

1 Christopher A. Brown Bar No. 144595
2 **FENNEMORE DOWLING AARON**
3 8080 N Palm Avenue
4 Third Floor
5 Fresno, California 93711
6 Tel: (559) 432-4500 / Fax: (559) 432-4590
7 cbrown@fennemorelaw.com

8 Attorneys for Plaintiff
9 KIDS KARE SCHOOLS, INC.

E-FILED
11/10/2021 12:15 PM
Superior Court of California
County of Fresno
By: Jamie Nelson, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF FRESNO

12 KIDS KARE SCHOOLS, INC.,

13 Plaintiff,

14 v.

15 Desiray De La Torre, an individual, DOES 1
16 through 10, inclusive,

17 Defendants.

Case No. 21CECG03346

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

- 18 1. **LIBEL (DEFAMATION *PER SE*)**
- 19 2. **LIBEL (DEFAMATION *PER QUOD*)**
- 20 3. **NEGLIGENCE**
- 21 4. **INTENTIONAL INTERFERENCE**
22 **WITH PROSPECTIVE ECONOMIC**
23 **ADVANTAGE**
- 24 5. **NEGLIGENT INTERFERENCE**
25 **WITH PROSPECTIVE ECONOMIC**
26 **ADVANTAGE**

27 Plaintiff (KIDS KARE SCHOOLS, INC.) alleges as to Defendants as follows:

28 **PRELIMINARY ALLEGATIONS**

1. Plaintiff KIDS KARE SCHOOLS INC. (hereinafter, "KIDS KARE") is a California corporation registered and licensed to do business in the state of California at all times relevant hereto.

1 11. DE LA TORRE by her statements effectively discourages other potential customers
2 from doing business with KIDS KARE on the same basis of the untrue accusations.

3 12. Defendant DE LA TORRE' posts contained information that Defendant either
4 knew, or should have known to be false and unprivileged. Defendant was grossly negligent in
5 posting harmful accusations about Plaintiff without undertaking any steps to confirm whether the
6 information was accurate. The nature of the posts exposed KIDS KARE to hatred, contempt,
7 ridicule, or obloquy, and have a tendency to injure Plaintiff and its business.

8 13. The posts made by Defendant caused Plaintiff special damage, including harm to its
9 business and reputation.

10 **FIRST CAUSE OF ACTION**
11 **(Libel - Defamation Per Se)**

12 Plaintiff alleges as to Defendants, and each of them:

13 14. Plaintiff incorporates by reference each allegation in paragraphs 1 through 13 above
14 as though fully set forth herein.

15 15. Plaintiff is informed, believes, and thereon alleges that Defendant DE LA TORRE
16 made the false statements as referenced hereinabove on a publicly-viewable platform, Yelp.com
17 between November 6, 2021 and the present, and intended that they be viewed and understood by
18 the public at large, and reasonably understood and intended that they referred to Plaintiff KIDS
19 KARE.

20 16. DE LA TORRE made these statements with the reasonable understanding that they
21 would be taken to mean that KIDS KARE had committed, either actively or by means of
22 negligence, certain false acts constituting the accusations contained within DE LA TORRE'
23 writings on the Yelp.com platform.

24 17. These statements as made by DE LA TORRE are without truth, and completely
25 false, in their totality as described hereinabove.

26 18. In authoring such false statements, DE LA TORRE failed to exercise any amount of
27 reasonable care in determining the truth or falsity of the statements.

28 19. These false statements, as they stand, are believed to be actively injurious to

1 Plaintiff's business, reducing potential business and discouraging potential customers or clientele,
2 and it is the reasonable belief of Plaintiff that without action to remove and enjoin DE LA TORRE
3 from making such statements, further harm in the form of damage to Plaintiff's reputation, business,
4 and clientele will continue to result.

5 20. DE LA TORRE' conduct was intentional, willful, wanton, with malice, and in
6 reckless disregard of the rights of Plaintiff, and Plaintiff has suffered damages in addition to the
7 harm described hereinabove, to be shown in the course of trial. Defendants' conduct also entitles
8 Plaintiff to recover exemplary and punitive damages, subject to proof at trial.

9 **SECOND CAUSE OF ACTION**
10 **(Libel - Defamation Per Quod)**

11 Plaintiff alleges as to Defendants, and each of them:

12 21. Plaintiff incorporates by reference each allegation in paragraphs 1 through 20 above
13 as though fully set forth herein.

14 22. Plaintiff is informed, believes, and thereon alleges that DE LA TORRE made false
15 statements about Plaintiff to persons other than Plaintiff. Those statements included accusations
16 that Plaintiff allowed, facilitated, or somehow caused the traumatization, neglect and/or bullying of
17 a minor child in Plaintiff's care, among other harmful or defamatory statements to be proven at
18 trial.

