT OF

Galveston County - 212th District Court

_____ **JUDICIAL DISTRICT**

GALVESTON COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURES

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **CELESTE HERNANDEZ, INDIVIDUALLY AND AS NEXT FRIEND OF A.S.**, a minor, hereinafter referred to as "Plaintiffs" and files this Original Petition complaining of **JACK KUEHL AND SANTA FE SPORTS FORMERLY KNOWN AS DANA'S DANCE AND GYMNASTICS dba DANAS GYMNASTIC BOOSTER CLUB** hereinafter referred to as "Defendants" and for cause of action would respectfully show the Court as follows:

DISCOVERY LEVEL

Plaintiff intends that discovery be conducted under Level 2 of the Rule 190 of the Texas Rules of Civil Procedure.

PARTIES

Plaintiff, **CELESTE HERNANDEZ INDIVIDUALLY AND AS NEXT FRIEND OF A.S.**, are all residents of Galveston County, Texas.

Defendant, **JACK KUEHL** an individual and as the owner, president, and officer of **SANTA**

Plaintiff's Original Petition

Status Conference Set for 6-18-2020

FE SPORTS FORMERLY KNOWN AS DANA'S DANCE AND GYMNASTICS INC dba DANAS GYMNASTICS BOOSTER CLUB is residing at 6802 Avenue R, Sante Fe, Galveston County, Texas 77510. Citation is hereby requested.

Defendant, **SANTA FE SPORTS FORMERLY KNOWN AS DANA'S DANCE AND GYMNASTICS INC. dba DANAS GYMNASTICS BOOTER CLUB**, is a proprietorship and its operating location is 13402 6th Street, Santa Fe, Texas 77510 and may be served through its owner, Jack Kuehl at 13402 6th Street, Santa Fe, Texas 77510 or wherever he may be found. Citation is hereby requested.

MISNOMER/ALTER EGO

In the event any parties are misnamed or are not included herein, it is Plaintiff's contention that such was a "misidentification," "misnomer," and/or such parties are/were "alter egos" of parties named herein. Alternatively, Plaintiff contends that any "corporate veils" should be pierced to hold such parties properly included in the interest of justice. Pursuant to Texas Rule of Civil Procedure 28, Plaintiff reserves the right to substitute this Defendant's true name, if different than the foregoing, after adequate time for discovery.

JURISDICTION AND VENUE

This Court has jurisdiction over the cause because the amount in controversy is within the jurisdictional limits of this Court.

Venue is proper and maintainable in Galveston County, Texas, pursuant to §15.002 of the Texas Civil Practice & Remedies Code because the acts and/or omissions giving rise to Plaintiff's action occurred, in whole or in part, in Galveston County, Texas.

CLAIM FOR RELIEF

The damages sought are within the jurisdictional limits of this Court. Plaintiff currently seeks monetary relief over \$1,000,000. The amount of monetary relief actually awarded, however, will ultimately be determined by a jury. Plaintiff also seeks pre-judgment and post-judgment interest at the highest legal rate.

FACTS

Plaintiff, **CELESTE HERNANDEZ INDIVIDUALLY AND AS NEXT FRIEND OF A.S.**, brings this lawsuit to recover for the damages and personal injuries suffered, resulting directly and proximately from the negligence of **JACK KUEHL individually and also against SANTA FE SPORTS FORMERLY KNOWN AS DANA'S DANCE AND GYMNASTICS dba DANAS GYMNASTIC BOOSTER CLUB.**

At all times, Defendants extended an open invitation to the public, including Plaintiff to enter the premises located at 13402 6th Street, Santa Fe, Texas 77510, occupied, operated and maintained by Defendants as an indoor sports activity center known as Santa Fe Sports formerly known as Dana's Dance and Gymnastics and to become customers or patrons of the business conducted there.

Specifically, on or about April 13, 2018, A.S., a minor, entered the business premises of the Defendants. Plaintiff A.S. purpose for being on the premises at the time was to participate in trampoline activities. Consequently, Plaintiff was an invitee to whom Defendants owed a duty to use ordinary care, including the duty to protect and in making its premises reasonably safe and/or warning the Plaintiff of any dangerous conditions and/or activities existing upon said premises.

Defendants, their agents, servants and employees negligently allowed the premises to become unsafe and dangerous, negligently or willfully permitted such condition to exist, and/or negligently or willfully failed to warn Plaintiff of the condition of the property, despite the fact that Defendants, its agents, servants and employees knew, or in the exercise of ordinary care, should have known of the

existence of the dangerous conditions and that there was a likelihood of someone being injured as happened to the Plaintiff.

