

CAUSE NO. 2024-CI-05418

CHINA BRANFORD, INDIVIDUALLY	§	IN THE DISTRICT COURT
AND AS NEXT FRIEND OF E.B.,	§	
A MINOR	§	
<i>Plaintiffs,</i>	§	
 	§	
V.	§	45TH JUDICIAL DISTRICT
 	§	
CITY OF UNIVERSAL CITY, AND	§	
PLAYCORE, INC. DOING BUSINESS AS	§	
PLAY & PARK STRUCTURES	§	
<i>Defendants.</i>	§	BEXAR COUNTY, TEXAS

DEFENDANT CITY OF UNIVERSAL CITY’S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Defendant CITY OF UNIVERSAL CITY (“City”) and in response to the allegations contained in Plaintiffs’ Original Petition files this Answer and would show the Court as follows:

I.
GENERAL DENIAL

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant City generally denies all material allegations contained in Plaintiffs’ Original Petition and calls upon Plaintiffs to prove said allegations by a preponderance of the evidence as required by the laws of the State of Texas.

II.
AFFIRMATIVE DEFENSES

2. Defendant City hereby alleges affirmatively that it is a governmental entity, organized and operating under the laws of the State of Texas, with sovereign immunity from claims asserted by Plaintiffs, except to the extent that such immunity is waived under the provisions of

the Texas Tort Claims Act. Defendant City asserts in full its statutory and common law immunities from suit in this proceeding.

3. Defendant City further alleges it is not liable for claims that do not properly invoke the jurisdiction of the court.

4. Defendant City asserts the defense of any and all statutory caps on damages recoverable, immunity from punitive damages, as well as other exclusions and limitations as provided by the Texas Tort Claims Act.

5. Defendant City asserts that Plaintiff's damages, in addition to any other limitations under law, are limited to recovery of medical or health care expenses incurred to the amount actually paid or incurred by or on behalf of Plaintiff, pursuant to §41.0105, TEX. CIV. PRAC. & REM. CODE.

6. Defendant City further alleges that it is not liable for:

- a) discretionary functions or legislative decisions;
- b) claims for which Defendant City has not received timely notice of claim under the Texas Tort Claims Act;
- c) exemplary or punitive damages;
- d) any amount in excess of the statutory caps identified under the Texas Tort Claims Act;
- e) damages proximately caused by the acts and/or omissions of any other person, party or entity;
- f) claims that do not overcome Defendant's sovereign immunity, including but not limited to a claim involving a governmental function that does not satisfy the limited waiver of immunity set forth in the Texas Tort Claims Act;
- g) damages limited by section 41.0105 of the Texas Civil Practices and Remedies Code; and
- h) claims that do not properly invoke the jurisdiction of the court; and

(i) claims that do not fall under the limited waiver of immunity under the Texas Tort Claims Act.

7. Defendant City hereby asserts the defense of sovereign or governmental immunity to the fullest extent allowed under law. Defendant further asserts the defense of any and all statutory caps on damages recoverable, immunity from punitive/exemplary damages, as well as other exclusions and limitations as provided by the Texas Tort Claims Act and Recreational Use Statute.

8. Without waiving any immunity and to the extent that Defendant City is liable, Defendant asserts that the claims, damages, and injuries complained of by Plaintiff is not the result of any act or omission, if any, of the Defendant City, but rather were caused by conditions and/or acts by others that were not under the control of or committed by the Defendant City and which were the sole cause, sole proximate cause, contributing, comparative or new and intervening cause of the occurrence and injuries in question and the damages alleged, namely Plaintiff driver Michael Stasko. Defendant City invokes the doctrine of comparative negligence or proportionate responsibility under Chapter 33 of the Texas Civil Practice and Remedies Code – Proportionate Responsibility - and requests the jury to compare the extent to which any other party, person or entity, whether joined in this suit or not, may have cause or contributed to cause the injury to Plaintiff.

9. Without waiving any immunity and to the extent that Defendant City is liable, Defendant asserts the affirmative defense of failure to mitigate, to the extent Plaintiff failed to properly mitigate damages they are claiming to have suffered, including any health care received, paid or not paid, submitted or not submitted to insurance for payment.

10. Without waiving any immunity and to the extent that Defendant City is liable, Defendant

asserts the paid versus incurred analysis and entitlement to credits and offsets as laid out by the Texas Supreme Court and Chapter 33 – Proportionate Responsibility and Chapter 41 – Damages (specifically § 41.0105) of the Texas Civil Practice and Remedies Code.

III.
RULE 193.7 NOTICE

11. Plaintiffs filed a Rule 193.7 Notice with their Original Petition giving “notice is hereby given to Defendants that Plaintiffs intend to use all documents produced by each party in pretrial and/or trial of this cause, to the extent allowed pursuant to the Texas Rules of Civil Procedure.”

Objections to Rule 193.7 Notice:

12. Defendant City serves these objections to the authenticity of documents produced by Plaintiffs in discovery. To use a document produced in response to a request for a notice of production, the party offering the document must prove it is admissible, lay the proper predicate for its admission, offer it into evidence, and get the court to rule on its admissibility. See Tex. R. Civ. Evid. 104, 105, 402. Just because a document was produced by the other party in discovery does not mean the document is admissible.

13. Defendant objects to Plaintiffs’ notice in that it is premature until further discovery is conducted and/or completed. Defendant City reserves its right to amend its objections once discovery has commenced.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Defendant City of Universal City prays Plaintiffs take nothing by this suit and that upon final hearing herein all relief sought by Plaintiffs be denied, and that Defendant has such other and further relief, at law or in equity, general or special, to which it may show itself justly entitled.

DATED this 13th day of April, 2024.

Respectfully submitted,

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CITY OF UNIVERSAL CITY

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served in accordance with the Texas Rules of Civil Procedure on this 13th day of April, 2024, to the following:

Paula A. Wyatt
Gavin McInnis
Thomas Kocurec, Jr.
Wyatt Law Firm, PLLC
Oakwell Farms Business Center
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San Antonio, Texas 78218

E-NOTIFICATION

/s/ Clarissa M. Rodriguez
PATRICK C. BERNAL
CLARISSA M. RODRIGUEZ

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Marlena Guajardo on behalf of Clarissa Rodriguez
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Envelope ID: 86631085
Filing Code Description: ORIGINAL ANSWER OF
Filing Description: City of Universal City
Status as of 4/15/2024 11:28 AM CST

Associated Case Party: China Branford

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Karen Rangel		karenr@wyattlawfirm.com	4/13/2024 2:54:24 PM	SENT
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Jack De Luna		jdeluna@wyattlawfirm.com	4/13/2024 2:54:24 PM	ERROR

Associated Case Party: Playcore Wisconsin, Inc.

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