

141-355277-24

CAUSE NO. _____

**RAMILA CHALISE AND PRABESH
POUDEL AS NEXT OF FRIEND OF Y.
P., A MINOR**

Plaintiff,

VS.

ABA INTERACTIVE, LLC,

Defendant.

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IN THE DISTRICT COURT

___ **JUDICIAL DISTRICT**

TARRANT COUNTY TEXAS

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Ramila Chalise and Prabesh Poudel as Next of Friend of Y. P., a Minor (“Plaintiff”) in the above-numbered and styled cause, complaining of ABA Interactive, LLC (“Defendant”), and files this as their Original Petition, for cause of action would respectfully show the Court as follows:

I. PARTIES

1. Plaintiffs Ramila Chalise and Prabesh Poudel are the parents of Y. P., a minor, and are residents of Tarrant County, Texas.

2. Defendant ABA Interactive, LLC is a Domestic Limited Liability Company duly authorized to conduct business in the State of Texas, and may be served with process by and through its registered agent, Kiara Henry at 8317 Sayers Ln, North Richland Hills, TX 76182.

II. VENUE AND JURISDICTION

3. Venue is proper in Tarrant County, Texas, pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002, because it is the county in which all or a substantial part of the events or omissions

giving rise to the claim occurred. Venue is proper in Tarrant County against all Defendants pursuant to TEX. CIV. PRAC. & REM. CODE § 15.005 because venue is proper against at least one Defendant and all claims and causes of action in this case arise out of the same transaction, occurrence, or series of transactions or occurrences.

4. Jurisdiction is proper in that the damages sought well exceed the minimum jurisdictional limits of the Court.

5. Plaintiff seeks damages in excess of \$1,000,000.00.

III. NOTICE OF INTENT

7. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, all parties are hereby on notice that Plaintiff intends to utilize any and all items or things produced in discovery at trial or any matter which requires Plaintiff's to prove the authenticity of evidence produced.

IV. DISCOVERY

8. Plaintiff intends to conduct discovery under Level 3 of the Texas Rules of Civil Procedure pending the submission of an Agreed Scheduling Order between the parties and approval and entry of the Order by the Court.

V. FACTS

9. Y. P. is a seven-year-old child who was born and raised in a loving, nurturing home. However, at a young age, Y. P. was diagnosed with non-verbal autism and his parents have learned and grown with him on his journey. Following his diagnosis, Y. P.'s parents, Ramila and Prabesh (hereinafter "Parents") did what any parent would and sought professional guidance. In the early years of his growth, Y. P. was provided in-home counseling and the Parents were given in-home counseling to learn how to cope with the challenges of raising a non-verbal autistic child.

ABA Interactive:

10. Through his counseling and the community, the Parents learned about a specialized program known widely as “applied behavioral analysis”, or ABA for short. According to Autism Speaks, “ABA therapy applies our understanding of how behavior works to real situations. The goal is to increase behaviors that are helpful and decrease behaviors that are harmful or affect learning.”¹ When applied to a classroom setting, a facility is overseen by an analyst who is certified by the Behavioral Analyst Certification Board. This certified analyst must undergo minimum training requirements and clinical hours to obtain said certification. The certified analyst creates individualized treatment plans for a classroom setting or an individual and the designed program is administered by professionals employed by various centers.

11. After a diligent search, the Parents found an ABA center near their home, ABA Interactive, and decided to enroll Y. P. so he could learn and grow in a classroom setting with other similarly situated children. ABA Interactive was founded in 2017 by Kiara Henry, who, admittedly, had no background in ABA therapy, but nevertheless took a job interview at a clinic. In her own words, “I remember fumbling through the interview and at the end of it, the clinical director at the time stated she would be willing to take a chance on me based on my energetic personality and my stature as long as I was willing to put in the work.”² Another selling point to the Parents was that ABA Interactive was overseen by a board certified analyst.

12. Initially, the Parents had no concerns with ABA Interactive and trusted the method, given the surety provided by the leadership at ABA Interactive and the oversight of a certified analyst. However, that all changed on June 20, 2024.

