

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type: Personal Injury

Doe 116,

Court File No.:

Plaintiff,

v.

SUMMONS

The Children's Theatre Company, a Minnesota
Non-Profit Corporation, and Jason McLean,

Defendants.

THIS SUMMONS IS DIRECTED TO DEFENDANTS ABOVE NAMED.

1. YOU ARE BEING SUED. The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this Summons.

2. YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS. You must give or mail to the person who signed this Summons a **written response** called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this Summons located at Jeff Anderson & Associates, P.A., 366 Jackson Street, Suite 100, St. Paul, MN 55101.

3. YOU MUST RESPOND TO EACH CLAIM. The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.

If you do not Answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the Complaint. If you do not want to contest the claims stated in the Complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the Complaint.

5. LEGAL ASSISTANCE. You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. ALTERNATIVE DISPUTE RESOLUTION. The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: 1/5/16

JEFF ANDERSON & ASSOCIATES, P.A.



By: Jeffrey R. Anderson, #2057

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STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
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Case Type: Personal Injury

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Plaintiff,

v.

COMPLAINT

The Children's Theatre Company, a Minnesota
Non-Profit Corporation, and Jason McLean,

Defendants.

Plaintiff, for her causes of action against Defendants, alleges that:

PARTIES

1. At all times relevant to this Complaint, Plaintiff Doe 116 resided in the State of Minnesota. The identity of Plaintiff Doe 116 has been disclosed under separate cover to Defendants.

2. Defendant The Children's Theatre Company, Minneapolis, Minnesota, (hereinafter "Children's Theatre") was founded in 1964 or 1965. Beginning in 1964 or 1965, Children's Theatre was a Theatre troupe known as The Children's Theatre Company operating as a department within the Minneapolis Institute of Art in Minneapolis, Minnesota. In approximately 1972 or 1973, Children's Theatre became a division of the Minneapolis Society of Fine Arts, which governed the Children's Theatre. In 1975, Children's Theatre separated from the Minneapolis Society of Fine Arts and incorporated as an independent non-profit corporation in the State of Minnesota with a governing board of directors (hereinafter the "Board"). At all times material, Defendant Children's Theatre was and continues to be an organization and entity and a civil corporation conducting business in the State of Minnesota with its principal place of business at

2400 Third Avenue South, Minneapolis, Minnesota 55404. Children's Theatre has functioned and continues to function as a business by engaging in numerous revenue producing activities and soliciting money in exchange for its services. Children's Theatre has offered and continues to offer Theatre and educational programs in which it seeks out the participation, enrollment, and attendance of children. Children's Theatre, through its Board, has had control over and continues to have control over programs involving children participating in its programs, trainings, activities, and educational offerings, including its school programs. The educational programs Children's Theatre has offered and continues to offer include, but are not limited to, its Theatre School, including the Conservatory School, and its Summer Institute. Children's Theatre, through its Board, has had and continues to have the authority to appoint, hire, supervise, monitor, and fire each person working with children in any program, activity, training, class, educational program, and school program offered by Children's Theatre.

3. At all times material, Defendant Jason McLean (hereinafter "McLean") was an adult male resident of the State of Minnesota and an agent or employee of Defendant Children's Theatre.

FACTS

4. Upon information and belief, in approximately 1965, John Clark Donahue (hereinafter "Donahue") established Children's Theatre as a department within the Minneapolis Institute of Art, which operated under the umbrella organization the Minneapolis Society of Fine Arts. Donahue was hired as Children's Theatre's artistic director.

5. In 1975, the Children's Theatre separated from the Minneapolis Society of Fine Arts and incorporated as an independent non-profit corporation in the State of Minnesota with an independent governing Board of Directors. Donahue continued to be employed as the artistic

director of Children's Theatre.

6. From 1975 to 1986, Children's Theatre operated a theatre school, which in various forms offered educational opportunities, programs, trainings, and courses in the theatre arts to students. Beginning in 1975, students attended classes at their school in the morning and then attended afternoon educational programming and classes at Children's Theatre's school.

7. In the late 1970s, McLean became employed as a company actor with Children's Theatre.

8. In approximately 1978 or 1979, when Plaintiff Doe 116 was approximately 11 or 12 years old, she became involved with Children's Theatre as a student and child actor.

9. In September 1980, Plaintiff Doe 116 was a student at Children's Theatre school. She was 13 years old and in the 9th grade.

