

CAUSE NO. 2024CI05418

CHINA BRANFORD, Individually and as next friend of E.B., a minor. <i>Plaintiffs,</i>	§ § §	IN THE DISTRICT COURT
VS.	§ §	45 th JUDICIAL DISTRICT
CITY OF UNIVERSAL CITY and PLAYCORE INC. d/b/a PLAY & PARK STRUCTURES <i>Defendants.</i>	§ § §	BEXAR COUNTY, TEXAS

DEFENDANT PLAYCORE WISCONSIN INC. d/b/a PLAY & PARK STRUCTURES’ ORIGINAL ANSWER TO PLAINTIFFS’ ORIGINAL PETITION

TO THE HONORABLE JUDGE:

COMES NOW Defendant **PLAYCORE WISCONSIN INC. d/b/a PLAY & PARK STRUCTURES** (“Defendant”), incorrectly named herein as Playcore Inc. d/b/a Play & Park Structures, in the above-entitled and numbered cause, files this Original Answer to Plaintiffs’ Original Petition, dated March 12, 2024, would respectfully show unto the Court as follows:

I.
GENERAL DENIAL

1.01 As authorized by TEXAS RULE OF CIVIL PROCEDURE 92, Defendant enters a general denial of all matters pleaded by Plaintiffs’ claims herein, and it requests that the Court require Plaintiffs to prove their charges and allegations by a preponderance of the evidence, as required by the Constitution and laws of the State of Texas.

II.
AFFIRMATIVE DEFENSES

2.01 Defendant asserts the affirmative defense of contributory negligence. The negligence of Plaintiffs caused or contributed to Plaintiffs’ injures so that the claims are barred or, in the alternative, must be reduced in accordance with the relative degree of Plaintiffs’ own

negligence. Defendant requests the trier of fact to determine Plaintiffs' liability and percentage of responsibility pursuant to TEXAS CIVIL PRACTICE & REMEDIES CODE section 33.003.

2.02 Defendant is entitled to all caps and limitations on damages pursuant to the TEXAS CIVIL PRACTICE & REMEDIES CODE.

2.03 Defendant alleges that Plaintiffs' injuries and/or damages were caused by an intervening event for which Defendant has no liability.

2.04 To the extent that Plaintiffs' medical expenses exceed the amount actually paid on Plaintiffs' behalf to Plaintiffs' medical providers, Defendant asserts the statutory defense set forth in Section 41.0105 of the TEXAS CIVIL PRACTICE & REMEDIES CODE. Thus, recovery of Plaintiffs' medical or health care expenses are limited to the amount actually paid or incurred by or on behalf of Plaintiffs.

2.05 To the extent that any health care provider has written off its charges for medical care for Plaintiffs and/or paid charges for medical care in connection with the injuries underlying this suit, and in the unlikely event that Plaintiffs obtains a final judgment against Defendant, Defendant is entitled to a credit and/or offset for the total amount of such write-offs and/or expenditures incurred and paid by others and accruing to Plaintiffs pursuant to TEXAS CIVIL PRACTICE & REMEDIES CODE Section 41.0105.

2.06 Defendant states that the alleged occurrence, incident, event or accident underlying this suit may have been caused by the negligence of a third party or parties over whom Defendant had no control and said negligence was the proximate cause, or in the alternative, the sole proximate cause of the occurrence, incident, event or accident underlying this suit and of the alleged damages to Plaintiffs.

2.07 Defendant asserts the defense of unavoidable accident. The damages Plaintiffs

claim were due to an accident that was not caused by the negligence of any party, and one that could not be prevented by the exercise of due care.

2.08 Pleading further, and in the alternative, and subject to the preceding paragraphs herein, without waiving same, Defendant's products were, at all times, manufactured and distributed in accordance with the standards, which constituted the entirety of the then existing "state of the art" and at all times material hereto that the state of the technological arts were such that there was no generally accepted or recognized knowledge of any unavoidably unsafe, inherently dangerous, hazardous, or defective character or nature of the products associated with Defendant, if such products were used in the manner and for the purposes intended, such that Defendant had no duty to know of such character or to warn Plaintiffs or others similarly situated.

