

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

P.R., M.R., AND N.R., INDIVIDUALLY	§	IN THE DISTRICT COURT OF
AND AS NEXT FRIEND OF S.R.,	§	
Plaintiffs,	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
CENTRAL TEXAS AUTISM CENTER,	§	
INC. AND CARA BROWN,	§	
Defendants.	§	IN THE _____ JUDICIAL DISTRICT

### ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

P.R., M.R. and N.R, individually and as next friends of S.R. (collectively, Plaintiffs) hereby file this Original Petition against Central Texas Autism Center, Inc. (CTAC) and Cara Brown (Ms. Brown), individually and as a representative of CTAC.

#### I. DISCOVERY LEVEL

Discovery should be conducted under Level 2 pursuant to Texas Rule of Civil Procedure 190.3.

#### II. PARTIES

1. S.R. is a twelve-year-old male child residing in El Campo, Wharton County, Texas, who is represented in this matter by P.R., M.R. and N.R.
2. P.R. is an individual residing in El Campo, Wharton County, Texas. P.R. is S.R.'s father.
3. M.R. is an individual residing in El Campo, Wharton County, Texas. M.R. is S.R.'s grandfather and, with N.R., has possessory custody of S.R.
4. N.R. is an individual residing in El Campo, Wharton County, Texas. N.R. is S.R.'s grandmother and, with M.R., has possessory custody of S.R.
5. Defendant CTAC is a Texas corporation with its principal place of business in Austin, Travis County, Texas. CTAC may be served with process through its registered agent,

Kelle Wood Rich, Central Texas Autism Center, 3006 Bee Caves Road, Suite B-200, Austin, Texas 78746.

6. Ms. Brown is an individual residing in Austin, Travis County, Texas. Ms. Brown may be served with process at her residence address of 3816 Lamar Blvd. #524, Austin, Texas 78704.

### **III. JURISDICTION AND VENUE**

7. The Court has jurisdiction over this matter because the amount in controversy exceeds its minimum jurisdictional limits.
8. Pursuant to Section 15.002 of the Texas Civil Practice and Remedies Code, venue is proper in Travis County because CTAC's principal place of business is in Travis County and Ms. Brown is a resident of Travis County and was so at all times relevant to the matters contained herein.

### **IV. FACTS**

9. Today, S.R. is a happy 6th grader earning A's and B's in his regular education classroom in the Louise Independent School District (LISD) in Louise, Texas. His current teachers describe him as "polite," someone who "tries very hard," and a child with a "positive attitude." And he is becoming friends with his classmates for the first time in a long time.
10. For many parents and grandparents, S.R.'s current status would be unremarkable. But as set forth in detail below, S.R.'s current status was unthinkable just a short time ago, and P.R., M.R., and N.R. are slowly getting back the child and grandchild they knew before the Defendants wrecked his life.
11. S.R. suffers from reactive attachment disorder (RAD) and post-concussion syndrome (PCS). RAD is an emotional disorder and PCS is a neurological deficit.

12. The El Campo Independent School District (ECISD) in El Campo, Texas (where S.R. lives) hired Defendants to develop an educational plan for S.R. consistent with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq.
13. Defendants developed an educational plan that had at its core a plan of solitary confinement, mind games, and physical restraint. That plan resulted in S.R. being **physically held on the floor** of his empty classroom by **multiple adults**, sometimes for **more than an hour**, nearly **every other school day** when he acted out (as would any rational person, child or adult) in response to Defendants' mind games. Ms. Brown directly participated in and encouraged those episodes of pinning S.R. down on the ground.
14. S.R. had to leave ECISD to escape Defendants' plan of abuse. After a year of home schooling, his father and grandparents found a nearby school where S.R. would not be subjected to frequent assault and intentional emotional distress. Instead, in August 2008, he began prospering in LISD. The following paragraphs detail S.R.'s path from distress under Defendants' plan to success in its aftermath.
  - A. **S.R. is statutorily entitled to a free, appropriate, public education.**
15. Based on S.R.'s RAD and PCS disorders, the IDEA entitles S.R. to a "free appropriate public education" by means of an individualized education program (IEP) that supports his needs within the least restrictive environment. As S.R. is a resident of El Campo, Texas, the ECISD was statutorily charged with developing and administering an IEP for S.R. that was appropriate to his individual needs.
16. To assist in developing an appropriate IEP, Plaintiffs provided ECISD with S.R.'s detailed medical, psychiatric and psychological records. These records reveal that S.R.:

(1) experiences heightened anxiety, (2) becomes easily frustrated and overwhelmed, (3) suffers from symptoms of severe depression, and (4) decomposes or becomes physically aggressive in response to stress. S.R.'s records also reveal recommendations by competent professionals that S.R. be placed in a regular classroom as much as possible, and warn that inconsistency in his environment will cause him to become easily frustrated and physically aggressive.