10. In the spring of 1981, when she was a ninth-grade student at Children's Theatre school and 13 or 14 years old, McLean began sexually abusing Plaintiff Doe 116. McLean continued to abuse Plaintiff Doe 116 for approximately four years.

11. In September 1981, Children's Theatre opened the Children's Theatre Conservatory School. Students enrolled in the school attended all classes at the school including academic and arts related classes and participated in the Children's Theatre's theatrical productions.

12. In September 1981, Plaintiff Doe 116 was a student enrolled in Children's Theatre's school. She was 14 years old and in the 10th grade.

13. In the fall of 1982, McLean began sexually abusing Victim M1, who was a 14- or 15-year-old girl and student at Children's Theatre school. McLean's abuse of Victim M1 continued for approximately a year and a half.

14. On October 18, 1982, agents from the Bureau of Criminal Apprehension informed a Children's Theatre Board member that they were investigating Donahue.

15. When the Board members confronted Donahue, he denied any wrongdoing.

16. In approximately the fall of 1983, McLean sexually abused Victim M4, a student at Children's Theatre school, on multiple occasions. She was approximately 15 to 16 years old.

17. In May or June of 1983, McLean sexually abused Laura Adams. She was a 15-year-old student at Children's Theatre school.

18. In September 1983, in addition to his continued employment as a company actor at Children's Theatre, McLean began teaching acting classes to students at the Children's Theatre school.

19. On April 18, 1984, law enforcement arrested Donahue.

20. At some point after Donahue's April 1984 arrest, McLean was on leave from Children's Theatre.

21. At some point after Donahue's arrest in April 1984 but before a grand jury heard testimony, McLean orchestrated Victim M1 to assist him by speaking to a list of several female Children's Theatre students McLean had sexually abused. McLean had M1 talk with the girls to try to convince them that the abuse was consensual. The youngest student on the list was 13 years old.

22. At some point after Donahue's arrest in April 1984 but before Plaintiff Doe 116 testified before the grand jury, McLean spoke with her privately on several occasions concerning his sexual abuse of her. McLean coerced Doe 116 to lie to the grand jury so as to deny the abuse.

23. In approximately the late summer or fall of 1984, McLean returned to Children's Theatre when he began attending rehearsals as a company actor for a Children's Theatre

production.

24. During the 1984-1985 school year, McLean was employed as a staff member at Children's Theatre school.

25. In September 1984, McLean began sexually abusing Victim M3, also known as Doe 76 in a separately filed lawsuit against Children's Theatre and McLean, a 15-year-old female student at Children's Theatre school. McLean abused Victim M3/Doe 76 for approximately nine months.

26. During the approximately four years McLean sexually abused Plaintiff Doe 116, from approximately 1981 to approximately 1985, McLean was employed as a Children's Theatre company actor and was a cast member with roles in Children's Theatre's productions in which Plaintiff Doe 116 was involved in or cast as a student actor.

27. McLean continued to be employed by Children's Theatre until 1986.

28. Upon information and belief, there are additional minors who McLean sexually abused when he was an employee, agent, actor, and/or teacher at Children's Theatre.

29. Prior to the sexual abuse of Plaintiff Doe 116 from approximately 1981 to 1985, Defendant Children's Theatre and the Board should have learned that McLean was not fit to work with children.

30. At all times material, McLean was an employee of Children's Theatre working at Children's Theatre.

31. At all times material, McLean remained under the direct supervision, employ and control of Children's Theatre and the Board. Defendant Children's Theatre placed McLean in positions where he had access to and worked with children as an integral part of his work.

32. Defendant Children's Theatre should have known that McLean was a danger to

children before McLean sexually abused Plaintiff Doe 116.

33. Defendant negligently or recklessly believed that McLean was fit to work with children; that McLean would not sexually abuse children; that McLean would not injure children; and/or that McLean would not hurt children.

34. As an actor and teacher at Children's Theatre, McLean was an employee who had unlimited access to children. Children, including Plaintiff Doe 116, and their families were not told what Children's Theatre and the Board should have known – that McLean was a danger to children.

35. Plaintiff Doe 116 came to know McLean when she was a student and child actor at Children's Theatre.

36. From approximately 1981 to 1985, when Plaintiff Doe 116 was approximately 13 or 14 years old to 18 years old, and a student and child actor at Children's Theatre, in multiple instances McLean inflicted harmful, offensive and unpermitted sexual contact upon Plaintiff Doe 116.

