

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Personal Injury

Doe 170,

Court File No.:

Plaintiff,

v.

COMPLAINT

The Children's Theatre Company, a Minnesota
Non-Profit Corporation, and John Clark Donahue,

Defendants.

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

PARTIES

1. Plaintiff Doe 170 is an adult male resident of the State of Minnesota. In the interest of privacy, the identity of Plaintiff Doe 170 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, Minneapolis, Minnesota. In approximately 1972 or 1973, Children's Theatre became a division of the Minneapolis Society of Fine Arts, which then governed the Children's Theatre. 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 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, such as its school programs. Children's Theatre, through its Board, had and has the authority to appoint, hire, supervise, monitor, and fire each person working with children in any program, activity, training, class, educational and school program offered at Children's Theatre.

3. At all times material, John Clark Donahue (hereinafter "Donahue") was an adult male resident of the State of Minnesota and an employee of Defendant Children's Theatre.

FACTS

4. On information and belief, in 1961, Defendant Donahue was a teacher at Carl Sandburg Junior High in Golden Valley, Minnesota. He sexually abused a 17-year-old, Victim D1, was criminally charged, and pleaded guilty to indecent exposure or indecent conduct.

5. News of Donahue's criminal activity was published in the paper. Donahue then resigned from his teaching position at Sandburg Junior High.

6. In 1962, Donahue was hired to work at The Moppet Players, which was a Theatre in Minneapolis, Minnesota, that produced Theatre for children with child actors.

7. In approximately 1964, Donahue left the Moppet Players and established The Children's Theatre at the Minneapolis Institute of Art. In 1965, after an initial one-year trial period, Children's Theatre was established 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.

8. In the 1960s, Donahue sexually abused at least five minor boys, all of whom were involved with Children's Theatre: Victim D2, Victim D3, Victim D4, Victim D5, and Victim D6. The boys were 15 to 17 years old.

9. In the early 1970s, Donahue sexually abused Victim D7, a minor boy involved with Children's Theatre.

10. At some point during the 1970s, Donahue sexually abused Victim D8, a 13-year-old boy involved with Children's Theatre.

11. In approximately 1971, Donahue sexually abused Victim D9, an approximately 14-year-old child actor involved with Children's Theatre.

12. In 1972, Donahue began residing at a residence located on Steven Avenue in Minneapolis, Minnesota, across the street from Children's Theatre.

13. Donahue frequently hosted parties at the Steven Avenue residence that included staff, actors, students, and minors. At these parties, minors were served and had access to alcohol.

14. In approximately 1972 to 1973, Donahue sexually abused at least two minor boys involved in Children's Theatre: Victim D10, and Victim D11.

15. 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 (hereinafter the "Board"). Donahue continued to be employed as the artistic director of Children's Theatre.

16. From 1975 to 1984, Children's Theatre operated the theatre school, which in various forms, which offered performance and educational opportunities, programs, trainings, and

courses in the theatre arts to students. In the 1970s, students attended classes at their school in the morning and then attended afternoon classes at Children's Theatre's school.

17. In the late 1970s, sometime between 1975 and 1980, Donahue sexually abused Victim D12, a minor boy involved with Children's Theatre.

18. In approximately 1976 to 1977, Donahue sexually abused Plaintiff Doe 170 (Victim D18), a 14- to 15-year-old minor student and child actor involved with Children's Theatre.

19. In 1977, Donahue sexually abused Victim D13, also known as Doe 84 in a separately filed lawsuit against Children's Theatre and Donahue, who was a minor student and child actor involved with Children's Theatre.

20. In approximately 1978, Donahue sexually abused a minor boy involved with Children's Theatre, Victim D14.

21. In approximately 1978 to 1979, Donahue sexually abused D19, who was a minor student and child actor involved with Children's Theatre.

22. Sometime in the late 1970's, Donahue abused Victim D15, a minor boy involved with Children's Theatre.

23. In approximately 1980 to 1983, Donahue sexually abused Victim D16, a 12- to 13-year-old boy involved with Children's Theatre.