17. Indeed, according to ECISD's own behavioral consultant, it was important to develop an IEP for S.R. that avoided imposing stress on him so as to minimize his outbursts.

[I]t will be very important for adults to be familiar with and learn to recognize [S.R.'s] precursor behaviors. That is, adults indicated that he tends to "shut down" and is not able to articulate when something is bothering him. This "shut down" and lack of verbalization appears to be a predictor that he is going to become physically aggressive. **If this occurs, adults should not place any more demands on [S.R.]. Instead, they should quietly and calmly ask if he needs a break or a "cool down" . . . .[S.R.] should be left alone while he is accessing it.**

**B. During the summer and early fall months of 2006, S.R. was doing well.**

18. During the summer of 2006, S.R. was taking prescription medications designed to minimize his outbursts. He was also attending sessions three to four times a week working at Physio Kids in Houston, Texas, whose strategies were successful in teaching S.R. how to self-regulate his behavior so as to better cope with frustration.
19. S.R. began the fall semester of 2006 in the fourth grade. ECISD was helpful and supportive in implementing the strategies that had been so successful during the preceding summer.
20. S.R.'s schedule at the beginning of the school year provided that he would sit in a regular classroom with other fourth graders for announcements and routine morning activities. He would then leave for individualized instruction in a self-contained classroom, only to

rejoin his classmates for music, physical education, lunch, and resource time. Whenever S.R. experienced frustration, his teachers instructed him to ask for help or for a break.

21. Reports and e-mails from S.R.'s teacher demonstrate that during the early fall months of 2006, S.R. was learning to control his outbursts. Moreover, with the support of an aide, S.R. was able to spend successively longer periods of time in a regular classroom.
22. On October 26, the aide assigned to support S.R. resigned. Deprived of the consistent environment that he requires, S.R. experienced difficulty in adapting to the change.
23. During November, S.R.'s behavior regressed as he attempted to cope with a series of substitute aides provided by ECISD. A replacement aide who began on November 20 never returned after the Thanksgiving holidays, exacerbating S.R.'s frustration with his changing environment.
24. Prior to the resignation of his aide in October, S.R. had to be restrained from physical aggression on five occasions during the first two months of the fall semester. After the aide's resignation, S.R. had to be restrained eight times during the two remaining months of the fall semester.
25. Although a permanent aide was hired on December 6, 2006, S.R.'s disruptive behavior had escalated to the point that ECISD was sending him to In-School Suspension.
- C. **CATC's employee, Ms. Brown, developed a BIP that subjected S.R. to forty-five contrived "trials" that were specifically designed to frustrate him each day.**
26. Upon information and belief, ECISD entered into a contract with CTAC sometime late fall 2006 whereby CTAC would develop and administer a Behavior Intervention Plan (BIP) that would become part of S.R.'s IEP.
27. The first step in developing a BIP for S.R. was to perform an initial functional behavioral assessment (FBA). CTAC delegated this responsibility to Ms. Brown. Ms. Brown has

no training as an educator, psychologist or psychiatrist. Her sole training in the field of behavioral science consists of a two-week seminar provided by the private institute that certified her as an “associate behavior analyst.” According to that certifying agency, associate behavior analysts should be closely supervised by a behavior analyst who holds at least a Masters Degree in the field of behavioral science.

28. Ms. Brown never spoke to any of the psychologists or behavioral scientists that had tested, examined, or previously treated S.R. prior to conducting the FBA. Rather, Ms. Brown’s sole preparation for the FBA consisted of reviewing teachers’ anecdotal notes from fall 2006 and the report from ECISD’s behavioral consultant, who had emphasized the importance of consistency in S.R.’s environment and warned that placing demands upon S.R. once he became frustrated or overwhelmed would lead to physical aggression.
29. Ms. Brown was aware that S.R.’s environment had been in turmoil since his aide’s resignation. Nevertheless, after two days of FBA observation, which no other more qualified CTAC employee attended, Ms. Brown determined that S.R.’s motivation for engaging in inappropriate behavior was a desire for attention or a means to avoid demands that he did not wish to fulfill. In reaching this conclusion, Ms. Brown substituted her own minimal training and experience for that of numerous, highly-credentialed experts in the field.
30. During Ms. Brown’s FBA observation on December 14, she witnessed S.R. manifest his frustration at a game of tic-tac-toe by laying his head down on his desk and refusing to write the number “49” on his paper. According to ECISD’s own behavioral consultant, the proper response to S.R.’s inability to articulate his frustration appropriately at the time would have been to ask him if he needed a break. Ms. Brown, however, egregiously