¹ <https://www.autismspeaks.org/applied-behavior-analysis>

² <https://www.motivity.net/blog/motivator-spotlight-kiara-henry-at-aba-interactive>

The Nightmare:

13. It was a normal Thursday afternoon when Prabesh Poudel got off work. Like he always did, he drove from his office to pick up his son from ABA Interactive located at 8225 Mid Cities Blvd. Suite 200, North Richland Hills, TX 76182. Mr. Poudel got out of his vehicle and passed by Kiara Henry, the center's owner and director, and she said there was an incident report waiting for him that he needed to sign. Mr. Poudel was met by Sonika Shrestha who produced the incident report to Mr. Poudel, which stated Y. P. had a behavioral episode and Y. P. scratched himself. Naturally, Mr. Poudel asked what had happened to trigger the episode, but Sonika explained she was not present and had no more information than what was in the report.



14. Mr. Poudel signed the incident report as requested, but he had serious reservations about what had occurred, as Y. P. had never self-harmed before. When he got home Mr. Poudel explained the incident to his wife, who echoed Mr. Poudel's concerns, especially since no one from ABA Interactive had called either Parent to let them know what had happened. That evening,

Mrs. Chalise spoke with Mitchel Riser, another therapist at the school, and asked what had happened, but he was out of the office during the incident. The next day Kiara reached out to Mrs. Chalise and explained she had talked to the employees involved in the incident.

ALBA
BEHAVIORAL THERAPY

Incident Report

Incident Date: 6/20/24 Incident Time: 2:30pm Incident Location: aba interactive
Client's Name: YP Client's DOB: _____
Client's Address: _____
City: _____ State _____ Zip code: _____
Parent/Guardian Name: _____ Phone Number: _____

Employee involved: _____ Witnessed by:
1. _____ 1. Kyla Jacobs
2. _____ 2. Ashley Morenoga
3. _____ 3. _____
4. _____ 4. _____

Type of injury? scratch
What was done for injury? clean his scratch
Hospitalization required? Yes or No (No)
Were nolds utilized? Yes or No (No) If yes, approximately how long? _____

1. Describe event: During circle time Yp engaged in maladaptive behavior where he began to have a tantrum and scratched the right side of his face.
2. What happened before the event occurred: Yp was sitting down participating in circle time & listening to a story.

Staff Signature: Kyla Jacobs Date: 6/20/24
Parent/Guardian Signature: _____ Date notified: 6/20/24

15. Mrs. Chalise told Kiara that this was a new behavior, and she was concerned Y. P. was self-harming, and if this was something they were to expect in the future, she would like to see the video footage of the incident so she can know what signs to watch for. Kiara told Mrs. Chalise that she would watch the video of the incident and see if it was okay to distribute because of HIPAA concerns. Mrs. Chalise acknowledged her understanding and said she would follow up after Kiara had time to digest the video's contents.

Lies and The Cover Up:

16. Mrs. Chalise followed up from the date of the incident until the following Monday, continuing to explain that she needed to see the video so she could better understand her son's behavior and what triggered his self-harm. Kiara finally responded that there were other kids seen in the video and because of which, she won't be able to share the video. She also explained that she spoke to another parent of a child in the room and that parent objected to the dissemination of the video and had no ability to show it to Mrs. Chalise.

17. Something felt off about the encounter, and to add to the confusion, Kiara came to the Parent's home on Tuesday around 7pm. Before entering the door, Kiara explained she had Roxette Warren, the BCBA certified therapist, on the phone with her. During the meeting Kiara reiterated her prior recount of events, but this time added additional content. Kiara explained that in the video, she saw Y. P. having a behavioral episode when he began hitting Kyla Jacobs, who proceeded to gently restrain him. Kiara then explained that Y. P. would not calm down and that's when Ashley Morenoa entered the picture. From her telling, Ashley gently picked Y. P. up by his collar and helped to restrain him, and that at some point the two had their backs turned to the camera and it was indiscernible when Y. P. scratched himself.

18. Shocked and concerned Kiara had waited until now to reveal this information, Mrs. Chalise asked an obvious question: why the incident report failed to reflect the event with Ashley and why did the center sign off on an incident report when they cannot confirm how Y. P. received the marks on his face?

The Shocking Truth and History of Abuse:

19. Mrs. Chalise and Mr. Poudel were perturbed by what they heard and told Kiara they did not feel comfortable allowing Y. P. to continue on campus at ABA Interactive. Kiara, in an attempt to assuage their concerns, explained that Ashley had been suspended from providing care

at the center, and was now only allowed to provide care via an in-home setting, but was still on the company pay roll. The Parents had more questions than answers and told Kiara they were not sending Y. P. back to the facility. Kiara acknowledged and said two other therapists from ABA Interactive could provide Y. P.'s in-home care from then on. Roxette Warren, did not say a word during the entire conversation and Kiara hung up with her before leaving.