24. In September 1981, Children's Theatre opened the Children's Theatre Conservatory School.

25. On October 18, 1982, agents from the Bureau of Criminal Apprehension (herein after "BCA") informed a Children's Theatre Board member that the BCA was investigating Donahue.

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

27. In 1983, Donahue abused Victim D17, a 15-year-old boy involved with Children's Theatre.

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

29. On May 11, 1984, Donahue resigned from his position as Artistic Director at Children's Theatre.

30. In October 1984, Donahue pleaded guilty to three counts of criminal sexual conduct. In November, he was sentenced to ten months in the workhouse.

31. Prior to Donahue's sexual abuse of Plaintiff, Defendant Children's Theatre and the Board should have learned that Donahue was not fit to work with children.

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

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

34. Defendant should have known that Donahue was a danger to children before Donahue sexually abused Plaintiff.

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

36. As the artistic director at Children's Theatre, Donahue was an employee and member of the Board who had unlimited access to children. Children, including Plaintiff, and their families were not told what Children's Theatre and the Board should have known – that Donahue was a danger to children.

37. Plaintiff came to know Donahue when he was a child actor involved with Children's Theatre.

38. In approximately 1976 to 1977, when Plaintiff Doe 170 was approximately 14 to 15 years old, and an actor and student at Children's Theatre, in multiple instances Donahue inflicted harmful, offensive and unpermitted sexual contact upon Plaintiff.

39. At all times material, Donahue's employment duties included but were not limited to directing, teaching, overseeing, and supervising child actors and students at Children's Theatre. While he was an actor and student in Children's Theatre's custody, Plaintiff participated as a child actor in performances at Children's Theatre in which Donahue was the artistic director. Donahue, therefore, was in a position of power and authority over Plaintiff.

40. By holding Donahue out as safe to work with children, and by undertaking the education, custody, supervision of, and/or care of the minor Plaintiff, Children's Theatre entered into a fiduciary relationship with minor Plaintiff. As a result of Plaintiff being a minor, and by Children's Theatre undertaking the care and guidance of the then vulnerable minor Plaintiff, Children's Theatre held a position of power over Plaintiff.

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

42. 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. This empowerment prevented the then minor Plaintiff from effectively protecting himself and Children's Theatre thus entered into a fiduciary relationship with Plaintiff.

43. Children's Theatre had a special relationship with Plaintiff.

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

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

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

47. 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.

48. 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.

49. Children's Theatre also breached its duty to Plaintiff by failing to warn Plaintiff and his family of the risk that Donahue 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.

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

51. Defendant 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.

52. Defendant 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.

53. Defendant 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.

54. Defendant Children's Theatre should have known that it had agents and/or 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.

55. Defendant Children's Theatre held its leaders, teachers, employees, and agents out as people of great talent, high morals, as possessing immense power and influence, teaching families to respect and revere these leaders teachers, employees, and agents, soliciting youth to its programs at Children's Theatre, marketing to youth, recruiting youth, and holding out the people that worked at Children's Theatre as being safe to work with children.

56. As a direct result of the Defendants' described herein, Plaintiff 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 was prevented, and will continue to be prevented, from performing normal daily activities and obtaining the full enjoyment of life, and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling, and on information and belief has and/or will incur loss of income and/or loss of earning capacity.

COUNT I: BATTERY AGAINST
DEFENDANT JOHN CLARK DONAHUE

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

57. In approximately 1976 to 1977, Defendant Donahue inflicted multiple instances of unpermitted, harmful, and offensive sexual contact upon the person of Plaintiff Doe 170.

58. As a direct result of Defendant Donahue's wrongful conduct, Plaintiff had suffered the injuries alleged herein.

COUNT II: NEGLIGENT HIRING AGAINST
DEFENDANT CHILDREN'S THEATRE

Plaintiff 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 a duty of reasonable care in hiring its agents, employees and actors.