continued to repeat the demand to write “49” on the paper. She continued the demand while S.R. decomposed. She continued the demand while S.R. became physically aggressive, and banged his head against the floor. She continued the demand while she and two other adults physically restrained S.R. for almost a full hour. When later asked by N.R. about the incident, Ms. Brown remarkably admitted that she had intentionally provoked S.R. to see what she was “dealing with.”

31. Ms. Brown represented to M.R. and N.R. that she would be conducting the FBA of S.R. Indeed, Ms. Brown was required to obtain informed parental consent before any FBA could be performed. *See* TEX. EDUC. CODE § 29.004. Ms. Brown’s representation created a substantially false impression by disclosing some facts and withholding others. In particular, Ms. Brown withheld the fact that during the FBA she planned to intentionally provoke S.R. until he became physically aggressive and required restraint. Had M.R. or N.R. known of Ms. Brown’s intentions, they would not have consented to the FBA. Indeed, on the first morning of S.R.’s FBA, M.R. expressly instructed Mr. Dan Hammock, Special Education Director of ECISD, that under no circumstances was the school or CTAC permitted to provoke S.R. to the point that he would decompose.
32. Based on her purported FBA, Ms. Brown created a BIP requiring the contrived imposition of forty-five “trials” a day upon S.R. These “trials” were of three varieties: (1) continuously repeating a demand until S.R. complied; (2) telling S.R. “no” regardless of whether such a denial was appropriate; and (3) interrupting S.R. as he began an activity and telling him to “wait” before proceeding. Ms. Brown’s BIP required S.R.’s teachers and aides to purposefully and artificially subject him to the very frustration that physicians, psychologists and psychiatrists had recommended be avoided.

**D. S.R. reacted to the IEP as predicted by experts.**

33. S.R. reacted to the forty-five artificial trials a day just as his physicians, psychologists, and psychiatrists had predicted—with increased physical aggression. A letter from S.R.’s teacher dated February 23, 2007 memorializes S.R.’s attempt to withdraw from feelings of frustration caused by a worksheet until he could gain control over his feelings. Rather than permit S.R. the “break” or “cool down” that he needed, however, S.R.’s teacher (in accordance with Ms. Brown’s BIP) followed S.R. around the room continuously repeating the demand that he complete the worksheet.

Earlier in the day we had to restrain [S.R.] because he left the work table when a work demand was placed on him. He was supposed to do a worksheet that went with the Reading Mastery Program we’re using. He refused to do the worksheet and crawled to the floor. I kept the demand so he started kicking the table. When I came around the table to move it out of his reach he tried to bite me. We went to restraint immediately. Mrs. Marek and I tried to restrain him on our own but he struggled more today. After about 10 min. of restraint and release (done several times) we called for support. Coach Pavlu and Mr. Wilshire both responded. [S.R.] calmed down after a few minutes and complied with the demand.

34. Notably, Ms. Brown’s BIP required teachers to escalate situations known to cause S.R.’s physical aggression, which in turn inevitably led to his physical restraint. Texas law permits physical restraint of special education students only in cases of emergency. *See* 19 TAC § 89.1053(c). It does not permit physical restraint in situations in which an “emergency” is purposefully and voluntarily created.

**E. The BIP resulted in S.R. being physically restrained forty-two times and deprived of any comforting objects.**

35. It is undisputed that S.R. had been physically restrained prior to the introduction of Ms. Brown’s BIP. ECISD’s records reflect that S.R. had been restrained a total of thirteen times during the fall 2006 semester. The restraints multiplied exponentially, however,



after Ms. Brown's BIP was implemented. S.R. was physically restrained six times in the month of January 2007, ten times during the month of February, fifteen times during the month of April, and three times during the month of May. Thus, S.R. was physically restrained thirty-four times in the second semester of the school year—an increase of more than 260% over the fall semester. Ms. Brown herself physically restrained S.R. at least twice: once on December 14, 2007 and again on February 12, 2007. At no time did CTAC intervene to modify Ms. Brown's BIP so as to minimize the physical restraints being imposed on S.R.