20. The Parents were later contacted by another therapist at the center who told them Kiara was keeping the video of the incident hidden and would not allow anyone to view it. He also told the Parents to not stop digging because he believed something was not right. Days went by and the Parents received a call from another therapist at the school who said they had obtained a copy of the video showing the incident and the Parents needed to see it. The Parents drove to the therapist's house and watched the video. It in no way tracked the story told by Kiara, Ashley, and Kyla and was more shocking than they ever imagined.

21. In the video Y. P. can be seen sitting on the floor during circle time with other children at the center. Y. P. did pat Kyla on the lap with his hands, but from the footage, it was not an aggressive measure, rather one of attention seeking. The video then shows Kyla taking Y. P.'s hands and placing them on his lap, a maneuver which is meant to soothe and calm a child with autism. At that point, Kyla walks away from Y. P. to attend to another matter, but Ashley can be seen racing toward Y. P., who is sitting on the floor doing nothing other than trying to calm himself down. Ashley then picks Y. P. up by his collar and can be seen flailing. Ashley then pushes Y. P. into a corner, stepping on another autistic child on her way, and throws Y.P. against a wall with her hands around his neck. All the while, Kyla does nothing to intervene, and Y. P. is unable to remove himself from Ashley Morenoa's grip.

22. Mrs. Chalise and Mr. Poudel left and went straight to the police, who are actively investigating the incident. Upon information and belief, there were at least two other incidents of

violence against autistic children at ABA Interactive that went unreported to authorities and misreported to the parents of said children. Upon information and belief, Ashley Morenoa remained an employee of ABA Interactive for weeks following Kiara Henry's actual knowledge of the physical assault on Y. P.

VI. CAUSES OF ACTION

COUNT 1: VICARIOUS LIABILITY/ RESPONDEAT SUPERIOR

23. Plaintiff adopts and incorporates the above paragraphs and allege that Defendant is vicariously liable for the conduct of their employees, which proximately caused the incident made the basis of this lawsuit and the resulting injuries and damages of the Plaintiff.

24. Under the theory of respondeat superior, Defendant ABA Interactive, LLC is therefore liable for the damages suffered by Plaintiff as a result of the conduct of its employees, Kiara Henry, Kyla Jacobs, and Ashley Morenoa.

COUNT 2: NEGLIGENCE

25. Defendant owed a duty to exercise ordinary care in the operation, implementation, and oversight of the children in their care. Defendant as a providers of childhood care services took custody of Y. P. *in loco parentis* and a person *non compos mentis*, and thus bore a heightened duty of care to protect the child and act in his best interest. Defendant breached its duty in one or more of the following ways:

- a. Failing to supervise their employees and allowing continued harm to come to persons under their care;
- b. Failing to adequately supervise the children under their care despite having full access to video footage which showed the assault of children under their care;
- c. In failing to intervene and protect the children under their care;
- d. In failing to fully investigate or inquire into matters of the abuse of children under their authority and care after suspected abuse was identified;

- e. Failing to comply with strict adherence to Texas Family Code § 261.101 by not reporting suspected or the actual knowledge of physical abuse by one of the teachers under their direct supervision;
- f. In covering up for and lying about the physical assault of a non-verbal autistic child under their care; and
- g. In failing to maintain a safe environment for the children under their care and supervision.

26. Each of these acts or omissions, singularly or in any combination with others, constituted negligence which proximately caused the occurrence made the basis of this action and Plaintiff's injuries and damages.

Sec. 261.101. PERSONS REQUIRED TO REPORT; TIME TO REPORT. (a) A person having reasonable cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.

(b) If a professional has reasonable cause to believe that a child has been abused or neglected or may be abused or neglected, or that a child is a victim of an offense under Section 21.11, Penal Code, and the professional has reasonable cause to believe that the child has been abused as defined by Section 261.001, the professional shall make a report not later than the 48th hour after the hour the professional first has reasonable cause to believe that the child has been or may be abused or neglected or is a victim of an offense under Section 21.11, Penal Code. A professional may not delegate to or rely on another person to make the report. In this subsection, "professional" means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers.

COUNT 3: NEGLIGENT HIRING, TRAINING, SUPERVISION, RETENTION, AND UNDERTAKING AGAINST ABA INTERACTIVE, LLC

27. At all times relevant to this lawsuit, Ashley Morenoa and Kyla Jacobs were employees of ABA Interactive, LLC, or statutory employees of ABA Interactive, LLC, under 49 C.F.R. §§ 376.11–.12, 390.5 *et seq.*, 37 Tex. Admin. Code § 4.11 *et seq.*, and other applicable law.

