



**NAILAH K. BYRD**  
**CUYAHOGA COUNTY CLERK OF COURTS**  
1200 Ontario Street  
Cleveland, Ohio 44113

**Court of Common Pleas**

**New Case Electronically Filed:**  
**December 12, 2019 10:54**

By: HANNAH KLANG 0090470

Confirmation Nbr. 1891943

MELISSA LAUBENTHAL, ET AL.

CV 19 926496

vs.

KIDDIE KOLLEGE, INC. ET AL.

**Judge:** ASHLEY KILBANE

**Pages Filed:** 21

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

MELISSA LAUBENTHAL, Individually and  
as Natural Parent and Guardian of Minor Son,  
JOHN DOE,  
c/o Merriman Legando Williams & Klang,  
LLC  
1360 West 9th Street, Suite 200  
Cleveland, Ohio 44113

and

WILLIAM KESLING, Individually and as  
Natural Parent and Guardian of Minor Son,  
JOHN DOE  
c/o Merriman Legando Williams & Klang,  
LLC  
1360 West 9th Street, Suite 200  
Cleveland, Ohio 44113

Plaintiffs,

v.

KIDDIE KOLLEGE, INC., dba, KIDDIE  
KOLLEGE and BAY VILLAGE KIDDIE  
KOLLEGE KID KARE  
c/o Michael Moell, Statutory Agent  
662 Dover Center Road  
Bay Village, Ohio 44140

and

RENEE MOELL, Individually and as Agent  
of Kiddie Kollege, Inc.,  
555 Cahoon Road  
Bay Village, Ohio 44140

and

CATHY NEMETH, Individually and as  
Agent of Kiddie Kollege, Inc.,  
27054 Oakwood Drive No. 217  
Olmsted Falls, Ohio 44138

and

EFTHIMIA MASTROKOSATAS,  
Individually and as Agent of Kiddie Kollege,  
Inc.,  
5239 Main Avenue  
North Ridgeville, Ohio 44039

CASE NO.

**COMPLAINT**

**Jury Demand Endorsed Hereon**

and

KAITLYN DERONDE, Individually and as  
Agent of Kiddie Kollege, Inc.,  
805 Longson Avenue  
Elyria, Ohio 44035

and

PAULA HEISER, Individually and as Agent  
of Kiddie Kollege, Inc.,  
27055 Oakwood Circle 101  
Olmsted Township, Ohio 44138

Defendants.

Plaintiffs Melissa Laubenthal and William Kesling, on behalf of their minor son, John Doe,<sup>1</sup> state and allege as follows for their Complaint:

#### INTRODUCTION

1. This negligence cause of action is brought by the parents of three-year-old John Doe, individually and on John Doe's behalf, for injuries sustained after John Doe was brutalized by Defendants while under their care and supervision at the daycare facility located at 662 Dover Center Road, Bay Village, Ohio 44140 ("Kiddie Kollege").

2. On January 17, 2019, Plaintiffs trusted Defendants to care and supervise John Doe with reasonable care and to protect him from psychological and physical harm.

3. Instead, Defendants restrained John Doe with such force that bruises were left all over John Doe's neck, face, back, and shoulder.

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<sup>1</sup> In accordance with Local Rule 39.0(C), and to protect the privacy of the minor child, the minor child will be identified only as John Doe for purposes of public filings.

4. Defendants used such force and restraint because John Doe—who was two-and-half-years-old—was struggling to settle down for a nap.

5. Defendants' actions violated reasonable standards of care, including their own policies which prohibit the use of such force and/or punishment for refusing to take a nap.

6. Defendants physically abused and traumatized John Doe.

7. Defendants then lied and covered up the source of John Doe's injuries to shield Plaintiffs from understanding the abuse and neglect that occurred as a result of their negligent, reckless, and willful and wanton behavior.

8. As a result of John Doe's injuries, John Doe was forced to undergo emergency medical treatment, medical transport to a specialized pediatric care facility, blood tests, and several full body x-rays. John Doe also underwent counseling to deal with the symptoms of post-traumatic stress, including but not limited to sleeplessness, nighttime terrors, and anxiety.