19 23. DE LA TORRE knew these statements to be false, but made them to cause Plaintiff
20 financial harm and to harm Plaintiff's reputation.

21 24. As a result of DE LA TORRE' postings and statements, Plaintiff has suffered harm
22 to its business and reputation. Plaintiff has been damaged in a sum to be proven at trial.

23 25. The conduct of DE LA TORRE and the DOE Defendants was a substantial factor in
24 causing Plaintiff's harm.

25 26. Defendants acted with malice, oppression or fraud in knowingly posting the false,
26 negative information about Plaintiff on the public Yelp.com platform, entitling Plaintiff to recover
27 exemplary and punitive damages, subject to proof at trial.

28 ///

1 **THIRD CAUSE OF ACTION**
2 **(Negligence)**

3 Plaintiff alleges as to Defendants, and each of them:

4 27. Plaintiff incorporates by reference each allegation in paragraphs 1 through 26 above
5 as though fully set forth herein.

6 28. In communicating to other persons, including posting on social media, DE LA
7 TORRE and the DOE Defendants owed a reasonable duty of care to Plaintiff to not communicate
8 false information with the intent of tarnishing Plaintiff's reputation, and to not misrepresent
9 Plaintiff's actions.

10 29. By misrepresenting that Plaintiff had allowed traumatization, bullying and/or
11 neglect of a child under Plaintiff's care, Defendants breached their duty of care to not tarnish
12 Plaintiff's reputation or misrepresent its actions.

13 30. As a direct and proximate result of Defendants' breach, Plaintiff has been damaged
14 in an amount subject to proof at trial.

15 31. Defendants acted with oppression, fraud, or malice by their grossly negligent actions
16 of communicating information Defendants knew to be false and posting those defamatory
17 statements in an online public forum.

18 **FOURTH CAUSE OF ACTION**
19 **(Intentional Interference with Prospective Economic Advantage)**

20 Plaintiff alleges as to Defendants, and each of them:

21 32. Plaintiff incorporates by reference each allegation in paragraphs 1 through 31 above
22 as though fully set forth herein.

23 33. DE LA TORRE and the DOE Defendants intentionally interfered with an economic
24 relationship between Plaintiff and Plaintiff's customers (and potential customers) that likely would
25 have resulted in an economic benefit to Plaintiff.

26 34. Defendants knew of the economic relationship between Plaintiff and Plaintiff's
27 customers (and potential customers), and knowingly posted false information in a public online
28 forum with the intention of disrupting Plaintiff's relationships.

1 35. Defendants knew that it was certain or substantially certain that their
2 communications with third parties would cause disruption of Plaintiff's relationships.

3 36. Defendants' conduct was a substantial factor in causing Plaintiff economic harm.

4 37. Defendants acted with oppression, fraud, or malice in intentionally communicating
5 information Defendants knew to be false and posting those defamatory statements in an online
6 public forum.

7 **FIFTH CAUSE OF ACTION**
8 **(Negligent Interference with Prospective Economic Advantage)**

9 Plaintiff alleges as to Defendants, and each of them:

10 38. Plaintiff incorporates by reference each allegation in paragraphs 1 through 37 above
11 as though fully set forth herein.

12 39. DE LA TORRE and the DOE Defendants negligently interfered with an economic
13 relationship between Plaintiff and Plaintiff's customers (and potential customers) that probably
14 would have resulted in an economic benefit to Plaintiff.

15 40. Defendants knew of the economic relationship between Plaintiff and Plaintiff's
16 customers (and potential customers), and knowingly posted false information in a public online
17 forum with the intention of disrupting Plaintiff's relationships.

18 41. Defendants knew that disruption of Plaintiff's relationships was certain or
19 substantially certain as a result of Defendants' actions.

20 42. Defendants' conduct was a substantial factor in causing Plaintiff economic harm.

21 43. Defendants acted with oppression, fraud, or malice by their grossly negligent actions
22 of communicating information Defendants knew to be false and posting those defamatory
23 statements in an online public forum.

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

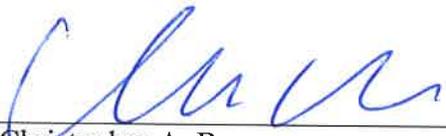
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgement as follows:

1. For interlocutory and permanent injunctive relief prohibiting Defendants from making false and damaging statements about Plaintiff KIDS KARE as described hereinabove;
2. For general damages, including but not limited to damages arising from Plaintiff's loss of reputation, shame mortification, and emotional distress, according to proof;
3. For special damages according to proof, including but not limited to, damages arising from harm to Plaintiff's reputation, industry standing, and goodwill within the community and industry, and harm to Plaintiff's business, profession, and occupation;
4. For exemplary damages, because Defendants acted with oppression, fraud, or malice in making the intentional or grossly negligent defamatory statements, according to proof;
5. For costs and expenses, and expert witness fees; and
6. For any additional or further relief as the Court deems proper.