28. Defendant ABA Interactive, LLC owed a duty to Plaintiff to use ordinary care in hiring, training, supervising, and retaining its employees. Defendant ABA Interactive, LLC knew or should have known that Ashley Morenoa and Kyla Jacobs were incompetent, and/or reckless and that their employment created an unreasonable risk of harm to Plaintiff and others. Defendant

ABA Interactive, LLC failed to use ordinary care in hiring, training, supervising, and retaining Ashley Morenoa and Kyla Jacobs and is therefore directly liable for the torts of its employees.

COUNT 4: GROSS NEGLIGENCE A

29. The negligence of the Defendant described above was of such a character as to make Defendant guilty of gross negligence. The conduct of Defendant, viewed objectively from the standpoint of the Defendant at the time of its occurrence, involved an extreme degree of risk, considering the probability and the magnitude of potential harm to others. Moreover, the Defendant engaged in the conduct with conscious indifference to the rights, safety, or welfare of others, despite the Defendant actual, subjective awareness of the risk involved. Plaintiff are entitled to recover and seek exemplary damages in an amount that may be found by the trier of fact.

VII. DAMAGES

30. As a direct and proximate cause of Defendant's negligence, Y. P. sustained bodily injuries. Further, Y. P. has experienced physical pain and suffering, scarring and disfigurement, and mental anguish. In all reasonable probability, will continue to suffer in this manner into the future, if not for the balance of his natural life.

VIII. PUNITIVE DAMAGES AGAINST DEFENDANT ABA INTERACTIVE, LLC

31. To the extent not inconsistent herewith, Plaintiffs incorporate by reference all of the above facts and paragraphs as if set forth fully herein.

32. Defendant acted with gross negligence and malice, which justifies an award of punitive damages under Texas law. The acts or omissions of Defendant constitute gross negligence and malice, as those term are defined in Texas Civil Practice and Remedies Code section 41.001(7), (11).

33. While, as a general matter, a company may not be held liable for the criminal acts of a third party, pursuant to Texas Civil Practice and Remedies Code section 41.005(b)(1), ABA

Interactive, LLC may be held liable for the criminal acts of its employees because: (a) Ashley Morenoa and Kyla Jacobs were principals of the company; (b) Ashley Morenoa and Kyla Jacobs were unfit and Kiara Henry acted with malice in employing or retaining them; (c) Ashley Morenoa and Kyla Jacobs were employed in a managerial capacity and were acting in the scope of employment; or (d) Kiara Henry ratified or approved the conduct of Ashley Morenoa and Kyla Jacobs.

34. Further, the limit on exemplary damages in Texas Civil Practice and Remedies Code section 41.008 does not apply because Plaintiff seeks recovery of exemplary damages based on conduct described as a felony in Texas Penal Code Section 22.04, Injury to a Child.

35. Additionally, the limit on exemplary damages in Texas Civil Practice and Remedies Code section 41.008 does not apply because Plaintiffs seek recovery of exemplary damages based on conduct described as a felony in Texas Penal Code section 32.46, securing execution of a document by deception. Specifically, Defendant ABA Interactive, LLC, with the intent to defraud or harm a person, by deception, caused another to sign or execute a document affecting property or service or the pecuniary interest of a person, namely, the fraudulent incident report signed by Mr. Poudel.

36. The grossly negligent and malicious acts and/or omissions of Defendant were a proximate cause of actual damages to Plaintiffs in an amount within the jurisdictional limits of this Court, for which Plaintiffs seek judgment.

IX. DEMAND FOR TRIAL BY JURY

37. Plaintiff hereby demands a jury trial and tenders the appropriate fee with this petition.

X. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendant be cited to appear and answer herein, and upon final hearing, Plaintiff have and recover from Defendant compensation for past medical expenses, future medical expenses, past pain and suffering, future pain and suffering, past mental anguish, future mental anguish, past and future scarring and disfigurement, exemplary damages, costs of court, pre-judgment and post-judgment interest in the highest lawful rate, and any further relief both at law and in equity to which Plaintiff may be justly entitled.

Respectfully Submitted,

FIROUZBAKHT LAW FIRM

By: */s/ Wesley H. M. Gould* _____

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Associated Case Party: RAMILA CHALISE AND PRABESH POUDEL AS NEXT OF FRIEND OF Y. P., A MINOR

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