9. The instant cause of action seeks to hold not only the individual Defendants Renee Moell, Cathy Nemeth, Efthimia Mastrokosatas, Kaitlyn DeRonde, and Paula Heiser, responsible for John Doe's injuries, but to further hold Defendant Kiddie Kollege responsible for failing to properly train and supervise its staff in the proper treatment of children in their care. Defendants abused a child dependent upon them for protection, breaching reasonable standards of care and statutory obligations. As a result of their negligence, recklessness, and willful and wanton misconduct, Plaintiffs have sustained serious injury and seek compensation for their own injuries in addition to policy changes to ensure this does not happen to another child entrusted to Defendants' care.

## PARTIES

10. Plaintiffs Melissa Laubenthal and William Kesling are the natural parents and guardians of minor John Doe. Plaintiffs bring this cause of action on their own behalves and on the behalf of their minor son, John Doe.

11. At the time of the actions giving rise to this litigation, Plaintiffs resided in the City of Westlake, in Cuyahoga County.

12. At all relevant times, Defendant Kiddie Kollege, Inc., was a childcare provider licensed by the State of Ohio under License Number 308461, and authorized to conduct business in the State of Ohio, with its principal place of business located at 662 Dover Center Road, Bay Village, Ohio 44140. Defendant Kiddie Kollege, Inc., as a state licensed childcare center, was obligated to provide appropriate care and supervision to children entrusted to it. All acts giving rise to this litigation occurred at 662 Dover Center Road, Bay Village, Ohio 44140.

13. Defendant Renee Moell is the owner of Defendant Kiddie Kollege, Inc., and resides at the captioned address. As owner of Defendant Kiddie Kollege, Inc., Defendant Moell was obligated to properly supervise and train staff to ensure staff did not use inappropriate means of restraint or force on a child and to ensure that staff properly reported and documented instances of abuse.

14. Defendant Cathy Nemeth is an employee, representative, and/or agent of Defendant Kiddie Kollege, Inc., and resides at the captioned address. Defendant Nemeth was obligated to provide proper care and support for John Doe. Instead, Defendant Nemeth physically restrained and assaulted John Doe, and/or ignored fellow staff members physically restraining and assaulting John Doe, then engaged in a cover-up to prevent Plaintiffs from discovering the cause of John Doe's bruises.

15. Defendant Efthimia Mastrokosatas is an employee, representative, and/or agent of Defendant Kiddie Kollege, Inc. Defendant Mastrokosatas was obligated to provide proper care and support for John Doe. Instead, Defendant Mastrokosatas physically restrained and assaulted John Doe, and/or ignored fellow staff members physically restraining and assaulting John Doe, then engaged in a cover-up to prevent Plaintiffs from discovering the cause of John Doe's bruises.

16. Defendant Kaitlyn DeRonde is an employee, representative, and/or agent of Defendant Kiddie Kollege, Inc. Defendant DeRonde was obligated to provide proper care and support for John Doe. Instead, Defendant DeRonde physically restrained and assaulted John Doe, and/or ignored fellow staff members physically restraining and assaulting John Doe, then engaged in a cover-up to prevent Plaintiffs from discovering the cause of John Doe's bruises.

17. Defendant Paula Heiser is an employee, representative, and/or agent of Defendant Kiddie Kollege, Inc. Defendant Heiser was obligated to properly document and report injuries to John Doe, and to properly supervise and train staff on the proper care and supervision of children in the care of Defendant Kiddie Kollege. Instead, Defendant Heiser failed to document the physical restraint and abuse of John Doe and actively assisted other staff members to conceal the abuse.

#### JURISDICTION AND VENUE

18. At the time of the actions and inactions which give rise to the within action, Plaintiffs were residents of Cuyahoga County.

19. Defendant Kiddie Kollege, Inc., maintains its principal place of business in Cuyahoga County.

20. Bay Village Kiddie Kollege Kid Kare ("Kiddie Kollege"), which is the location of the subject physical abuse and assault, is located within Cuyahoga County.

21. The conduct, actions and inactions, which give rise to the instant cause of action set forth in this Complaint occurred in Cuyahoga County, Ohio, and, accordingly, venue for this action exists in Cuyahoga County.

#### GENERAL FACTUAL ALLEGATIONS

22. Plaintiffs hereby incorporate by reference all allegations contained in the preceding paragraphs as if fully restated herein.

