

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

Case No. CI 17-6252

JANE DOE NO. 1, a minor girl, by and
through MOTHER DOE NO. 1 and
FATHER DOE NO. 1, as Parents and
Natural Guardians, and MOTHER DOE
NO. 1 and FATHER DOE NO. 1,
Individually,

COMPLAINT AND PRAECIPE

Plaintiffs,

vs.

LA PETITE ACADEMY, INC.,
a Nebraska Corporation, and MARK R. MAYS,

Defendants.

COMPLAINT

Plaintiffs, JANE DOE NO. 1, a minor girl, by and through MOTHER DOE NO. 1 and FATHER DOE NO. 1, as parents and natural guardians, and MOTHER DOE NO. 1 and FATHER DOE NO. 1, individually, hereby sue Defendant LA PETITE ACADEMY, INC. and Defendant MARK R. MAYS and state the following:

1. JANE DOE NO. 1 (“JANE DOE”) is a minor child and a citizen and resident of Douglas County, Nebraska. She resides with her parents and natural guardians, MOTHER DOE NO. 1 and FATHER DOE NO. 1 (“MOTHER DOE and FATHER DOE”), in Douglas County, Nebraska. This action is brought using pseudonyms to protect the identities of JANE DOE, MOTHER DOE and FATHER DOE as this matter concerns the sexual abuse of a minor. Plaintiffs fear further psychological damage to JANE DOE if her identity as a victim of sexual abuse becomes publicly known. JANE DOE’s identity and MOTHER DOE and FATHER DOE’s identities are known, or will be made known, to Defendants upon the Defendants’ appearance in this action.

2. Defendant LA PETITE ACADEMY, INC. (“LA PETITE”) is a Delaware corporation with its principal place of business in Michigan. At all relevant times, JANE DOE was a child in the care of LA PETITE.

3. Defendant MARK R. MAYS (“MAYS”) is currently in the custody of the Nebraska Department of Correctional Services Diagnostic and Evaluation Center, Douglas County, Nebraska. He was born in November of 1991 and is a serial sex offender who sexually abused at least eight children in Douglas County, Nebraska. MAYS was employed as a day care worker by LA PETITE when he had contact with JANE DOE on LA PETITE’s premises.

4. Venue of this action lies in this District pursuant to Nebraska Statutes §25-403.01 as Defendant MAYS resides in this judicial district and the events and omissions giving rise to this action occurred in this judicial district. LA PETITE conducts substantial business activities in the jurisdiction.

FACTUAL ALLEGATIONS

5. JANE DOE, when she was approximately one year old, attended day care at LA PETITE, 10707 Birch Street, Omaha, Nebraska.

6. In 2011, MAYS was employed by Saint Andrew’s Children’s Enrichment Center as a day care worker. He was fired there for repeatedly crossing boundaries with children by putting kids on his lap.

7. In 2014, MAYS was employed as a day care worker by the Millard Public Schools childcare program Kids Network. He was fired there for repeatedly crossing boundaries with children by putting kids on his lap, holding and tickling kids, and giving his address to a young girl and inviting her to his home.

8. In 2015, LA PETITE hired MAYS without performing any investigation of his prior employment.

9. Had an employment check been conducted, LA PETITE would have been alerted to MAYS' firings for crossing boundaries with children.

10. Shortly after being hired by LA PETITE, MAYS was caught holding and kissing a little girl at La Petite. He was retained by LA PETITE without restriction despite the incident.

11. Shortly after MAYS was hired, MOTHER DOE asked LA PETITE administrators, including director Lisa Hampson, to not allow MAYS to change Jane Doe's diaper as MAYS made MOTHER DOE uncomfortable. Ms. Hampson agreed to MOTHER DOE's request and assured her that MAYS would no longer change JANE DOE'S diaper.

12. Despite this assurance, MAYS was repeatedly allowed to change JANE DOE's diaper. In one instance, MAYS was directed by LA PETITE teacher, Danielle, to change JANE DOE's diaper. MAYS told Danielle that MOTHER DOE had specifically requested that he not change JANE DOE's diaper. Danielle told MAYS to change the diaper anyway and told MAYS that she would document in the records that she changed the diaper, not MAYS. MAYS used this opportunity to sexually abuse JANE DOE in the restroom at LA PETITE.