36. Not only did Ms. Brown's BIP subject S.R. to substantially increased physical restraint, it also undermined the successful coping strategies that had been implemented that summer and early fall. S.R. had been taught to soothe himself when feeling overwhelmed by holding onto a comforting object. Indeed, S.R.'s teacher told Ms. Brown that S.R. used inanimate objects as a tool to help regulate his behavior.

[S.R.] looks for something to attach himself to—whether it be a pillow, his shoe, his shirt, a game piece, the gym mat we're using for the restraint or whatever. It's like he needs to be holding onto something in order to calm down.

37. S.R.'s teacher also realized that depriving him of comforting objects would provoke an aggressive response. For example, she wrote to Ms. Brown that “on Friday, we had a meltdown but I don't think it would have escalated if I had not taken everything he tried to latch onto away (pillow, shoe, gym mat, etc.)” Nevertheless, Ms. Brown purposefully ordered S.R.'s teacher to deny him access to comforting objects.

If you are placing a demand on him and he runs to grab something you would want to block him and keep the demand. Most likely he will then attack or hit you and you will have to go into the restraint. I think running and latching on to something is just another topography of escape motivated behavior that we don't want to reinforce.

**F. The BIP was continued despite clear evidence of its harm to S.R.**

38. As the second semester progressed, S.R.'s behavior proportionately regressed. Rather than accept that the BIP was a dismal failure—and resort to methods that had been successful, such as allowing S.R. to withdraw to a safe area when he began to feel overwhelmed—Ms. Brown ordered S.R.'s teacher to escalate his restraints so that they occurred at the first sign of any aggression. Accordingly, S.R. was repeatedly pinned to the floor by as many as five adults two to three times his size while S.R.'s teacher repeated over and over again the demand of the moment.
39. By May 2006, S.R. had regressed from spending the majority of his time in a regular classroom with his classmates to being completely isolated in a self-contained classroom, with only an occasional visit by another child as permitted by Ms. Brown. Not only was his emotional growth stunted, his academic achievement suffered as well.
40. Since assuming possessory custody of S.R., M.R. and N.R. have aggressively sought parental training from five different experts and have consulted with three different psychiatrists as well as with psychologists and neurologists concerning S.R.'s emotional, neurological and behavioral deficits. They strongly disapproved of Ms. Brown's BIP and did not implement it in their home. They also made their disapproval known to ECISD, CTAC, and Ms. Brown.
41. At the end of the school year, M.R. and N.R. determined that they could no longer send S.R. to ECISD because ECISD, CTAC and Ms. Brown refused to substantially alter his BIP for the upcoming year.
42. During the 2007-2008 school year, M.R. and N.R. home-schooled S.R., employing the services of a twenty-six-year veteran special education aide. The aide saw no need to trigger frustration in S.R., and as a result, she never saw him decompose or had a need to

restrain him. While S.R. engaged in annoying behaviors from time to time, such as thumping her hand with a pencil, the aide considered such behaviors to be nothing more than a manifestation of his emotional and neurological deficits, which she capably handled by simply telling him to “stop.”

43. In the fall of 2008, S.R. transferred to Louise Jr. High in the LISD. A majority of LISD’s operations are independent from ECISD. However, as part of a cooperative agreement between the two districts, ECISD provides special education staff and services to LISD students. LISD conducted an initial ARD meeting on September 9, 2008 and a second ARD meeting on October 7, 2008.

44. Despite the deference that is commonly given to another school’s education plan, the ARD committee determined the least restrictive environment for educating S.R. would be in the general classroom and that it was not in S.R.’s best interest to continue under the CTAC plan. After several weeks of attending classes in the general population, S.R.’s teachers have noted his great achievement academically as well as an increased interaction with his peers. Additionally, no uses of restraint have been reported by the school’s faculty. Instead, the restraint reports have been replaced with feedback from S.R.’s teachers describing him as “polite”, having a “positive attitude”, “listening and following directions”, “stay[ing] on task”, and a “good student.”

**G. Plaintiffs have been irreparably harmed by Ms. Brown and CTAC.**

45. Armed with just two weeks training, Ms. Brown declared war against a child she decided was acting out simply to gain attention or to avoid fulfilling demands. CTAC failed to send a more qualified behavior analyst to observe S.R., properly supervise Ms. Brown, or to adjust S.R.’s BIP, even when it became obvious that Ms. Brown’s plan of attack was failing miserably.