Dated: November 10, 2021

FENNEMORE DOWLING AARON

By: 

Christopher A. Brown
Attorneys for Defendant
KIDS KARE SCHOOLS, INC.

Exhibit A



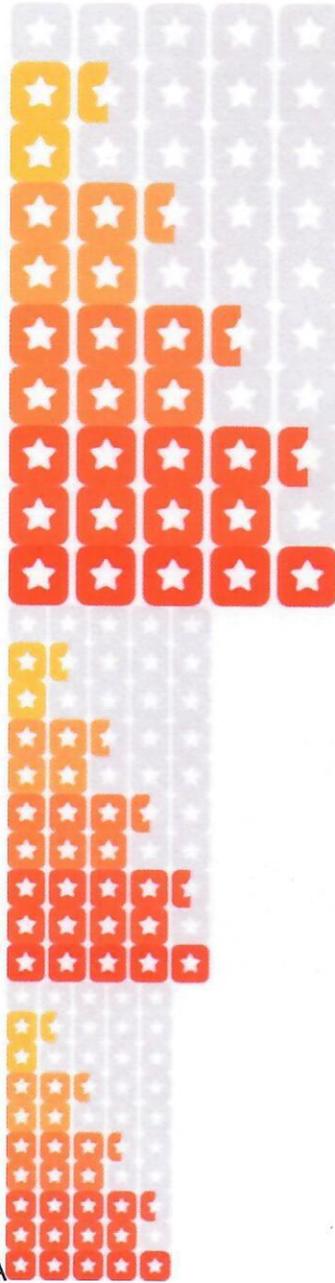
Kids Kare Fig Garden

Respond as business

Post a response

Say thanks





Desiray D. Fresno, CA

11/6/2021

I took a few months to think over my review on this place. My son is 3 and this is the first daycare he's attended. He doesn't have siblings or kids to socialize with so he went in with a lot to learn. I let them know that he may have boundary issues because he's an only child and primarily was watched by me or his father up until that point. He had some behavioral issues as expected and would get write ups. We worked with him on not hitting and walking away if he's mad. He also would complain that kids hit him so he hit back. I explained that it's not okay to do so and to tell his teacher right away so that they can deal with it. His first day he said a kid pushed him off the play set. And then he would cry and say he didn't like it there because people were mean to him. I was in the process of looking for other childcare. I honestly

didn't know if he just wanted to stay home or if there was an issue. A month leading up to his expulsion he had a lot of tantrums at home. He opened up to us about kids being mean and we told him that we would talk with the teachers and make sure that this gets resolved. They assured us that they were doing everything they could and he just acted out some days. I really did believe that this was solely our fault. We were reinforcing rules and teaching him how to regulate his emotions without violence. We felt like we didn't know what to do. One day they called and said he had a really bad day and that he would have to come home with me for the remainder of the day. I picked him up and we talked about the incident and the way she explained in person was like he just needed the day and he could come back. The director later called me that same day (Friday) and told me he couldn't return because his behavior needs to improve. She said this was a call from the main office and not them. Fast forward to now. He's been in KinderCare down the street for three months and he hasn't had any issues. His first week was tough because we really had to work together to see what he was lacking. After that no calls or write ups. They do positive reinforcement and keep the kids occupied. I'm not sure what they are doing at KinderCare but he didn't seem to be learning anything. At his new daycare he is coming home and actually using what he has learned. That was a realization for me. I feel bad that I thought we were the issue when in all actuality he wasn't getting the care he needed. We tried numerous times to speak with the main office and they never called back. He was expelled for touching (patting) another boy's private parts and the other boy did it back. As a concerned parent I wanted to know why this was taking place and express that he started to do this at home and we were working on it. I feel like a daycare that actually cares would investigate this and not just kick the child out. He's three years old of course he doesn't know what he's doing. Also from previous write ups he was hitting and not following directions. I also wanted to know if they were watching attentively to see if it was retaliation. Over all I am happy that they expelled him because that forced me to find him better care and see the situation for what it really was.

The only reason I am giving more than one star is for Ms. Alma. He still talks about her to this day. I think that was the only reason why he enjoyed it there. But I do not recommend this place for younger kids that can't tell you the whole story. I had a hard time getting the whole story from him but now thinking on it I just feel like he was bullied. And they made him out to be the bad kid.

****something I want to add is that he was also having a ton of accidents at daycare and at home while he was attending. I still don't know why but my mom believes he was traumatized from something. He's been potty trained since he was 2 so for him to have frequent accidents is very odd. I thought his focus was just off but thinking back on it now he was probably bullied or ignored. I don't want to assume the worst or make allegations but he definitely was not happy there.**