While upon Defendants' premises, Plaintiff suffered serious bodily injuries as a direct result of a fall proximately caused by the dangerous conditions of Defendants' property, which Defendants, their agents, servants and employees knew or, in the existence of ordinary care, should have known existed. Specifically, Defendants was on a trampoline at Santa Fe Sports when all of a sudden, he hit on a nail and rod protruding from a trampoline resulting in severe life changing injuries to Plaintiff including severe head and brain injury.

CAUSE OF ACTION: NEGLIGENCE

Plaintiff was on Defendant's premises at the express or implied invitation of Defendant and had entered thereon for the sole benefit of the Defendant. Defendant owed a duty to Plaintiff to exercise ordinary care in its ownership, possession, operation, control, supervision, maintenance and use of Defendant's premises to reduce or eliminate unreasonable risks of harm, which Defendant knew about or in the exercise of ordinary care should have known about. As a matter of routine, Defendant should never have created or allowed the hazard to remain where Defendant knew or should have known customers could potentially get hurt. Defendant's failure to exercise reasonable care proximately caused the incident in question and resulting damages.

Plaintiffs would show that the negligent acts and omissions of Defendants, as set out herein, separately and collectively, were a direct and proximate cause of the incident in question and the resulting injuries and damages sustained by Plaintiffs. Defendants negligence and failure to properly maintain trampoline and adequately supervise, was the direct and proximate cause of the incident in question and of Plaintiff's damages and personal injuries. Defendant was guilty of the following acts of negligence and common law negligence, each of which, separately and collectively, was the direct and

proximate cause of Plaintiff's injuries and damages, to-wit:

- a. Failure to provide adequate supervision;
- b. Failure to provide a safe place for customers;
- c. Failure to keep premises in a reasonable safe condition;
- d. Failure to provide necessary and proper procedures and/or to train its employees to have customers safely operate trampoline;
- e. Failure to provide necessary and proper procedures and/or to train its employees to identify unreasonable dangerous conditions on its premises;
- f. Failure to install, maintain, and use safety processes, devices and safeguards to make the condition safe for Plaintiff;
- g. Failing to provide, follow and enforce safety rules and regulations for the safety of its customers;
- h. Failing to properly supervise Plaintiff;
- i. Failing to give any warning of hazardous conditions;
- j. Failing to maintain its property;
- k. Failing to properly inspect and maintain its premises to identify the unreasonable dangerous condition before Plaintiff was injured;
- l. Failing to remove or eliminate the unreasonably dangerous condition;
- m. Failing to take appropriate corrective, or remedial action to prevent an unreasonably dangerous condition;

Defendants owed Plaintiffs certain duties and obligations in which Defendants failed to perform. The above acts and omissions, individually and in combination, constituted negligence. Defendant's breach of duty was the direct and proximate cause of the incident and the resulting injuries and damages

to Plaintiffs, for which sums Plaintiffs herein now sue for and for which sums Defendants are liable.

The conditions described above posed an unreasonable risk of harm to Plaintiffs and others in that there was such a probability of a harmful event occurring that a reasonable prudent person would have foreseen that the event would occur or that a similar event was likely to happen again. That is, Defendants did not exercise reasonable care to reduce or eliminate a risk.

NEGLIGENT TRAINING

Plaintiff alleges that Defendants' owed a legal ordinary duty to properly train its employees as to the safety standards and use of company equipment. Defendants' breached that duty by failing to properly train its employees. A reasonable prudent employer under the circumstances would have adequately provided training. Defendants' breach proximately caused the injuries and other damages suffered by Plaintiff. The injuries and damages suffered by Plaintiff were within the scope of the employer's duty to properly train its employees.

NEGLIGENT SUPERVISION

Plaintiff alleges that Defendants' owed a legal ordinary duty to properly control and supervise its employees, especially regarding the maintaining of safety standards and use of company equipment. The improper supervision created an unreasonable risk of harm to Plaintiff and his fellow employees. Defendants' breach proximately caused the injuries and other damages suffered by Plaintiff. The injuries and damages suffered by Plaintiff were within the scope of the employer's duty to properly train its employees.

CAUSE OF ACTION-GROSS NEGLIGENCE

The negligent acts and omissions on the part of Defendants and their agents, servants, and employees, as set forth previously, were more than inadvertence or error of Judgment. These negligent

acts and omissions constituted such an entire want of care as to establish that they were the result of actual conscious indifference to the rights, welfare, or safety of the persons affected by them. The Plaintiffs' injuries and damages resulted from an act or omission of Defendants which, when viewed objectively from the standpoint of the Defendants at the time of its occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others and of which Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety or welfare to others.