37. At all times material, McLean's employment duties included but were not limited to acting in Children's Theatre productions and coaching students and child actors at Children's Theatre. While she was an actor and student in the Children's Theatre's custody, Plaintiff Doe 116 participated as a student and an actor in performances at Children's Theatre in which McLean acted. McLean, therefore, was in a position of power and authority over Plaintiff Doe 116.

38. By holding McLean out as safe to work with children, and by undertaking the education, custody, supervision of, and/or care of the minor Plaintiff Doe 116, Children's Theatre entered into a fiduciary relationship with the minor Plaintiff Doe 116. As a result of Plaintiff Doe 116 being a minor, and by Children's Theatre undertaking the care and guidance of the then

vulnerable minor Plaintiff Doe 116, Children's Theatre held a position of power over Plaintiff Doe 116.

39. By accepting custody of minor Plaintiff Doe 116, Children's Theatre established an *in loco parentis* relationship with Plaintiff Doe 116 and in so doing, owed Plaintiff Doe 116 a duty to protect her from injury.

40. Further, Children's Theatre, by holding itself out as being able to provide a safe learning, acting, training, and educational environment for children at Children's Theatre, solicited and/or accepted this position of power over Plaintiff Doe 116. This empowerment prevented the then minor Plaintiff Doe 116 from effectively protecting herself and Children's Theatre thus entered into a fiduciary relationship with Plaintiff Melisa Beneke.

41. Children's Theatre had a special relationship with Plaintiff Doe 116.

42. Children's Theatre owed Plaintiff Doe 116 a duty of reasonable care because it had superior knowledge about the risk that McLean posed to Plaintiff Doe 116, the risk of abuse in general at Children's Theatre, and/or the risks that its agents and/or employees posed to minor children.

43. Children's Theatre owed Plaintiff Doe 116 a duty of reasonable care because it solicited youth for participation in its acting and educational programs and school, encouraged youth and parents to have youth participate in its acting and educational programs and school, undertook custody of minor children, including Plaintiff Doe 116, promoted its facilities, including but not limited to the Children's Theatre and school, and its acting and educational programs as being safe for children, held its employees and agents, including McLean, out as safe to work with children, encouraged children to spend time with its employees and agents, and/or encouraged its employees and agents, including McLean, to spend time with and interact with children.

44. Children's Theatre had a duty to protect Plaintiff Doe 116 from harm because Children's Theatre's actions created a foreseeable risk of harm to Plaintiff Doe 116.

45. Children's Theatre's breach of its duties include, but are not limited to: failure to have sufficient policies and procedures to prevent child sexual abuse, failure to properly implement policies and procedures to prevent child sexual abuse, failure to take reasonable measures to make sure that the policies and procedures to prevent child sexual abuse were working, failure to adequately inform families and children of the risks of child sexual abuse, failure to investigate risk of child molestation, failure to protect children in its programs and at its theatre and school from sexual abuse, failure to adhere to applicable standards of care for child safety, failure to investigate the amount and type of information necessary to represent itself, its theatre, its school, and its programs, leaders and people as safe and failure to use ordinary care in determining whether its facilities were safe and/or whether it had sufficient information to represent its facilities as safe.

46. Children's Theatre failed to use ordinary care in determining whether its facilities, which included all aspects of Children's Theatre, including its theatre and school, and employees were safe to work with children and/or in determining whether it had sufficient information to represent its facilities and employees as safe to work with children. Children's Theatre's failures include, but are not limited to: failure to have sufficient policies and procedures to prevent abuse by its employees and at its facilities, failure to investigate risks at its facilities and of its agents, failure to properly train workers at its facilities, failure to have any outside agency test its safety procedures, and failure to train its agents and employees to properly identify signs of child molestation.

47. Children's Theatre also breached its duty to Plaintiff Doe 116 by failing to warn Plaintiff Doe 116 and her family of the risk that McLean posed and the risk of child sexual abuse

by educators and teachers in educational youth programs, educational youth activities, including youth theatre programs, and schools. It also failed to warn them about any knowledge that Children's Theatre had about child sexual abuse.

48. Children's Theatre should have known that some of its leaders and employees working at Children's Theatre were not safe.

49. Children's Theatre should have known that it did not have sufficient information about whether its leaders and employees working at Children's Theatre were safe.

50. Children's Theatre should have known that there was a risk of child sexual abuse for children participating in programs and activities at Children's Theatre and with its agents and employees.

