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DC-22-14308

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

DESERI KELLEY, as next friend of	§	IN THE DISTRICT COURT
K.G.K., a minor child	§	
<i>Plaintiff</i>	§	
	§	
v.	§	DALLAS COUNTY, TEXAS
	§	
MAJOR LEAGUE SOCCER, L.L.C., FC	§	
DALLAS SOCCER, LLC, FCD	§	
YOUTH, LLC and CHARLES	§	95th
CHRISTIAN HAYDEN a/k/a CHRIS	§	
HAYDEN	§	_____ JUDICIAL DISTRICT
<i>Defendants</i>		

**PLAINTIFF’S ORIGINAL PETITION AND JURY DEMAND**

TO THE HONORABLE JUDGE OF THE COURT:

**COMES NOW**, Plaintiff Deseri Kelley, as next friend of K.G.K., a minor child, Plaintiff in the above-styled cause and complains of Major League Soccer, LLC, FC Dallas Soccer, LLC, and Chris Hayden, Defendants, and for cause would respectfully show the Court as follows:

**I. DISCOVERY CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Level 3 in accordance with Texas Rule of Civil Procedure 190 and request the Court to enter a Docket Control Order consistent thereto.

**II. PARTIES**

2. Plaintiff Deseri Kelley, as next friend of K.G.K., a minor child, is an individual and resident of Dallas County, Texas.

3. Defendant Major League Soccer, L.L.C. (hereinafter referred to as “MLS”) is a Delaware limited liability company doing business in the State of Texas via its football club operations and is the parent company of its subsidiary FC Dallas Soccer, LLC. It may be served through its registered agent: The Prentice Hall Corporation, 211 E. 7th Street, Ste. 620, Austin, TX 78701.

4. Defendant FC Dallas Soccer, LLC, (hereinafter referred to as “FC Dallas”) is a Texas

limited liability company with its principal place of business in Dallas County, Texas. It may be served through its registered agent: Alan W. Tompkins at 5956 Sherry Lane Ste 1500 Dallas, Texas 75225 or wherever he may be found.

5. Defendant FCD Youth, LLC (hereinafter referred to as “FCD Youth”) is a Texas limited liability company with its principal place of business in Dallas County, Texas. It may be served through its registered agent: Alan W. Tompkins at 5956 Sherry Lane Ste 1500 Dallas, Texas 75225 or wherever he may be found.

6. Defendant Charles Christian Hayden, a/k/a Chris Hayden (hereinafter referred to as “Hayden”) is an individual residing in Prosper, Texas and may be served with process at his residence address: 1240 Circle J Trail, Prosper, TX 75078, or wherever he may be found.

### **III. JURISDICTION & VENUE**

7. The amount in controversy exceeds the minimal jurisdictional limits of this Court.

8. Venue is proper in this Court pursuant to Tex. Civ. Prac. & Rem. Code § 15.002 because FC Dallas and FCD Youth had their principal places of business in Dallas County at the time the cause of action arose.

### **IV. FACTUAL BACKGROUND**

9. On September 2, 2022, Defendant Hayden, a vice president with FC Dallas, in charge of the Youth program through FCD Youth, forced K.G.K. to participate in a soccer match with and against players younger than him by one year or more at Toyota Stadium, operated by Defendant FC Dallas, located at 9200 World Cup Way, Frisco, Texas 75033. Defendant Hayden forced K.G.K. to play this match as a punishment for K.G.K. being tardy to one of his classes as Lone Star High School.