Such Gross negligence resulted in Plaintiff's injuries set out herein, and on the basis of such gross negligence, Plaintiff seek an award of exemplary damages in an amount sufficient to punish Defendants for their conduct and to deter Defendants and others from engaging in similar conduct in the future.

CAUSE OF ACTION: PREMISES LIABILITY

All preceding paragraphs are incorporated herein by reference. In addition, and in the alternative, Plaintiffs would show that the occurrence made the basis of this suit and the resulting injuries and damages caused by the Defendants' failure to properly maintain said premises in a safe manner. Plaintiff would show that:

- a) The plaintiff was an invitee;
- b) The defendant was a possessor of that premises;
- c) The condition on the premises posed an unreasonable risk of harm;
- d) The defendant knew or reasonably should have known of the danger;
- e) The defendant breached its duty of ordinary care by both
 - i. Failing to adequately warn the plaintiff of the condition; and
 - ii. Failing to make the condition reasonably safe; and

- f) The defendant's breach proximately caused the plaintiff's injuries.

DAMAGES FOR PLAINTIFF

Pursuant to Rule 47 of the Texas Rules of Civil Procedure, Plaintiffs affirmatively seek monetary relief of over \$1,000,000.00.

As a direct and proximate result of Defendants negligence, Minor A.S. has suffered damages and personal injuries and, as provided by Texas law, is entitled to recover for those damages. Minor A.S. has suffered damages as follows :

- a. Physical impairment in the past and future;
- b. Physical pain and suffering incurred by Plaintiff in the past and future;
- c. Mental anguish incurred by Plaintiff in the past and future;
- d. Medical expenses incurred in the past and future;
- e. Disfigurement sustained in the past and, in all reasonable probability, that Plaintiff will sustain in the future;
- f. Loss of future earning capacity;
- g. Exemplary damages;
- h. Medical care expenses; and
- i. Such other and general and special damages as may be recoverable at law.

As a direct and proximate result of Defendants negligence, Plaintiff Celeste Hernandez has suffered damages and, as provided by Texas law, is entitled to recover for those damages. Plaintiff Celeste Hernandez has suffered damages as follows :

- a. Loss of consortium;
- b. Medical care expenses incurred for Minor A.S. in the past;
- c. Medical care expenses for Minor A.S. that in reasonable probability,

- Plaintiff will incur in the future;
- d. Lost earnings; and
 - e. Such other and general and special damages as may be recoverable at law.

REQUEST FOR DISCLOSURE AND PRESERVATION

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiff requests Defendant disclose, within 50 days of the service of this request, the information and materials described in Rule 194.2 of the Texas Rules of Civil Procedure.

Defendants are hereby given notice that any documents, other material, or item, including electronically stored information, that may be evidence or relevant to any issue in this case is to be preserved in its present form until litigation is concluded.

RULE 193.7 NOTICE

Plaintiff gives notice to Defendant that he intends to use all discovery responses as evidence at trial in accordance with such right and privileges established by Texas Rules of Civil Procedure 193.7.

SPOILIATION

Defendant is hereby requested to retain any and all witness statements, incident reports, videos, photographs, facsimiles, email, voice mail, text messages, and any electronic image or information related to the referenced incident and all investigative materials associated with this claim, together with all surveillance tapes of the premises on the date of this incident. Plaintiff further requests Defendant provide a copy of the surveillance video.

JURY DEMAND

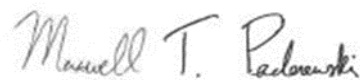
Plaintiff requests a jury trial and tenders the appropriate fee.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendant be cited to appear and answer herein, that Plaintiff receive judgment against Defendant in a sum within the jurisdictional limits of this Court, with pre-judgment and post-judgment interest at highest rate allowed by law, costs of suit, and such other and further relief, legal and equitable, to which she may show herself justly entitled.

Respectfully submitted,

CROCKETT LAW, P.C.



By: _____

Brian H. Crockett

State Bar No. 24074094

Maxwell T. Paderewski

State Bar No. 24110187

9900 Westpark Dr. Ste 200

Houston, Texas 77063

(281) 953-1180 – Telephone

(281) 953-1186 – Facsimile

brian@crockettlawfirm.com

max@crockettlawfirm.com

ATTORNEYS FOR PLAINTIFF