2.09 Pleading further, and in the alternative, and subject to the preceding paragraphs herein, without waiving same, Defendant denies that it owed any duty or warranty to Plaintiffs and it denies any fault or breach of warranty. Defendant would affirmatively show that any products distributed or sold by it were at all times reasonably fit and suitable for the purpose for which they were distributed and sold, and that Plaintiffs' damages did not result from any defect in Defendant's products, either by way of manufacturing, design, or marketing defect.

2.10 Pleading further, and in the alternative, and subject to the preceding paragraphs herein, without waiving same, Defendant alleges that at all relevant times, all of its products complied with industry standards and with federal and state standards and regulations governing the manufacturing, sale, packaging, and distribution of such products.

2.11 Pleading further, and in the alternative, and subject to the preceding paragraphs herein, without waiving same, Defendant would show that the occurrence in question was caused by the misuse or mishandling of the product associated with Defendant.

III.
RIGHT TO SUPPLEMENT

3.01 Defendant respectfully reserves the right at this time to amend this Original Answer to Plaintiffs' allegations, after said Defendant has the opportunity to more closely investigate these claims, as is the right and privilege of said Defendant under the TEXAS RULES OF CIVIL PROCEDURE and the laws of the State of Texas.

IV.
DEMAND FOR JURY TRIAL

4.01 In accordance with the provisions of TEXAS RULE OF CIVIL PROCEDURE 216, Defendant requests that when this case proceeds to trial, it be placed on the Court's jury trial docket.

4.02 A jury fee will be paid contemporaneously with the filing of this Answer, or at a later date in accordance with the applicable rule.

V.
NOTICE OF USE

5.01 Defendant hereby gives actual notice to Plaintiffs that any and all documents produced during discovery may be used against the Plaintiffs at any pre-trial proceeding and/or trial of this matter without the necessity of authenticating the document. This notice is given pursuant to TEXAS RULE OF CIVIL PROCEDURE 193.7.

WHEREFORE, PREMISES CONSIDERED, Defendant **PLAYCORE WISCONSIN INC. d/b/a PLAY & PARK STRUCTURES** prays that upon final hearing hereof, Plaintiffs take nothing by way of their Original Petition, and any revised, amended, and/or subsequently filed petition in this cause, and that Defendant have judgment in its favor over and against Plaintiffs, its costs and such other and further relief as to which Defendant may show itself justly entitled.

Respectfully submitted,

GORDON REES SCULLY MANSUKHANI LLP

By: /s/ Philip Robert Brinson

Philip Robert Brinson
State Bar No. 00787139
TransWestern Tower
1900 West Loop South, Suite 1000
Houston, Texas 77027
(713) 490-4834 (Telephone)
(713) 961-3938 (Facsimile)
prbrinson@grsm.com

**ATTORNEY FOR DEFENDANT
PLAYCORE WISCONSIN INC. D/B/A
PLAY & PARK STRUCTURES**

CERTIFICATE OF SERVICE

I hereby certify by my signature above that a true and correct copy of the foregoing document has been sent via electronic service to counsel of record in accordance with the TEXAS RULES OF CIVIL PROCEDURE, on this the 8th day of April, 2024.

/s/ Philip Robert Brinson
Philip Robert Brinson

Automated Certificate of eService

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Gloria Flores on behalf of Philip Brinson
Bar No. 787139
gflores@grsm.com
Envelope ID: 86393578
Filing Code Description: ORIGINAL ANSWER OF
Filing Description: PLAYCORE WISCONSIN INC.
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Associated Case Party: China Branford

Name	BarNumber	Email	TimestampSubmitted	Status
Paula Wyatt		e-serve@wyattlawfirm.com	4/8/2024 10:42:03 AM	SENT
Jack De Luna		jdeluna@wyattlawfirm.com	4/8/2024 10:42:03 AM	SENT
Karen Rangel		karenr@wyattlawfirm.com	4/8/2024 10:42:03 AM	SENT
Cristal Colleli		cristalc@wyattlawfirm.com	4/8/2024 10:42:03 AM	SENT

Associated Case Party: Playcore Wisconsin, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Philip RobertBrinson		prbrinson@grsm.com	4/8/2024 10:42:03 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Gloria E.Flores		gflores@grsm.com	4/8/2024 10:42:03 AM	SENT
Brendan Gilmartin		bgilmartin@grsm.com	4/8/2024 10:42:03 AM	SENT