46. S.R. suffered extreme physical and emotional trauma at the express direction of Ms. Brown and indirectly as the result of CTAC's lack of oversight over Ms. Brown. M.R. and N.R. also suffered severe mental anguish as they watched S.R. regress emotionally and cognitively. They have also incurred substantial expense as experienced professionals continue to attempt to repair and redress the damage done to S.R. by Ms. Brown's BIP.

**V. COUNT 1: ASSAULT—INFLECTION OF BODILY INJURY**

47. Plaintiffs incorporate by reference all allegations in the preceding paragraphs.
48. Ms. Brown made physical contact with S.R.'s person on at least December 14, 2006 and February 12, 2007.
49. Additionally, Ms. Brown set the BIP in motion, ultimately resulting in S.R. being physically assaulted by others on thirty-four separate occasions.
50. Ms. Brown acted intentionally, knowingly, or recklessly.
51. Ms. Brown's physical contact with S.R., and/or the physical contact that others had with S.R. at Ms. Brown's direction, caused bodily injury to S.R., which resulted in the following damages:
- a. physical pain in the past;
  - b. mental anguish in the past and future;
  - c. physical impairment in the past; and
  - d. medical expenses in the past and future.
52. Plaintiffs, on behalf of S.R., seek unliquidated damages within the jurisdictional limits of this Court for Ms. Brown's actions.

53. S.R.'s injuries resulted from Ms. Brown's fraud, gross negligence or malice, which entitle Plaintiffs, on behalf of S.R., to exemplary damages pursuant to Texas Civil Practices & Remedies Code Section 41.003(a).

**VI. COUNT 2: ASSAULT—OFFENSIVE PHYSICAL CONTACT**

54. Plaintiffs incorporate by reference all allegations in the preceding paragraphs.

55. Ms. Brown made physical contact with S.R.'s person on at least December 14, 2006 and February 12, 2007.

56. Ms. Brown acted intentionally or knowingly.

57. Ms. Brown knew or reasonably believed that S.R. would regard the physical contact as offensive.

58. Ms. Brown's physical contact with S.R. resulted in him suffering mental anguish that is likely to continue in the future. For this past and future mental anguish, Plaintiffs seek unliquidated damages within the jurisdictional limits of this Court.

59. S.R.'s injuries resulted from Ms. Brown's fraud, gross negligence or malice, which entitle Plaintiffs to exemplary damages pursuant to Texas Civil Practices & Remedies Code 4 Section 41.003(a).

**VII. COUNT 3: ASSAULT—THREAT OF BODILY INJURY**

60. Plaintiffs incorporate by reference all allegations contained in the preceding paragraphs.

61. In the alternative to Counts 1 and 2, Ms. Brown threatened S.R. with imminent bodily injury on at least December 14, 2006 and February 12, 2007.

62. Ms. Brown acted intentionally or knowingly.

63. Ms. Brown's threat caused apprehension and injury to S.R.

64. Ms. Brown's threat caused S.R. to suffer mental anguish that is likely to continue in the future. For this past and future mental anguish, Plaintiffs seek unliquidated damages within the jurisdictional limits of this Court.
65. S.R.'s injuries resulted from Ms. Brown's fraud, gross negligence or malice, which entitle Plaintiffs to exemplary damages pursuant to Texas Civil Practices & Remedies Code Section 41.003(a).

#### **VIII. COUNT 4: FRAUD BY NON-DISCLOSURE**

66. Plaintiffs incorporate by reference all allegations contained in the preceding paragraphs.
67. Ms. Brown concealed and failed to disclose material facts related to her December 14, 2006 FBA session with S.R. Specifically, Ms. Brown did not inform P.R., M.R., or N.R. that she planned to provoke S.R. until he became physically aggressive and required physical restraint.
68. Ms. Brown had a duty to disclose that information to P.R., M.R., or N.R. because she only partially informed them of her plans for the December 14, 2006 FBA, which created a substantially false impression.
69. The information Ms. Brown concealed was material because P.R., M.R. and N.R. would not have consented to Ms. Brown conducting an FBA of S.R. had they been made aware of her intention to provoke him to the point that he required physical restraint.
70. Ms. Brown knew that P.R., M.R., and N.R. were ignorant of the information and did not have an equal opportunity to discover the truth prior to Ms. Brown's FBA of S.R.
71. Ms. Brown deliberately remained silent and did not disclose the information to P.R., M.R. or N.R.
72. By deliberately remaining silent, Ms. Brown intended for P.R., M.R. and N.R. to consent to the FBA without the information.