23. John Doe attended Kiddie Kollege since he was approximately three months old until January 17, 2019.

24. Plaintiffs trusted that Kiddie Kollege and its staff would properly care for and supervise John Doe, based in part on Kiddie Kollege's policies and promises made to Plaintiffs that its employees would not:

- a. Abuse, endanger or neglect children;
- b. Utilize cruel, harsh, unusual, or extreme techniques;
- c. Use physical restraints on a child;
- d. Restrain a child by any means other than holding children for a short period of time, such as in a protective hug, so that the children may regain control;
- e. Confine children to equipment such as cribs or highchairs; and
- f. Punish children for failure to eat or sleep or for toileting accidents.

25. Defendants did not abide by these policies and practices. On January 17, 2019, Defendants violated each of these policies, subjecting John Doe to physical restraint and abuse simply because he did not want to take a nap.

THE JANUARY 17, 2019 ASSAULT AND COVER UP

26. On January 17, 2019, at approximately 5:00 pm, Plaintiff Kesling arrived at Kiddie Kollege to pick John Doe up and take him home after a day of work.

27. Upon arrival at Kiddie Kollege, Plaintiff Kesling noticed that John Doe had bruising on his neck and that he was wearing a onesie that did not fit him and that he had not been wearing when he arrived in the morning.

28. Plaintiff Kesling immediately asked Defendant Cathy Nemeth what happened to John Doe.

29. Defendant Cathy Nemeth knew that she and other staff members had physically restrained and abused John Doe during nap time and that the bruises were the result of their restraint.

30. Defendant Cathy Nemeth advised Plaintiff Kesling that there would be a form at the front desk that would explain what happened.

31. Plaintiff Kesling went to the front desk at Kiddie Kollege and spoke to staff member “Kaitlyn,” who advised Plaintiff Kesling that there was no form and that they needed to “find out what happened to [John Doe]” and implied that John Doe probably pinched himself.

32. At the time “Kaitlyn” made these statements to Plaintiff Kesling, she knew that staff members physically restrained and abused John Doe, and that she was covering up what actually happened to prevent Plaintiffs from discovering the truth.

33. Plaintiff Kesling took John Doe home, where he and Plaintiff Laubenthal engaged in a closer inspection of John Doe.

34. Upon doing so, Plaintiffs were horrified to find significant bruising along John Doe’s face, neck, shoulder, and back. To their horror, the bruising resembled handprints and finger marks.



35. Plaintiff Laubenthal immediately contacted Kiddie Kollege and demanded an explanation from Defendant Paula Heiser, the Administrator at Kiddie Kollege.

36. “Kaitlyn” advised that Defendant Heiser was not available and said that John Doe had trouble going down for a nap and that she *may* be able to provide an “observation report” sometime the following day.

37. In the past whenever John Doe received an injury at Kiddie Kollege, an Incident Report was always provided the same day, detailing how the injury had occurred, as is required by Ohio Revised Code 5101:2-12-16.

38. Defendants failed to provide the Incident Report on January 17, 2019.

39. Defendants failed to provide an Incident Report at all relative to the physical restraint and abuse John Doe suffered at the hands of Kiddie Kollege employees on January 17, 2019.

40. Instead, the following day, Defendants provided an “observation report,” which is not in accordance with a childcare provider’s obligations under Ohio Revised Code 5101:2-12-16.

41. When questioned about the use of an “observation report” instead of the required Incident Report, Defendant Kiddie Kollege lied to Plaintiffs, telling them that an Incident Report is only required when the injury is witnessed by staff.

42. Defendant Kiddie Kollege is incorrect. An injury need not be witnessed to trigger the Incident Report requirement.

43. Defendant Kiddie Kollege either knew this statement was incorrect and lied to Plaintiffs to try to further conceal the abuse John Doe suffered at the hands of Kiddie Kollege staff, and/or Defendant Kiddie Kollege failed to properly train staff in the requirements under Ohio law regarding reporting injuries to children in their care.

AS A RESULT OF THE ASSAULT, JOHN DOE UNDERGOES EMERGENCY MEDICAL  
TREATMENT

44. After not receiving reasonable explanation as to the cause of John Doe's injuries, Plaintiffs contacted John Doe's pediatrician for advice on how to proceed given the significant bruising.

45. Plaintiffs were advised that they needed to take John Doe to an after-hours walk-in clinic for evaluation. Upon arriving at the clinic, medical staff advised Plaintiffs that John Doe should be taken to an emergency room immediately to ensure there were no broken bones or internal injuries.

