

Daily Journal

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Top Verdicts

The largest and most significant verdicts and appellate reversals in California in 2021

TOP PLAINTIFF'S VERDICTS (BY IMPACT)

Jane Doe v. Fitness Alliance LLC

Case Info

CASE NAME: JANE DOE V. FITNESS ALLIANCE LLC

TYPE OF CASE: NEGLIGENCE SUPERVISION

COURT: RIVERSIDE

JUDGE(S): SUPERIOR COURT JUDGE HAROLD W. HOPP

PLAINTIFFS ATTORNEYS: Panish Shea Boyle Ravipudi LLP, Spencer R. Lucas, Nadine N. Khedry; Compass Law Group LLP, Joseph P. Shirazi, Simon Esfandi

DEFENSE ATTORNEYS: Koeller, Nebeker, Carlson, & Haluck, LLP, Edward W. Schmitt, William A. Nebeker

Video showed the 13-year-old boy groping the 5-year-old girl for an hour alone in the gym's daycare center. The gym argued the boy was entirely at fault. But the jury placed all the liability, and the \$13 million in damages, on the gym.

The family's lead trial attorney, Spencer R. Lucas, said he argued to the jury that the gym had an obligation to protect both the little girl and the teenage boy. "It's not fair for the gym to say they were negligent for failing to supervise the children, while at the same time trying to blame the 13-year-old they failed to supervise."

The case began in January 2020, when a mother went to the EoS Fitness gym in Palm Springs and signed her baby son and her young daughter into the gym's daycare center. The center comprised two rooms, a small one for children under 18 months and a larger room for children from one and a half to 12 years old.

Doe v. Fitness Alliance LLC, PSC2002874; (Riv. Super. Ct., filed June 15, 2020).

There was supposed to be a supervisor in each room, but that day, Lucas said, there was only one young woman at the check-in desk in the smaller room. The gym had fired the daycare manager the day before, he said. Thus, the mother's daughter and the teen boy were mostly alone in the larger room.

Lucas said the young woman on the desk was kept busy by the younger children and by three gym managers who, one by one, dropped in to visit with her, as shown on video. "These managers who were each responsible for making sure the daycare was safe, repeatedly distracted the daycare attendant. If they would have just looked in the other room, they would have been able to prevent this tragedy."

Corporate representatives admitted during discovery that the company had been negligent. But the trial was



SPENCER LUCAS



NADINE KHEDRY

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not a slam-dunk.

One problem was the little girl herself, who is quite bright, confident and energetic. The therapist who saw her said at a deposition she saw no signs of depression or anxiety.

At trial, Lucas got the therapist to concede that just because the girl seemed strong didn't mean she wasn't bottling up trauma. "We actually called the therapist in our case in chief to own the narrative."

The family's testimony proved to be compelling. The parents told the jury their former daddy's girl would no longer sit on her father's lap, nor would she wash her private areas during her baths. She has night-

mares, and she cried when a first-grade classmate tickled her stomach.

The \$13 million verdict, all noneconomic damages, is very large for what Lucas calls a "one-episode touching case." He believes it should send a message to the entire fitness industry. "If they're going to be running a child daycare, there needs to be training and awareness about the dangers of child sexual abuse," he said.

Simon Esfandi, whose firm brought the case to the Panish firm, said he too "hopes that this serves as a deterrent for future insurance adjusters making that same decision to not give what's right to plaintiffs."

Defense attorneys Edward W. Schmitt and William A. Nebeker did not respond to a request to comment on the verdict.

— DON DEBENEDICTIS