13. MAYS was ultimately fired by LA PETITE for pushing a little girl to the ground in or about August 2015.

14. MAYS was subsequently hired by Little Hands at Work and Play daycare.

15. In January of 2016, Omaha Police Department officers were dispatched to Little Hands due to an employee witnessing MAYS in a bathroom with a two-year-old girl, with the girl sitting on MAYS lap, straddling and facing MAYS. At the time, the two-year-old girl was naked from the waist down.

16. In February of 2016, the police interviewed MAYS about the above-described incident and he disclosed that he had undressed the girl completely and sat her on his lap facing him. He further disclosed that he had penetrated the girl's vagina with his pinky finger. MAYS indicated that he would place children on his lap so that he would get an erection. MAYS

proceeded to admit that he had placed his ring finger inside of another girl at Little Hands and had six other similar incidents with two other girls at Little Hands and four girls at LE PETITE.

17. MAYS admitted that he sexually abused JANE DOE during his interview with the police, in which MAYS admitted that, during his employment at LA PETITE, JANE DOE sat on his lap whereupon MAYS sexually abused her.

18. The sexual abuse included MAYS touching and rubbing JANE DOE's vagina, chest, and stomach in order to get an erection. MAYS admitted to "swiping" up and down on JANE DOE's genital area while wearing a latex glove. MAYS furthermore admitted to placing JANE DOE on his crotch area, while she was naked from the waist down, while stroking her body in order to get an erection. Upon information and belief, the sexual abuse occurred on multiple occasions until Mays' termination in August 2015.

19. Subsequent to his arrest, police searched MAYS' computer and found digital images of girls' vaginas, some with MAYS' penis or finger touching them. Upon information and belief, Jane Doe was one of the girls whose genitals were photographed.

20. Additionally, searched MAYS' room and found a drawer containing girls' panites and condoms.

21. Mother Doe and Father Doe were not aware of the sexual abuse of Jane Doe until they were first contacted by police in February, 2016.

22. LA PETITE undertakes to provide a loving, caring, and safe environment for every child. It undertakes to promote praise and understanding from their staff to help children develop the self-esteem they need to be successful and confident in life. LA PETITE authorizes their employees to touch the children they are providing child care for, including authorizing the children to sit on the lap of their employees and authorizing employees to change children's diapers.

COUNT I – NEGLIGENCE AGAINST LA PETITE

23. Plaintiff readopts and realleges all of the allegations set forth in Paragraphs 1 through 22 as though fully set forth herein.

24. At all material times, LA PETITE owed a duty to JANE DOE to use reasonable care to ensure JANE DOE's safety, care, health, and well-being, including protecting her from sexual assault or abuse. This duty encompassed using reasonable care in the supervision and protection of JANE DOE and the other children being cared for at LA PETITE, and otherwise providing a safe environment for them while on LA PETITE's premises.

25. LA PETITE further owed JANE DOE a duty to prevent foreseeable harm from occurring to her while she was on its premises and/or under its supervision.

26. In hiring MAYS, LA PETITE had a duty to exercise reasonable care to assure that MAYS was safe and fit for employment caring for children. This duty included, among other things, investigating his past employment, particularly his employment in child care.

27. LA PETITE acted *in loco parentis* while entrusted with the custody and control of JANE DOE, had a special relationship with JANE DOE as a result of their caregiver-child relationship, and was paid for its services by JANE DOE's parents. In promoting LA PETITE's services to parents, LA PETITE undertook to provide a healthy, nurturing and safe environment for children.

28. At all relevant times, LA PETITE knew or in the exercise of reasonable care should have known that MAYS posed a substantial risk of harm to the health, safety and welfare of children.

29. At all relevant times, LA PETITE knew or in the exercise of reasonable care should have known that a failure to supervise the children in its care or its employee MAYS would lead to potentially dangerous and harmful conduct, including the sexual abuse of the children in its care.

30. LA PETITE failed to respond to actual or constructive notice of a danger to the children in its care from its employee MAYS, to warn parents, and/or train its staff to detect and prevent sexual abuse.