46. Plaintiff Laubenthal took John Doe to St. John's Medical Center at approximately 8:00 pm on January 17, 2019.

47. John Doe was thoroughly examined by a resident, attending physician, and pediatrician.

48. The medical professionals determined that Joe Doe's injuries created a "high suspicion of abuse" and contacted Bay Village Police and Cuyahoga County Children and Family Services to report the abuse.

49. Hospital staff and Bay Village Police noted the following visible injuries:

- a. Dark red bruising on right cheek near the ear;
- b. Two dark red bruises on top of the right shoulder (consistent with two separate pinches);
- c. Petechiae formation around the perimeter of the neck (consistent with being held or forced down);
- d. Large area of multiple red markings on the right side of the back (consistent with a handprint); and
- e. Small area of Petechiae and red marking on the right thigh.

50. Hospital staff performed several blood tests to rule out any non-traumatic causes of John Doe's injuries. Due to the amount of blood draws that were required, an IV port was placed onto the right arm of the two-and-a-half-year-old John Doe.

51. John Doe underwent several x-rays, which came back negative for broken bones.
52. However, given the extent of John Doe's bruising, medical personnel recommended a full skeletal survey x-ray, which the hospital was not equipped to perform.
53. John Doe was terrified and, in several instances, began to scream throughout this ordeal.
54. John Doe was transported by ambulance to Rainbow Babies and Children's Hospital.
55. John Doe arrived at Rainbow Babies and Children's Hospital at approximately 1:00 am.
56. Due to his exhaustion and terror, John Doe had to be sedated to undergo a full skeletal survey.
57. Once the skeletal survey was completed and the sedation began to wear off, John Doe was incredibly upset and crying uncontrollably.
58. John Doe was inconsolable, despite the Herculean efforts by his mother and medical staff to assure him that he was going to be ok.
59. Finally, at approximately 4:20 am, John Doe was able to cry himself to sleep.
60. John Doe was admitted overnight and was not released until approximately noon the following day.
61. John Doe was subjected to blood tests, x-rays, restraints, and medical examinations as a result of the physical abuse committed by Defendants.
62. Following the abuse, John Doe had significant difficulty sleeping, had night terrors, and became anxious and clingy.

63. John Doe required counseling to deal with post-traumatic stress as a result of the abuse committed by Defendants.

64. Despite therapy, it is unknown whether an event may trigger a post-traumatic episode.

BAY VILLAGE POLICE INVESTIGATE THE ASSAULT ON TWO-AND-A-HALF-YEAR-  
OLD JOHN DOE

65. Bay Village Police investigated Kiddie Kollege as a result of the January 17, 2019 incident.

66. During the course of the investigation, Kiddie Kollege employees confirmed that John Doe did not have any bruises when he arrived at the daycare on the morning of January 17, 2019, nor did they observe any behaviors that would have resulted in accidental injury.

67. Instead, according to Bay Village Police, John Doe's injuries occurred after Kiddie Kollege staff, namely Defendant Nemeth, Defendant Mastrokosatas, and Defendant DeRonde struggled to get John Doe to take a nap and utilized physical restraints and abuse.

68. Defendant Nemeth attempted to get John Doe to take a nap around noon.

69. According to Defendant Mastrokosatas, Defendant Nemeth became visibly frustrated when John Doe refused to go to sleep.

70. Defendant Nemeth forced John Doe onto a cot and held him there so that he could not move.

71. When this did not work, Defendant Nemeth left the room and advised Defendant DeRonde that Defendant DeRonde needed to get John Doe to take a nap.

72. Defendant DeRonde described Defendant Nemeth as visibly upset and flustered.

73. Defendant DeRonde went into the room where John Doe was located, where she observed John Doe terribly upset and screaming.

74. Defendant DeRonde rubbed his back, cradled him, and then physically tried to turn him over to force him to lie on his stomach.

75. John Doe continued to scream and flail as Defendant DeRonde physically restrained him.

76. Defendant Mastrokosatas heard John Doe scream even louder. Defendant Mastrokosatas did nothing to assist John Doe as he fought against both Defendant Nemeth and Defendant DeRonde's restraints and abuse.

77. After being abused by Defendants, John Doe went down for a nap.

78. At approximately 2:30 pm, Kiddie Kollege employee Megan Cain woke John Doe up from his nap.

79. Ms. Cain saw that John Doe was wearing an ill-fitting onesie and that he had marks all over his neck, shoulders, and back.