51. Children's Theatre should have known that it did not have sufficient information about whether there was a risk of child sexual abuse for children participating in the Children's Theatre's programs and activities and enrolled at Children's Theatre school and with its agents and employees.

52. Children's Theatre should have known that it had agents and employees who had sexually molested children. It should have known that child sexual molesters have a high rate of recidivism. It should have known that there was a specific danger of child sexual abuse for children participating in its youth programs and with its employees and/or agents.

53. Defendant Children's Theatre held its leaders, actors, teachers, employees, and agents out as people of great talent, high morals, as possessing immense power and influence, taught children and students to respect and revere these leaders, teachers, employees, and agents, solicited youth to its educational programs and school at Children's Theatre, marketed to youth,

recruited youth, and held out the people that worked at Children's Theatre as being safe to work with children.

54. As a direct result of the conduct of Defendants Children's Theatre and McLean described herein, Plaintiff Doe 116 has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation, physical, personal and psychological injuries. Plaintiff Doe 116 was prevented and will continue to be prevented from performing her normal daily activities and obtaining the full enjoyment of life, has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counselling, and on information and belief has and/or will incur loss of income and/or loss of earning capacity.

**COUNT I: PLAINTIFF DOE 116 v. DEFENDANT JASON MCLEAN –
SEXUAL BATTERY**

55. Plaintiff Doe 116 incorporates all consistent paragraphs of this Complaint as if fully set forth under this count and further alleges the following:

56. From approximately 1981 to 1985, Defendant McLean inflicted multiple instances of unpermitted, harmful, and offensive sexual contact upon the person of Plaintiff Doe 116.

57. As a direct result of Defendant McLean's wrongful conduct, Plaintiff Doe 116 has suffered the injuries alleged herein.

**COUNT II: PLAINTIFF DOE 116 v. DEFENDANT CHILDREN'S
THEATRE - NEGLIENT HIRING**

58. Plaintiff Doe 116 incorporates all consistent paragraphs of this Complaint as if fully set forth under this count and further alleges the following:

59. Defendant Children's Theatre owed Plaintiff Doe 116 a duty of reasonable care in hiring its agents and employees, including actors.

60. Defendant Children's Theatre further assumed this duty by holding McLean out to the public, including Plaintiff Doe 116, as a competent and trustworthy agent, employee, actor, acting coach, teacher, and supervisor.

61. Defendant Children's Theatre, by and through its employees and agents, should have known of McLean's dangerous and exploitive propensities, which could have been discovered by reasonable investigation by Defendant Children's Theatre prior to hiring McLean as an actor and teacher and agent and employee of Children's Theatre. Defendant Children's Theatre further knew the risk of child abuse in settings where education and programs are offered to children, including that it was a well-known and foreseeable risk that educators and youth workers may engage in sexually inappropriate contact with students and children in schools and youth educational and training programs.

62. Defendant Children's Theatre breached its duty to Plaintiff Doe 116 by failing to exercise reasonable care in hiring its employees and agents, including McLean.

63. As a direct result of Defendant Children's Theatre's negligent conduct, Plaintiff Doe 116 has suffered the injuries and damages described herein.

**COUNT III: PLAINTIFF DOE 116 v. DEFENDANT CHILDREN'S THEATRE -
NEGLIGENT SUPERVISION**

64. Plaintiff Doe 116 incorporates all consistent paragraphs of this Complaint as if fully set forth under this count and further alleges the following:

65. Defendant Children's Theatre owed Plaintiff Doe 116 a duty of reasonable care.

66. By establishing and operating Children's Theatre, accepting the enrollment of children and minor Plaintiff Doe 116, holding Children's Theatre out to be a safe environment for children and minor Plaintiff Doe 116 to study and learn, and accepting the care and custody of children and minor Plaintiff Doe 116, Defendant Children's Theatre owed students and actors at

Children's Theatre, including minor Plaintiff Doe 116, a duty of ordinary care, which included and continues to include protecting Children's Theatre's actors and students, including minor Plaintiff Doe 116, from foreseeable harm.

67. At all times material, McLean was employed by Defendant Children's Theatre and was under Defendant Children's Theatre and the Board's direct supervision, employ and control when he committed the wrongful acts alleged herein.

68. McLean engaged in the wrongful conduct while acting in the course and scope of his employment with Defendant Children's Theatre and/or accomplished the sexual abuse by virtue of his job-created authority.

