

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

TARIQ WILLIAMS and KAYLA MITCHELL, Individually and as Representatives of the Estate of B.W., a Minor, Deceased, Plaintiffs,	§	IN THE _____ DISTRICT COURT
	§	IN AND FOR
v.	§	
CITY OF ARLINGTON, Defendant.	§	TARRANT COUNTY, TEXAS

### **PLAINTIFFS' ORIGINAL PETITION**

COME NOW Plaintiffs, TARIQ WILLIAMS and KAYLA MITCHELL ("Plaintiffs"), Individually and as Representatives of the Estate of B.W., a Minor, Deceased ("Decedent"), by and through undersigned counsel, before this Honorable Court and assert the following factual allegations and causes of action against Defendant, CITY OF ARLINGTON ("Defendant"):

#### **I.** **DISCOVERY**

1. Plaintiffs plead that discovery in this matter shall be conducted under Level III of Rule 190 of the Texas Rules of Civil Procedure.

#### **II.** **PARTIES**

2. Plaintiff Tariq Williams is a natural person, biological father of Decedent, and resident of Tarrant County, Texas. The last three digits of Tariq Williams' social security number are 131, and the last three digits of his driver's license are 402.

3. Plaintiff Kayla Mitchell is a natural person, biological mother of Decedent, and resident of Tarrant County, Texas. The last three digits of Kayla Mitchell's social security number are 046, and the last three digits of her driver's license are 416.

4. Defendant City of Arlington is a Texas municipality, and can be served via service on the administrative head of the governmental unit, City Manager Trey Yelverton, at his office located at 101 W. Abram Street, 3<sup>rd</sup> Floor, Arlington, Texas 76010, pursuant to Tex. Civ. Prac. & Rem. Code § 101.102.

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

5. This Court has subject matter jurisdiction over this lawsuit. Plaintiffs' claims involve Texas statutory and common law. The amount in controversy is within this Court's jurisdictional limit.

6. This Court has personal jurisdiction over the parties. All the parties are either individuals or entities conducting business in the State of Texas, are entities created under Texas law, have sufficient minimum contacts with the State of Texas, and/or have purposefully availed themselves of the laws and markets of the State of Texas so as to not offend traditional notions of fair play and substantial justice by calling them before this Honorable Court.

7. Venue is proper in Tarrant County, Texas because, pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1), it is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

**IV.**  
**FACTS**

8. On multiple occasions in August and September 2021, Plaintiffs would routinely take their 3-year-old child, B.W., to a splash pad within Don Misenhimer Park, a city park operated by the City of Arlington, located at 201 E. Lonesome Dove Trail, Arlington, Texas 76002.

9. After visiting the splash pad within Don Misenhimer Park in early September of 2021, B.W. became ill and developed a fever. As reasonable and concerned parents, Plaintiffs took

B.W. to an urgent care facility. When the severity of B.W.'s fever was realized, B.W. was sent to Cooks Children's Medical Center.

10. Upon the conclusion of evaluation and testing, it was revealed that B.W. had developed primary amebic meningoencephalitis, an often fatal infection caused by the *Naegleria fowleri* amoeba.

11. On September 11, 2021, after days of suffering, B.W. tragically succumbed to his infection and passed away.

12. On September 24, 2021, the Centers for Disease Control and Prevention (CDC) confirmed the presence of active *Naegleria fowleri* amoeba with water associated within the splash pad at Don Misenheimer Park.

13. At all relevant times, Defendant owned, controlled, and operated the splash pad in question.

14. At all relevant times, Defendant was tasked with servicing, maintaining, monitoring, testing, and treating water within the splash pad in question.

15. Defendant, by and through its agents, servants, and/or employees, all of whom were acting within the course and scope of their employment, failed to adequately monitor and chlorinate the splash pad's water, making the splash pad unreasonably dangerous.

16. As a direct and proximate cause Defendant's failure to exercise basic reasonable care in maintaining the splash pad, Defendant proximately caused B.W.'s untimely and preventable death, and Plaintiffs' injuries, harms, and damages.