80. Ms. Cain asked Defendant Nemeth about the bruising, who then reported the bruising to Defendant Heiser.

81. No one contacted Plaintiffs to report the injuries and no medical care was provided to John Doe.

82. Bay Village Police reported that the story told by Kiddie Kollege employees as to how John Doe received his injuries was unlikely and untrustworthy.

83. Bay Village Police noted:

- a. [Defendant] Nemeth was disjointed and frequently off topic when discussing the events that took place while [John Doe] was in her care and custody on January 17th. In that, Ms Nemeth would discuss various behaviors of [John Doe] such as "climbing objects" or even doing somersaults on furniture, rather than providing a detailed accounting of what took place that day, especially the difficulty she had in getting [John Doe] to take a nap. There were several times during the course of the interview...that I had to get Ms. Nemeth back on the topic of discussing the events of January 17th.

84. The Kiddie Kollege facility is equipped with security cameras.

85. Bay Village Police and Plaintiffs could have definitively uncovered what happened to John Doe while he was in the care and custody of Kiddie Kollege from the use of surveillance footage at the facility.

86. However, during the course of their investigation, Bay Village Police discovered that the surveillance footage for the day of the incident was destroyed.

87. Despite the lack of surveillance footage, Bay Village Police concluded that John Doe's injuries were caused by physical abuse at the hands of Defendants.

88. As a result of the physical restraints and abuse by Defendants, Plaintiffs have suffered significant physical and psychological injury.

COUNT I – NEGLIGENCE AGAINST DEFENDANTS CATHY NEMETH, EFTHIMIA  
MASTROKOSTAS, AND KAITLYN DERONDE

89. Plaintiffs hereby incorporate by reference all allegations contained in the preceding paragraphs as if fully restated herein.

90. On January 17, 2019, Defendants Nemeth, Mastrokostas, and DeRonde were employed by Defendant Kiddie Kollege to care for and supervise children at the daycare facility, including John Doe.

91. Defendants Nemeth, Mastrokostas, and DeRonde had a duty to exercise reasonable care in caring for and supervising John Doe while in the custody of Kiddie Kollege.

92. On January 17, 2019, Defendants Nemeth, Mastrokostas, and DeRonde physically restrained and abused John Doe with such force as to leave bruises and marks all over his face, neck, shoulders, and back.

93. The actions of Defendants Nemeth, Mastrokostas, and DeRonde were negligent, reckless, and/or willful and wanton, and breached reasonable standards of care.

94. As a direct and proximate result of Defendants actions as set forth in the preceding paragraphs, Plaintiffs have suffered significant physical and psychological trauma.

95. As a direct and proximate result of Defendants Nemeth, Mastrokostas, and DeRonde's negligent, reckless, and/or willful and wanton conduct, Defendants, jointly and severally, are liable to Plaintiffs for the injuries and damages set forth herein, including but not limited to economic, non-economic, and punitive damages.

COUNT II – NEGLIGENCE AGAINST DEFENDANTS RENEE MOELL AND PAULA HEISER

96. Plaintiffs hereby incorporate by reference all allegations contained in the preceding paragraphs as if fully restated herein.

97. At all relevant times, Defendant Renee Moell was the owner of Kiddie Kollege.

98. At all relevant times, Defendant Paula Heiser was the Administrator of Kiddie Kollege.

99. At all relevant times, Defendants Moell and Heiser were statutorily responsible for the daily operations of Kiddie Kollege, including but not limited to proper training and supervision of staff and compliance with reporting requirements regarding injuries to children in the care of Kiddie Kollege.

100. Defendants Moell and Heiser had the duty to ensure children in the care of Kiddie Kollege, including John Doe, were properly cared for and were protected from abuse by staff.

101. Defendants Moell and Heiser breached their duty by permitting Defendants Nemeth, Mastrokostas, and DeRonde to physically abuse and restrain John Doe.

102. Defendants Moell and Heiser failed to properly train and supervise staff at Kiddie Kollege, including but not limited to Defendants Nemeth, Mastrokostas, and DeRonde.

103. Defendants Moell and Heiser breached reasonable standards of care for a child care provider by failing to enforce Kiddie Kollege policies regarding the use of physical restraints and abuse.