60. Defendant Children's Theatre further assumed this duty by holding Donahue out to the public, including Plaintiff, as a competent and trustworthy artistic director, director, producer, teacher, and supervisor.

61. Defendant Children's Theatre, by and through its employees and agents, should have known of Donahue's dangerous and exploitive propensities, which could have been discovered by reasonable investigation by Defendant Children's Theatre prior to hiring Donahue as the artistic director 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 by failing to exercise reasonable care in hiring its employees and agents, including Donahue.

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

**COUNT III: NEGLIGENT SUPERVISION AGAINST
DEFENDANT CHILDREN'S THEATRE**

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

64. Defendant Children's Theatre owed Plaintiff a duty of reasonable care.

65. By establishing and operating Children's Theatre, accepting the enrollment and participation of children and minor Plaintiff, holding Children's Theatre out to be a safe environment for children and minor Plaintiff to act, perform, study, and learn, and accepting the care and custody of children and minor Plaintiff, Defendant owed students and actors at Children's Theatre, including minor Plaintiff, a duty of ordinary care, which included and continues to include protecting Children's Theatre's actors and students, including minor Plaintiff, from foreseeable harm.

66. At all times material, Donahue 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.

67. Donahue 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.

68. Donahue'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 educational and training programs.

69. Defendant Children's Theatre failed to exercise ordinary care in supervising Donahue in his employment and failed to prevent the foreseeable misconduct of Donahue from causing harm to others, including Plaintiff.

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

**COUNT IV: NEGLIGENT RETENTION AGAINST
DEFENDANT CHILDREN'S THEATRE**

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

71. Defendant Children's Theatre, by and through its Board of Directors, agents, servants and employees, should have become aware of problems indicating that Donahue was an unfit employee with dangerous and exploitive propensities, prior to Donahue's sexual abuse of Plaintiff, yet Defendant Children's Theatre failed to take any further action to remedy the problem and failed to investigate or remove Donahue from his employment and from working with children.

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

**COUNT V: NEGLIGENCE AGAINST
DEFENDANT CHILDREN'S THEATRE**

Plaintiff 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 owed Plaintiff a duty of reasonable care.

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

75. Defendant Children's Theatre owed Plaintiff a duty to warn and protect him from harm because it had a special relationship with Donahue.

76. Defendant Children's Theatre owed Plaintiff a duty to protect him from harm because Defendant Children's Theatre's active misfeasance created a foreseeable risk of harm.

77. Defendant Children's Theatre owed Plaintiff a duty to protect him from harm because it invited him onto its property and Donahue posed a dangerous condition on Defendant Children's Theatre's property.

78. By establishing and operating Children's Theatre, accepting the enrollment and participation of minor Plaintiff, holding Children's Theatre out to be a safe environment for Plaintiff to perform, study and learn, accepting custody of minor Plaintiff *in loco parentis*, and by establishing a fiduciary relationship with Plaintiff, Defendant Children's Theatre entered into an express and/or implied duty to properly supervise Plaintiff and provide a reasonably safe acting and learning environment.

79. By establishing and operating Children's Theatre, which offered performance opportunities and education to children through its Theatre productions and educational classes and programs, including a school, and by accepting the enrollment and participation of minor Plaintiff as a child actor and/or student, Defendant Children's Theatre owed Plaintiff a duty to properly supervise Plaintiff from general dangers.

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

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

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

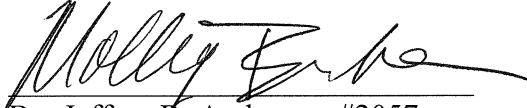
PRAYER FOR RELIEF

83. Plaintiff demands judgment against Defendants 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 IS HEREBY MADE FOR A TRIAL BY JURY.

Dated: 2-12-16

JEFF ANDERSON & ASSOCIATES, P.A.



By: Jeffrey R. Anderson, #2057

Molly K. Burke, #0391477

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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.