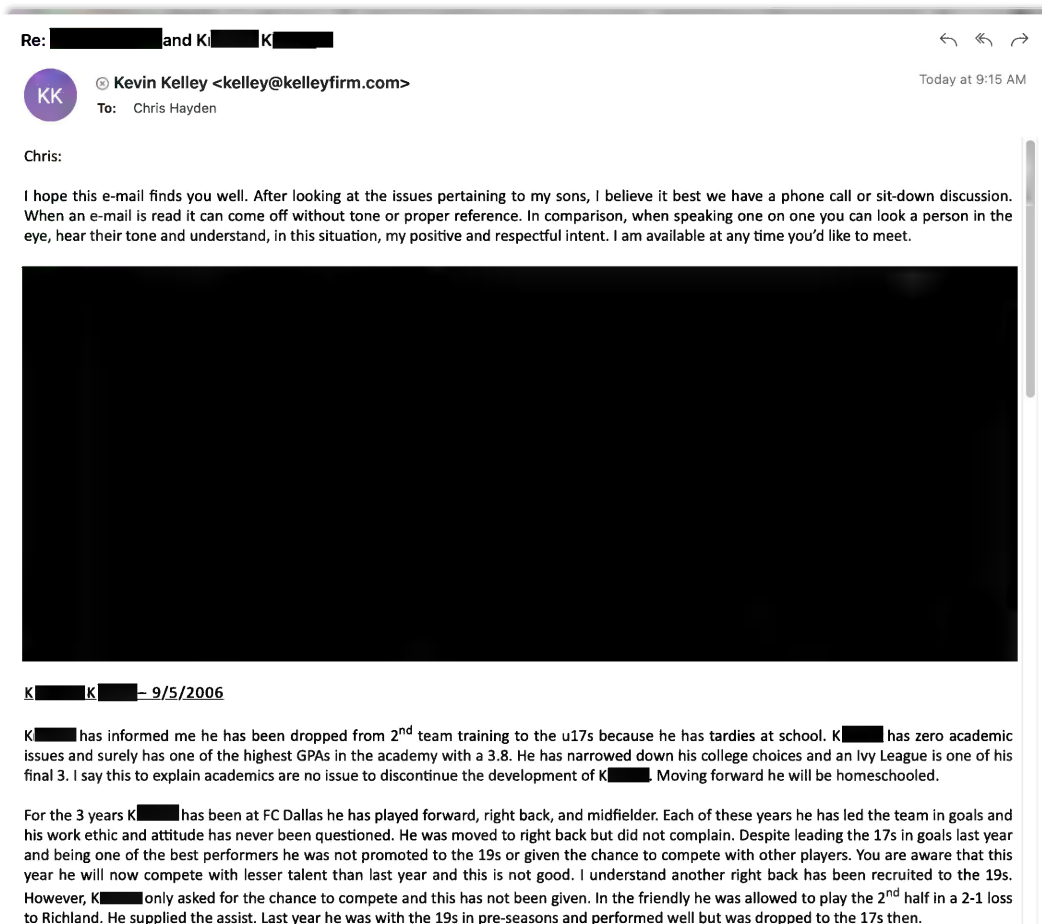
10. During the match, a younger player collided with K.G.K. on the field, causing a fracture,

separation, and displacement of his right ankle and tibia—all of which required surgery to repair.

11. Defendant Hayden, as an employee for FC Dallas, and Defendant FC Dallas owe a duty to the minor children who pay on their teams to exercise care in the supervision of the minors and ensure the safety of the minors, including the minimization of additional, unassumed risks.

12. By forcing K.G.K. to participate in a soccer match amongst 14 and 15-year-old players, numerous skill levels below K.G.K.'s accustomed environment, Defendant Hayden and Defendant FC Dallas placed K.G.K. in a situation with a high-risk of harm for reasons entirely unrelated to his participation or performance as a youth player for FC Dallas.

13. Prior to the match on September 2, 2022, Defendants Hayden and Defendant FC Dallas were put on notice by Kevin Kelley, K.G.K.'s father, of the dangers of placing K.G.K. with younger players, but Mr. Kelley's warning was ultimately ignored.



Re: Kevin Kelley II and Kristian Kelley

← ↶ ↷



Kevin Kelley <kelley@kelleyfirm.com>

Today at 9:15 AM

To: Chris Hayden

home discouraged because he has gone from training with pros to today training with players born in 2007. This is 100% harmful for his development in an environment where other MLS academies are playing their most talented players against older competition in an effort to find a few players of value. You have an academy of boys, I only have 2 boys and I want the best for them.

If K [REDACTED] cannot be challenged at FC Dallas better than u17 ball and training and playing against 07s, I have no choice but to move him immediately. The option we take will likely be one that will eliminate a fee owed to FC Dallas for his development. However, this is not what we prefer. We know what FC Dallas has done in the past, this is spoken of often. However, the past is the past and no business wins without evolution so it is best the entire landscape of soccer development be considered not just what FC Dallas did years ago. Gomez, Pickering, Corcoran and other losses should be of more concern than what was done 5 years ago. Due to the complexity of these issues, I ask that you have my message shared with others who have decision-making authority within FC Dallas. In addition, I hope you can find respect for the candor I am communicating with instead of the alternative of placing him elsewhere without notice or dialogue.