104. Defendants Moell and Heiser had the statutory duty to ensure that injuries to a child in the care of Kiddie Kollege, including John Doe, were documented by an Incident Report under Ohio Revised Code 5101:2-12-16.

105. Defendants breached their statutory duty by failing to prepare and submit an Incident Report.

106. The actions and omissions of Defendants Moell and Heiser were negligent, reckless, and/or willful and wanton, and breached reasonable standards of care.

107. As a direct and proximate result of Defendants actions as set forth in the preceding paragraphs, Plaintiffs have suffered significant physical and psychological trauma.

108. As a direct and proximate result of Defendants Moell and Heiser's negligent, reckless, and/or willful and wanton conduct, Defendants, jointly and severally, are liable to Plaintiffs for the injuries and damages set forth herein, including but not limited to economic, non-economic, and punitive damages.

COUNT IV – NEGLIGENCE AGAINST DEFENDANT KIDDIE KOLLEGE (*RESPONDEAT SUPERIOR*)

109. Plaintiffs hereby incorporate by reference all allegations contained in the preceding paragraphs as if fully restated herein.

110. At all relevant times, Defendant Kiddie Kollege, Inc., was a child care provider.



111. At all relevant times, John Doe was a child in the care and custody of Defendant Kiddie Kollege, Inc.

112. Defendant Kiddie Kollege, Inc., as a child care provider, has statutory and common law obligations to ensure for the safety of children entrusted to its care, including John Doe.

113. Employees, agents, and/or representatives of Defendant Kiddie Kollege, including but not limited to Defendants Moell, Heiser, Nemeth, Mastrokostas, and DeRonde committed a physical assault upon Plaintiff John Doe, and/or knew about fellow employees, agents, and/or representatives physically assaulting Plaintiff John Doe, and failed to properly report or document the assault.

114. The actions and inactions of Defendants breached the reasonable standard of care for a child care provider and its employees, representatives, and/or agents.

115. The actions and inactions of Defendants were negligent, and/or reckless, willful, and wanton.

116. Defendant Kiddie Kollege is vicariously liable, under the doctrine of respondent superior, for the breach of the reasonable standard of care by its employees, agents, and/or representatives, including but not limited to Defendants Moell, Heiser, Nemeth, Mastrokostas, and DeRonde.

117. As a direct and proximate result of Defendants actions as set forth in the preceding paragraphs, Plaintiffs have suffered significant physical and psychological trauma.

118. As a direct and proximate result of Defendants' negligent, reckless, and/or willful and wanton conduct, Defendants, jointly and severally, are liable to Plaintiffs for the injuries and damages set forth herein, including but not limited to economic, non-economic, and punitive damages.

COUNT V – NEGLIGENT HIRING, TRAINING, SUPERVISION, AND RETENTION  
AGAINST DEFENDANT KIDDIE KOLLEGE

119. Plaintiffs hereby incorporate by reference all allegations contained in the preceding paragraphs as if fully restated herein.

120. At all relevant times, Defendant Kiddie Kollege, Inc., was a child care provider.

121. At all relevant times, John Doe was a child in the care and custody of Defendant Kiddie Kollege, Inc.

122. Defendant Kiddie Kollege, Inc., as a child care provider, has statutory and common law obligations to ensure for the safety of children entrusted to its care, including John Doe.

123. Defendant Kiddie Kollege, Inc.'s statutory and common law obligations include the proper training, supervision, and retention of qualified staff to care for children entrusted to the care of Defendant Kiddie Kollege, Inc.

124. Defendant Kiddie Kollege, Inc., advertises itself as a superior child care provider and promises parents that its staff is properly trained and supervised.

125. Defendant Kiddie Kollege, Inc., promises parents that its staff will not:

- a. Abuse, endanger or neglect children;
- b. Utilize cruel, harsh, unusual, or extreme techniques;
- c. Use physical restraints on a child;
- d. Restrain a child by any means other than holding children for a short period of time, such as in a protective hug, so that the children may regain control;
- e. Confine children to equipment such as cribs or highchairs; and
- f. Punish children for failure to eat or sleep or for toileting accidents.

126. Despite these promises and its statutory and common law duties to protect children in its care, Defendant Kiddie Kollege, Inc., hired unqualified and violent personnel, including but not limited to Defendants Heiser, Nemeth, Mastrokostas, and DeRonde.