69. McLean's wrongful conduct was foreseeable by Defendant Children's Theatre because it is and was a well-known and foreseeable risk that educators and youth workers may engage in sexually inappropriate contact with students and children in schools and youth programs.

70. Defendant failed to exercise ordinary care in supervising McLean in his employment and failed to prevent the foreseeable misconduct of McLean from causing harm to others, including Plaintiff Doe 116.

71. As a direct result of Defendant Children's Theatre's negligent conduct, Plaintiff Doe 116 has suffered the injuries and damages described herein.

**COUNT IV: PLAINTIFF DOE 116 v. DEFENDANT CHILDREN'S THEATRE -
NEGLIGENT RETENTION**

72. Plaintiff Doe 116 incorporates all consistent paragraphs of this Complaint as if fully set forth under this count and further alleges the following:

73. Defendant Children's Theatre, by and through its Board of Directors, agents, servants and employees, should have become aware of problems indicating that McLean was an unfit employee with dangerous and exploitive propensities, prior to McLean's sexual abuse of

Plaintiff Doe 116, yet Defendant Children's Theatre failed to take any further action to remedy the problem and failed to investigate or remove McLean from his employment and from working with children.

74. As a direct result of Defendant Children's Theatre's negligent conduct, Plaintiff Doe 116 has suffered the injuries and damages described herein.

**COUNT V: PLAINTIFF DOE 116 v. DEFENDANT CHILDREN'S
THEATRE - NEGLIGENCE**

75. Plaintiff Doe 116 incorporates all consistent paragraphs of this Complaint as if fully set forth under this count and further alleges the following:

76. Defendant Children's Theatre owed Plaintiff Doe 116 a duty of reasonable care.

77. Defendant Children's Theatre owed Plaintiff Doe 116 a duty of care because it had a special relationship with Plaintiff Doe 116.

78. Defendant Children's Theatre owed Plaintiff Doe 116 a duty to warn and protect her from harm because it had a special relationship with McLean.

79. Defendant Children's Theatre owed Plaintiff Doe 116 a duty to protect her from harm because Defendant Children Theatre's active misfeasance created a foreseeable risk of harm.

80. Defendant Children Theatre owed Plaintiff Doe 116 a duty to protect her from harm because it invited her onto its property and McLean posed a dangerous condition on Defendant Children's Theatre's property.

81. By establishing and operating Children's Theatre, accepting the enrollment and participation of minor Plaintiff Doe 116 at the Children's Theatre's school, holding Children's Theatre out to be a safe environment for Plaintiff Doe 116 to study and learn, accepting custody of minor Plaintiff Doe 116 *in loco parentis*, and by establishing a fiduciary relationship with

Plaintiff Doe 116, Defendant Children's Theatre entered into an express and/or implied duty to properly supervise Plaintiff Doe 116 and provide a reasonably safe learning environment.

82. By establishing and operating Children's Theatre, which offered education to children through its Theatre and educational programs, including a school, and by accepting the enrollment and participation of minor Plaintiff Doe 116 as a student in its school, Defendant Children's Theatre owed Plaintiff Doe 116 a duty to properly supervise Plaintiff Doe 116 from general dangers.

83. Defendant Children's Theatre breached its duties to Plaintiff Doe 116. Its failures include but are not limited to failing to properly supervise McLean and failing to protect Plaintiff Doe 116 from a known danger at Children's Theatre.

84. Defendant Children's Theatre's breach of its duty was a proximate cause of Plaintiff Doe 116's injuries.

85. As a direct result of Defendant Children's Theatre's negligent conduct, Plaintiff Doe 116 has suffered the injuries and damages described herein.

PRAYER FOR RELIEF

86. Plaintiff Doe 116 demands judgment against Defendants Children's Theatre and McLean, individually, jointly and severally, in an amount in excess of \$50,000.00, plus costs, disbursements, reasonable attorney fees, interest and such other and further relief as the court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable.

Dated: 1/5/16

JEFF ANDERSON & ASSOCIATES, P.A.



By: Jeffrey R. Anderson, #2057

Molly K. Burke, #0391477

Attorneys for Plaintiff

366 Jackson Street, Suite 100

St. Paul, MN 55101

(651) 227-9990

ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions, including costs, disbursements, and reasonable attorney fees may be awarded pursuant to Minn. Stat. § 549.211 to the party against whom the allegations in this pleading are asserted.