73. P.R., M.R. and N.R. relied on Ms. Brown's deliberate silence.
74. By deliberately remaining silent, Ms. Brown directly and proximately caused injury to Plaintiffs, which has resulted in the following damages:
  - a. for S.R., physical pain in the past;
  - b. for all Plaintiffs, mental anguish in the past and future; and
  - c. for S.R., medical expenses in the past and future.

75. For Ms. Brown's fraudulent conduct, Plaintiffs seek damages within the jurisdictional limits of this Court.

76. Plaintiffs' injuries resulted from Ms. Brown's fraud, gross negligence or malice, which entitle Plaintiffs to exemplary damages pursuant to Texas Civil Practices & Remedies Code Section 41.003(a).

#### **IX. COUNT 5: CONSPIRACY**

77. Plaintiffs incorporate by reference all allegations contained in the preceding paragraphs.

78. Ms. Brown, in combination with S.R.'s teacher and other ECISD personnel, agreed to create situations in which the physical restraint of S.R. would inevitably be required. Physical restraint of special education students is permissible only in cases of emergency. *See* 19 TAC § 89.1053(c). Purposefully and voluntarily creating "emergencies" that require restraint of a special education student violates both the letter and spirit of Texas law, which mandates use of prevention and de-escalation techniques and alternatives to restraint.

79. On at least one occasion, Ms. Brown, in combination with S.R.'s teacher, intentionally inflicted emotional distress on S.R. and made physical contact with him, which they reasonably knew or should have known that S.R. would regard as offensive.

80. As a result, S.R. suffered mental anguish, which is likely to continue in the future.

81. For the conspiracy, Plaintiffs seek unliquidated damages within the jurisdictional limits of this Court.
82. The injury to S.R. resulted from Ms. Brown's fraud, gross negligence or malice, which entitles Plaintiffs to exemplary damages under Texas Practices & Remedies Code Section 41.0003(a).

**X. COUNT 6: NEGLIGENCE AND GROSS NEGLIGENCE**

83. Plaintiffs incorporate by reference all allegations contained in the preceding paragraphs.
84. CTAC and Ms. Brown voluntarily undertook an affirmative course of action for the benefit of S.R. when they agreed to conduct an FBA and develop a BIP for him. Accordingly, CTAC and Ms. Brown had a duty to exercise reasonable care that S.R. would not be injured by their actions.
85. CTAC and Ms. Brown breached that duty by failing to review S.R.'s psychiatric, psychological and medical records before conducting the FBA of S.R. and developing a BIP for him.
86. Ms. Brown further breached that duty by developing and overseeing the administration of a BIP that she knew or should have known would lead to S.R. being repeatedly physically restrained and suffering physical pain and mental anguish.
87. CTAC also had a duty to hire and supervise a competent and fit employee to conduct S.R.'s FBA and develop a BIP for him.
88. CTAC breached that duty by failing to provide to ECISD a certified behavior analyst to conduct S.R.'s FBA and develop his BIP. Alternatively, CTAC breached that duty by failing to properly supervise Ms. Brown.
89. CTAC's and Ms. Brown's breaches of duties proximately caused injury to Plaintiffs, which resulted in the following damages:



- a. for S.R., physical pain in the past;
  - b. for all Plaintiffs, mental anguish in the past and future; and
  - c. for S.R., medical expenses in the past and future.
90. For CTAC's and Ms. Brown's negligence, Plaintiffs seek unliquidated damages within the jurisdictional limits of this Court.
91. The injury to Plaintiffs resulted from CTAC's fraud, gross negligence, or malice, which entitles Plaintiffs to exemplary damages under Texas Civil Practices & Remedies Code Section 41.003(a).

**XI. COUNT 7: BREACH OF CONTRACT**

92. Plaintiffs incorporate by reference all allegations contained in the preceding paragraphs.
93. Upon information and belief, on or about December 2006, CTAC executed a valid and enforceable contract with ECISD to which S.R. was an intended beneficiary.
94. Upon information and belief, by this contract, ECISD would provide CTAC valuable consideration in return for its services.
95. Upon information and belief, on behalf of S.R., ECISD fully performed its contractual obligations.
96. Upon information and belief, CTAC breached the contract by failing to develop a BIP that supported S.R.'s needs with the least amount of physical restraint.
97. CTAC's breach caused injury to Plaintiffs, which resulted in Plaintiffs sustaining expectancy damages. Plaintiffs expectancy damages include consequential losses, including but not limited to the cost of hiring an aide to assist in home-schooling S.R.
98. For CTAC's breach, Plaintiffs seek unliquidated damages within the jurisdictional limits of this Court.