127. Defendant Kiddie Kollege, Inc., failed to properly train and supervise its employees, agents, and/or representatives, including but not limited to Defendants Heiser, Nemeth, Mastrokostas, and DeRonde.

128. Such failures include, but are not limited to training and supervision relative to the proper use of restraints on a child, prohibition on physically assaulting a child, and proper documentation after injuries are observed on a child.

129. Despite knowledge of the fact that Defendants Heiser, Nemeth, Mastrokostas, and DeRonde violated Defendant Kiddie Kollege, Inc.'s policies and Ohio law, Defendant Kiddie Kollege, Inc., continues to employ all Defendants, where the Defendants have continued access to vulnerable children.

130. The actions and inactions of Defendant Kiddie Kollege, Inc., breached the reasonable standard of care for a child care provider.

131. The actions and inactions of Defendant Kiddie Kollege, Inc., were negligent, and/or reckless, willful, and wanton.

132. Defendant Kiddie Kollege, Inc., is directly liable for its own negligence, and vicariously liable for its employees, agents, and/or representatives, for the failure to properly train and supervise unqualified and violent employees, agents, and/or representatives, including but not limited to Defendants Heiser, Nemeth, Mastrokostas, and DeRonde.

133. Defendant Kiddie Kollege, Inc., is directly liable for its own negligence, and vicariously liable for its employees, agents, and/or representatives, in continuing to retain and

employ unqualified and violent employees, agents, and/or representatives, including but not limited to Defendants Heiser, Nemeth, Mastrokostas, and DeRonde.

134. As a direct and proximate result of Defendant Kiddie Kollege, Inc.'s actions as set forth in the preceding paragraphs, Plaintiffs have suffered significant physical and psychological trauma.

135. As a direct and proximate result of Defendant Kiddie Kollege, Inc.'s negligent, reckless, and/or willful and wanton conduct, Defendant is liable to Plaintiffs for the injuries and damages set forth herein, including but not limited to economic, non-economic, and punitive damages.

#### COUNT VI – SPOILIATION AGAINST ALL DEFENDANTS

136. Plaintiffs hereby incorporate by reference all allegations contained in the preceding paragraphs as if fully restated herein.

137. At all relevant times, Defendants had an obligation to preserve relevant evidence relating to the physical restraint and abuse of John Doe committed by Defendant Kiddie Kollege, Inc.'s employees, agents, and/or representatives.

138. At all relevant times, Defendant Kiddie Kollege, Inc., had surveillance cameras at the facility, including in the area in which the physical restraint and assault took place.

139. During the course of the Bay Village Police investigation, it was discovered that the surveillance cameras either “stopped” recording footage on the day of the incident, January 17, 2019, or, alternatively, the footage was destroyed or concealed by Defendants.

140. Had the surveillance cameras been recording and/or the footage not been destroyed or concealed, the physical restraint and abuse of John Doe would have been captured, conclusively

establishing which employees, agents, and/or representatives were involved in the physical restraint and abuse of John Doe.

141. Defendants destroyed the footage despite knowledge that litigation and a criminal investigation were likely and/or pending.

142. Defendants destroyed the footage in an attempt to conceal their negligent, reckless, and/or willful and wanton acts and omissions from Bay Village Police, Plaintiffs, and the public at large, and to disrupt any future litigation or criminal investigation.

143. As a result of the destruction of relevant evidence, Plaintiffs are prejudiced in their ability to establish their claims against Defendants.

144. The destruction of this evidence proximately caused damage to Plaintiffs in that they have incurred and will continue to incur the expense of conducting an investigation, depositions, electronic discovery, and other efforts to prove what should be self-evident in the surveillance footage from the date of the incident.

WHEREFORE, Plaintiffs Melissa Laubenthal and William Kesling, individually and on behalf of their minor son, John Doe, pray for judgment against each Defendant, jointly and severally, in an amount in excess of \$25,000 in compensatory damages on each cause of action in this Complaint, as well as any and all other appropriate relief, including attorney's fees and litigation expenses, the costs of this action, pre and post judgment interest, punitive damages, and any other legal, equitable, injunctive or declaratory relief that may be just and appropriate.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

Respectfully submitted,

/s/ Hannah Klang

Tom Merriman (0040906)  
Hannah Klang (0090470)  
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