**Disclaimer:** I want to be sure no narrative is created that I, as their father, am the problem. My boys have been with FC Dallas for 3 years and in the 3 years, this conversation that began this summer is the only set of communications related to playing status I have ever had with the club. During this 3 year period of time I have had zero conversations with Coach Scott, Coach Alex, Coach Matias, or any other coach who has guided my sons out of respect for your wishes of parents. I have had one conversation with Pa and this was a great talk both ways. [REDACTED]

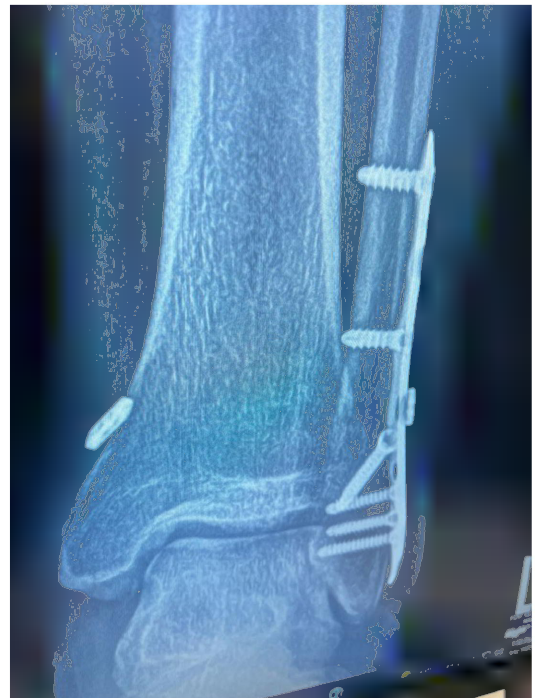
My wife and I have been respectful to all, as have my sons. My sons have always given their best, been respectful to all coaches, have been outstanding students, and they've been good to their teammates off of the field. At some point, I encourage there to be communications with the parents of kids because at current there is none and this is going to cause FC Dallas to lose talent. It may not be the best practice to talk to parents when you are recruiting kids but have no dialogue with parents of kids in your academy.

Kevin Kelley

14. As stated above, K.G.K. sustained a major injury due to a collision during the match with the younger players. CT scans confirmed a displaced oblique fracture, a comminuted multi-fragmented medial malleolus fracture fragment separation, an intra-articular fracture at the posterior medial aspect of the tibial plafond, and a possible fourth acute fracture. In short, a minor child has a maximum of four (4) breaks in his ankle as a result of a punishment given by Defendant Hayden and Defendant FC Dallas.



15. K.G.K.'s injuries are not the type that heal on their own or result in only mild discomfort; it was an agonizing injury and continues to be one that even grown adults fear. To treat the injuries, K.G.K. underwent surgery to repair his right ankle, including an internal fixation requiring several screws. He has been unable to walk since the procedure. While a perfect recovery would be ideal, the reality and magnitude of the injury he has sustained could permanently affect his ability to play soccer at the highest level.



16. Further investigation revealed several FC Dallas employees stated forcing K.G.K. to participate in that match was illogical and unsafe. One FC Dallas employee stated that K.G.K. was not even supposed to be playing in the match but “supposed to be with the U19s”. Another expressed that “[K.G.K.] should not be [playing] with the 17s.” A third FC Dallas employee said that “[K.G.K.] was not supposed to be with those kids” (referring to the 17s and 16s).” Each of these statements and comments reflect the avoidable risk placed on K.G.K. by Defendant Hayden. Though K.G.K. is a minor, his ability is far beyond his years. K.G.K. has been training for the last

month (prior to his injury) with North Texas SC and was rostered for a professional soccer match with North Texas SC on July 15, 2022.

17. While injuries are common in the sport of soccer and happen in all places, the reality of the situation is that due to the negligent decision to administer a disproportionate punishment and disregard the safety of K.G.K., Defendant FC Dallas and Defendant Hayden caused a minor child to sustain excruciating and career-threatening injuries.

## **V. LIABILITY OF DEFENDANTS**

### **A. MAJOR LEAGUE SOCCER, L.L.C.**

18. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

19. Upon information and belief, Defendant FC DALLAS SOCCER, LLC is a subsidiary of MAJOR LEAGUE SOCCER, L.L.C. Therefore, MLS is vicariously liable for the negligence of its subsidiary.