## **XII. COUNT 8: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

99. Plaintiffs incorporate by reference all allegations contained in the preceding paragraphs.
100. In the alternative to counts 1-7 in this Petition, Ms. Brown intentionally caused S.R. severe emotional distress.
101. Ms. Brown was at all time relevant hereto aware that S.R. had an extreme sensitivity to frustration. Nonetheless, Ms. Brown developed a BIP that she intended subject S.R. to forty-five contrived trials each day that he attended class. Ms. Brown intended that S.R. be frustrated by these trials and knew that they would result in S.R. becoming aggressive and requiring physical restraint. Indeed, on at least one occasion, Ms. Brown instructed S.R.'s teacher to take actions that Ms. Brown specifically intended would cause S.R. to decompose to the point that he would require protracted restraint.
102. Ms. Brown's conduct in this regard was extreme and outrageous.
103. Ms. Brown's conduct proximately caused severe emotional distress to S.R.
104. S.R.'s severe emotional distress cannot be remedied by any other cause of action.
105. Ms. Brown's wrongful conduct caused S.R. the following damages:
- a. physical pain in the past;
  - b. mental anguish in the past and future; and
  - c. medical expenses in the past and future.
106. For Ms. Brown's infliction of emotional distress, S.R. seeks unliquidated damages within the jurisdictional limits of this Court.
107. S.R.'s injury resulted from Ms. Brown's malice, which entitles Plaintiffss to exemplary damages under Texas Civil Practices & Remedies Code Section 41.003(a).
108. Independent of S.R.'s claims, and in the alternative to counts 1-7 in this petition, Ms. Brown intentionally inflicted emotional distress on P.R., M.R. and N.R.

109. Ms. Brown intentionally subjected S.R. to a BIP that she knew would result in his having to be repeatedly physically restrained. As S.R.'s parent and grandparents, P.R., M.R. and N.R. experienced severe emotional distress as S.R. was provoked on thirty-four separate occasions until he required physical restraint.
110. Ms. Brown's conduct was extreme and outrageous.
111. Ms. Brown's conduct proximately caused severe emotional distress to P.R., M.R. and N.R.
112. The severe emotional distress of P.R., M.R. and N.R. cannot be remedied by any other cause of action.
113. Ms. Brown's wrongful conduct caused P.R., M.R. and N.R. mental anguish in the past and will likely cause them mental anguish in the future.
114. P.R., M.R. and N.R. seek unliquidated damages within the jurisdictional limits of this Court.
115. The injury to P.R., M.R. and N.R. resulted from Ms. Brown's fraud, gross negligence, or malice, which entitles P.R., M.R. and N.R. to exemplary damages under Texas Civil Practices & Remedies Code Section 41.003(a).

### **XIII. COUNT 9: DECEPTIVE TRADE PRACTICES**

116. Plaintiffs incorporate by reference all allegations contained in the preceding paragraphs.
117. S.R. is a consumer as defined by Tex. Bus. & Com. Code §17.45.
118. S.R. sought services and ECISD acquired by purchase such services from CTAC with the primary purpose that they benefit S.R.
119. CTAC is amenable to suit under the Texas Deceptive Trade Practices Act, and all conditions precedent have been met.

120. CTAC, individually, and through its agent, Ms. Brown, committed wrongful acts, including (a) misrepresenting the sponsorship, approval, or certification of CTAC's and Ms. Brown's services; (b) misrepresenting and/or causing confusion regarding CTAC's and Ms. Brown's affiliation, connection or association with, or certification by, another; (c) representing that CTAC's and Ms. Brown's services have sponsorship, approval, characteristics, uses, or benefits that they do not have; (d) representing that CTAC's and Ms. Brown's services are of a particular standard quality or grade when they are of another; and (e) failing to disclose information concerning CTAC's and Ms. Brown's services which were known at the time of the transaction so as to induce P.R., M.R. and N.R. into a transaction which they would not have entered had the information been disclosed. CTAC and Ms. Brown intended to make these representations and misrepresentations knowing that they were false or misleading.
121. CTAC, individually, and through its agent, Ms. Brown, engaged in an unconscionable action or course of action that to Plaintiffs' detriment, took advantage of Plaintiffs' lack of knowledge, ability, experience or capacity to a grossly unfair degree.
122. P.R., M.R. and N.R. relied on CTAC's and Ms. Brown's representations to the detriment of S.R., and CTAC and Ms. Brown intended such reliance
123. CTAC's and Ms. Brown's actions were the producing cause of Plaintiffs' damages.
124. For CTAC's and Ms. Brown's deceptive trade practices, Plaintiffs seek unliquidated economic and actual damages within the jurisdictional limits of this Court.
125. CTAC and Ms. Brown acted with actual awareness of the falsity, deception or unfairness of its representations and misrepresentations, and with the specific intent that Plaintiffs rely on such falsity, deception or unfairness. CTAC's and Ms. Brown's actions in this