**V.**  
**CAUSES OF ACTION**

**A. Negligence**

17. Plaintiffs replead the foregoing factual allegations as if here quoted verbatim and set forth herein at length.

18. Defendant owed legal duties to Plaintiffs and Decedent as citizens of Arlington to use reasonable care to protect against unreasonable risk of harm of which Defendants knew or reasonably should have known.

19. Defendant breached its duties to Plaintiffs and Decedent by:

- (a) failing to use reasonable care to protect Plaintiffs and Decedent against unreasonable risk of harm;
- (b) failing to reasonably, adequately or timely test and/or treat the splash pad's water supply;
- (c) failing to cure dangerous conditions, such as improperly treated water, that posed an unreasonable risk to Plaintiffs and Decedent, and to the general public;
- (d) failing to adequately warn Plaintiffs of the unreasonable risks associated with the presence of *Naegleria fowleri*; and
- (e) unreasonably operating a city amusement that resulted in contaminated water infecting Decedent.

20. As a direct and proximate result of the foregoing acts and/or omissions, Plaintiffs suffered resulting injuries, harms, and damages in an amount to be determined at trial.

**VI.**  
**TEXAS TORT CLAIMS ACT**

21. Defendant is a governmental unit. As such, under Texas law, Defendant is entitled to immunity from certain tort claims when performing governmental functions, with relevant statutory exceptions. *See, e.g.*, the Texas Tort Claims Act ("TTCA"), Tex. Civ. Prac. & Rem. Code

§ 101.001, *et seq.* Defendant is, however, liable for the actions of employees resulting in “personal injury and death so caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law.” *Id.* at § 101.021. Here, Defendant’s acts and/or omissions allowed for a dangerous condition on real property owned and controlled by Defendant, resulting in Decedent’s death. In addition, Defendant’s acts and/or omissions allowed for a dangerous condition of tangible personal property, and used that personal property in a manner that resulted in Decedent’s death.

22. Moreover, municipalities such as the City of Arlington are not immune from liability arising from the performance of proprietary functions, such as the operation of “amusements owned and operated by the municipality.” Tex. Civ. Prac. & Rem. Code § 101.0215(b). The splash pad at issue was an amusement owned and operated by the City, and its operation was a proprietary, rather than governmental, function.

23. Plaintiffs contend that this suit is not governed by the TTCA. However, out of an abundance of caution, Plaintiffs have provided Defendant with notice as required by Tex. Civ. Prac. & Rem. Code § 101.101, and have fulfilled all conditions precedent to filing suit.

## **VII.** **DAMAGES**

24. As a result of Defendant’s negligent conduct, Plaintiffs suffered injuries, harms, and damages. The injuries have had a serious effect on Plaintiffs’ lives, health, and well-being. Because of Defendant’s acts and/or omissions, Plaintiffs suffered damages within the jurisdictional limits of the Court, which include, but are not limited to:

- (a) Survival damages;
- (b) Pecuniary loss;
- (c) Past and future physical pain and suffering;

- (d) Past and future mental anguish;
  - (e) Past and future loss of enjoyment of life; and
  - (f) Loss of companionship and society.
25. Pursuant to Tex. R. Civ. P. 47, Plaintiffs seek monetary relief over \$1,000,000.

**VIII.**  
**TEX. R. CIV. P. § 193.7 NOTICE**

26. Pursuant to Tex. R. Civ. P. § 193.7, Plaintiffs hereby give notice of intent to utilize items produced in discovery against the producing party.

**PRAYER**

WHEREFORE PREMISES CONSIDERED, Plaintiffs pray that Defendant be cited according to law to appear and answer herein, and that upon final trial, Plaintiffs have judgment against Defendant as follows:

- (a) An award of actual damages;
- (b) An award of pre- and post-judgment interest; and
- (c) All other relief the Court determines is just under the circumstances, whether in law or in equity.

Respectfully submitted,

**THE STEWART LAW FIRM, PLLC**

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**ATTORNEYS FOR PLAINTIFFS**

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