### **B. FC DALLAS SOCCER, LLC AND FCD YOUTH, LLC**

#### ***1. Negligent Hiring, Retention, Supervision and Training***

20. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

21. FCD Youth and FC Dallas operate as a single entity; the management staff for each is identical.

22. Defendants FC Dallas and FCD Youth owed K.G.K. a duty to exercise ordinary care in the hiring, retention, supervision and training of its employees. FC Dallas and FCD Youth knew or should have known of the dangers created by failing to train its employees on the safety of minor children in their care, and failing to supervise the decisions made by its employees in at least the following ways:

- a. Failure to adequately supervise the match;

- b. Failure to use ordinary care by failing to furnishing proper protocols for disciplinary action;
- c. Failure to use ordinary care to protect K.G.K. from hazards when Defendant Hayden retained control over the means and methods of carrying out the activities at the facilities;
- d. Failure to recognize the signs of risk of serious injury;
- e. Failure to use ordinary care by inadequately training personel to properly recognize and address harmful situations;
- f. Negligently failing to establish and/or enforce rules, regulations, protocols, standards and procedures determining who should be participating in practices, games, and other variations of participating in the sport;
- g. Failure to prohibit and prevent unreasonable uses of the Toyota Stadium, such as using the facilities as a means of disproportionate and unsupervised punishment of minors;
- h. Failure to establish reasonable training and procedures to prevent serious personal injury to users of the Toyota Stadium; and
- i. Any and all other acts or omissions that will be proven at the time of trial.

Consequently, Defendant FC Dallas and FCD Youth's failure to use ordinary care in instructing, supervising, and training its employees proximately caused Plaintiffs' damages.

## **2. *Respondeat Superior***

23. Defendant Hayden was in the course and scope of his employment for FC Dallas and FCD Youth when he negligently administered the punishment that resulted in K.G.K.'s injury. Accordingly, FC Dallas and FCD Youth is liable for the damages caused by his actions, as well as the actions of any other FC Dallas and FCD Youth employee who caused the harm to K.G.K.

3. ***Gross Negligence***

24. The two elements of gross negligence are: (1) when viewed objectively from the standpoint of the actor, the act or omission must involve an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and (2) the actor must have actual, subjective awareness of the risk involved, but nevertheless proceed in conscious indifference to the rights, safety, or welfare of others.

25. Defendant FC Dallas and FCD Youth negligent conduct (acts or omissions) was more than momentary thoughtlessness or inadvertence. Rather, Defendant FC Dallas and FCD Youth's conduct, when viewed objectively from the standpoint of Defendants at the time of these events, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to K.G.K..

26. Here, Defendant Hayden was acting in the course and scope of his employment for Defendant FC Dallas and FCD Youth. Defendant Hayden's acts and omissions caused serious injuries to K.G.K.. Defendant Hayden negligently decided to force K.G.K. to participate in a match with younger, lesser skilled, lesser experienced, and lesser developed competition, knowing that such participation increases the unassumed risk of injury that could easily lead to great harm to anyone in similar circumstances.

27. Moreover, Defendant FC Dallas and FCD Youth and Hayden had actual awareness of the risk involved but, nevertheless, proceeded with conscious indifference to the rights, safety, or welfare of others, including K.G.K.. Defendant FC Dallas and FCD Youth and Hayden should have properly evaluated and assessed the circumstances they were placing K.G.K. into, but still proceeded with the awareness of the heightened risk involved with a player of K.G.K.'s caliber playing against younger, less experienced competition.



28. Further, because Defendant FC Dallas and FCD Youth acts and omissions resulted from gross negligence, exemplary damages should be awarded against Defendant FC Dallas and FCD Youth in an amount to be determined by the jury in this case.

**B. CHRIS HAYDEN**

*1. Negligence Against Chris Hayden.*

29. Defendant Chris Hayden owed K.G.K. a duty to exercise ordinary care under the circumstances. Because of the special relationship between coaches and their young players, Defendant Hayden owes K.G.K. an ordinary duty of care and a duty to avoid unreasonable risk. Defendant Hayden knew or should have known of the dangers created by its acts and omissions and failed to exercise ordinary care to protect K.G.K. from harm. Consequently, Defendant Hayden's failure to use ordinary care proximately caused Plaintiffs' damages.