regards were the producing cause of Plaintiffs' mental anguish. For CTAC's and Ms. Brown's knowing and intentional actions, Plaintiffs seek treble damages.

**XIV. COUNT 10: RESPONDEAT SUPERIOR**

126. Plaintiffs incorporate by reference all allegations contained in the preceding paragraphs.
127. Plaintiffs were injured as a result of Ms. Brown's assault, fraud, negligence and gross negligence, and intentional infliction of emotional distress.
128. At all time relevant hereto, Ms. Brown was an employee of CTAC.
129. Ms. Brown committed assault, fraud, negligence and gross negligence and intentionally inflicted emotional distress while she was acting within the scope of her employment with CTAC; that is, Ms. Brown's actions were:
  - a. within her general authority as an employee of CTAC;
  - b. in furtherance of CTAC's business; and
  - c. to accomplish the objective for which Ms. Brown was hired.
130. For Ms. Brown's assault, fraud, negligence and gross negligence and intentional infliction of emotional distress, Plaintiffs seek from CTAC unliquidated damages within the jurisdictional limits of this Court.
131. The injury to Plaintiffs resulted from Ms. Brown's fraud, gross negligence, or malice, which entitles Plaintiffs to exemplary damages from CTAC under Texas Civil Practices & Remedies Code Section 41.003(a).

**XV. COUNT 11: RATIFICATION**

132. Plaintiffs incorporate by reference all allegations contained in the preceding paragraphs.
133. S.R. and Plaintiffs were injured by Ms. Brown's actions.
134. Ms. Brown committed the actions on behalf of CTAC.

135. CTAC approved Ms. Brown's actions by word, act, or conduct after acquiring full knowledge of Ms. Brown's actions.
136. CTAC's approval was with the intention of giving validity to Ms. Brown's actions.
137. For its ratification of Ms. Brown's actions, Plaintiffs seek from CTAC unliquidated damages within the jurisdictional limits of this Court.
138. The injury to Plaintiffs resulted from Ms. Brown's fraud, gross negligence, or malice, which entitles Plaintiffs to exemplary damages from CTAC under Texas Civil Practices & Remedies Code Section 41.003(a).

#### **XVI. ATTORNEYS' FEES**

139. Plaintiffs seek recovery of their reasonable and necessary attorneys' fees pursuant to Tex. Civ. Prac. & Rem. Code § 38.001 and Tex. Bus. & Com. Code § 17.50.

#### **XVII. DEMAND FOR JURY**

140. Plaintiffs demand a jury trial.

#### **XVIII. PRAYER**

141. WHEREFORE, PREMISES CONSIDERED, Plaintiffs request that the Court cause CTAC and Ms. Brown to be cited to appear and answer, and that Plaintiffs be awarded judgment against them for the following:

- (1) actual and consequential damages;
- (2) exemplary damages;
- (3) prejudgment and postjudgment interest;
- (4) costs of court;
- (5) attorneys' fees; and
- (6) all other relief, both general and specific, at law and equity, to which Plaintiffs may show themselves justly entitled.

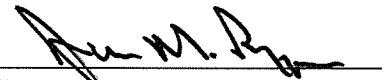
**XIX. REQUEST FOR DISCLOSURE**

142. Pursuant to Texas Rule of Civil Procedure 194, Plaintiffs request that CTAC and Ms. Brown disclose, within thirty (30) days of the service of this request, the information or material described in Texas Rule of Civil Procedure 194.2(a)-(1).

Respectfully submitted,

RYANGLOVER LLP

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ATTORNEYS FOR P.R., M.R., AND  
N.R., INDIVIDUALLY AND AS NEXT  
FRIEND OF S.R.