30. On the occasion in question, Defendant Hayden violated the duty owed to K.G.K. to exercise ordinary care in the following ways, including, but not limited to:

- a. Failure to use ordinary care in his distribution of disciplinary actions;
- b. Failure to use ordinary care by not communicating with parents about issues regarding their children;
- c. Failure to use ordinary care to protect Plaintiff K.G.K. from unreasonable harm;
- d. Failure to recognize the likelihood of causing a serious bodily injury;
- e. Failure to recognize potentially dangerous circumstances or conditions arising and to stop soccer play when dangerous conditions existed;
- f. Failure to minimize additional, unassumed risks of the players; and
- g. Any and all other acts or omissions that will be proven at the time of trial.

**2. Gross Negligence**

31. Defendant Hayden's negligent conduct (acts or omissions) was more than momentary thoughtlessness or inadvertence. Rather, Defendant Hayden's conduct, when viewed objectively from the standpoint of Defendants at the time of these events, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to K.G.K..

32. Here, Defendant Hayden was acting in the course and scope of his employment for Defendant FC Dallas and FCD Youth. Defendant Hayden's acts and omissions caused serious injuries to K.G.K.. Defendant Hayden negligently decided to force K.G.K. to participate in a match with younger, lesser skilled, lesser experienced, and lesser developed competition, knowing that such participation increases the unassumed risk of injury that could easily lead to great harm to anyone in similar circumstances.

33. Moreover, Defendant FC Dallas and FCD Youth and Hayden had actual awareness of the risk involved but, nevertheless, proceeded with conscious indifference to the rights, safety, or welfare of others, including K.G.K. Defendant FC Dallas and FCD Youth and Hayden should have properly evaluated and assessed the circumstances they were placing K.G.K. into. However, they failed to do so and still proceeded with the awareness of the heightened risk involved with a player of K.G.K.'s caliber playing against younger, less experienced competition.

34. Further, because Defendants Hayden's acts and omissions resulted from gross negligence, exemplary damages should be awarded against Defendant Hayden in an amount to be determined by the jury in this case.

**VII. DAMAGES**

35. Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

36. As a direct and proximate result of the Defendant's negligent acts complained herein, K.G.K. sustained various serious injuries. The collision that K.G.K. was a part of was of such high intensity his right ankle was broken in four (4) places, and K.G.K. is continuing to combat horrible physical pain, suffering, disfigurement, and mental anguish for which he brings this cause of action.

37. The Defendants' gross negligence entitles Plaintiff to exemplary damages.

38. Plaintiff claims for relief under Tex. R. Civ. P. 47(c)(5), in a maximum amount of \$40,000,000.00.

#### **IX. PRESERVATION OF EVIDENCE**

39. Plaintiffs demand Defendants preserve and maintain all evidence pertaining to any claim or defense related to the incident that made the basis of this lawsuit, or damages resulting therefrom, including photographs, videotapes, audiotapes, recordings, business or medical records, bills, estimates, invoices, checks, receipts, measurements, inspections, files, facsimiles, emails, voicemails, text messages, investigations, cellular phone records, calendar entries, any electronic images, data, or information related to the Defendants, the referenced incident, and any damages resulting therefrom.

#### **X. PRE-JUDGMENT AND POST-JUDGMENT INTEREST**

40. Plaintiffs request pre-judgment and post-judgment interest in accordance with the maximum legal interest rates allowable as interpreted under the laws of the State of Texas.

#### **XI. JURY DEMAND**

41. Plaintiffs hereby demand a jury trial regarding all issues of fact presented in this action, pursuant to Rule 216 of the Texas Rules of Civil Procedure, and tender the applicable fee.

**XII. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request that Defendants be cited to appear and answer the Plaintiffs and that Plaintiffs have judgment against the Defendants for the following:

1. Actual Damages;
2. Exemplary Damages;
3. Pre-judgment and post-judgment interest;
4. Costs of suit; and
5. All other relief, in law and equity, to which Plaintiffs may be entitled.

Respectfully Submitted,

**DUNK LAW FIRM**

  
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Brenna L. Sanchez  
State Bar No. 24068039  
Orville O. Dunk  
State Bar No. 24047385  
717 Franklin Street  
Houston, TX 77002  
(713) 223-1435 // (888) 407-2520 (fax)  
bsanchez@dunklawyers.com