31. LA PETITE breached its duties by failing to use reasonable care to provide a safe environment for JANE DOE where she would be free from sexual assault or abuse. This breach included (a) hiring, retaining and/or failing to supervise MAYS when LA PETITE knew or should have known that he posed a substantial risk of harm to children; (b) leaving MAYS alone with children; (c) failing to monitor and supervise children on the premises of LA PETITE and protect them from abuse; (d) by failing to conduct a proper employment background check for MAYS, and (e) allowing MAYS to change children's diapers. This is further evidenced by the number of children he abused in the same facility in a short period of time.

32. As a direct and proximate result of these breaches of duty, JANE DOE was sexually assaulted by MAYS on multiple occasions while she attended day care at LA PETITE.

33. This sexual abuse was a foreseeable result LA PETITE 's breach of its duties to JANE DOE.

34. As a direct and proximate result of the negligence of Defendant LA PETITE, Plaintiff JANE DOE has suffered severe psychological, emotional and physical injuries, and emotional distress arising out of the physical injuries, pain and suffering, mental anguish, inconvenience, loss of capacity for the enjoyment of life, inability to lead a normal life, shame, humiliation and regression, and costs associated with medical/psychological care and treatment. The injuries and damages are permanent and continuing in nature and the Plaintiff will suffer such losses in the future.

WHEREFORE, Plaintiff JANE DOE NO. 1 respectfully requests that this Court enter judgment against LA PETITE ACADEMY, INC., and award all damages including

compensatory damages and special damages, punitive damages, costs, interest, attorneys' fees, and any other relief that this Court deems just and proper.

COUNT II - RESPONDEAT SUPERIOR / VICARIOUS LIABILITY
AGAINST LA PETITE

35. The Plaintiff readopts and realleges all of the allegations set forth in Paragraphs 1 through 34 as though fully set forth herein.

36. MAYS was at all material times an employee, appointee and/or agent of LA PETITE.

37. Upon information and belief, MAYS committed acts of battery on JANE DOE by offensively touching her vagina in a sexual manner where JANE DOE was incapable of legally consenting to such.

38. MAYS was authorized by LA PETITE to be alone with JANE DOE and other children, and to have unfettered and unsupervised control and access to JANE DOE while she was a child in the care of LA PETITE.

39. The acts of battery and offensive touching in a sexual manner perpetrated by MAYS on JOHN DOE occurred in a child care facility where MAYS was required by LA PETITE to perform his employment duties, and within the course and scope of MAYS's performance of those duties.

40. The acts of battery described above occurred during MAYS's working hours and while he was doing what his position with LA PETITE contemplated.

41. MAYS's initial contact and relationship with JANE DOE were in furtherance of LA PETITE's business interests.

42. In addition, MAYS was authorized by LA PETITE to touch JANE DOE and change her diapers. MAYS extended and converted this authorized touching into acts of sexual assault and battery of JANE DOE as described above.

43. Further, MAYS was assisted in accomplishing his sexual assault of JANE DOE by virtue of his position and relationship with LA PETITE.

44. The acts engaged in by MAYS were in the actual and/or apparent course and scope of his employment or agency with LA PETITE.

45. As a result of the sexual abuse described herein, Plaintiff JANE DOE has suffered severe psychological, emotional and physical injuries, and emotional distress arising out of the physical injuries, pain and suffering, mental anguish, inconvenience, loss of capacity for the enjoyment of life, inability to lead a normal life, shame, humiliation and regression, and costs associated with medical/psychological care and treatment. The injuries and damages are permanent and continuing in nature and the Plaintiff will suffer such losses in the future.

46. Under the doctrine of respondeat superior, LITTLE HANDS is responsible for the negligent, reckless and intentional actions of its servant, MAYS, which were committed in the actual and/or apparent scope of his duties.

WHEREFORE, Plaintiff JANE DOE NO. 1 respectfully requests that this Court enter judgment against LA PETITE ACADEMY, INC., and award all damages including compensatory damages and special damages, punitive damages, costs, interest, attorneys' fees, and any other relief that this Court deems just and proper.

COUNT III - BATTERY AGAINST MAYS

47. The Plaintiff readopts and realleges all of the allegations set forth in Paragraphs 1 through 46 as though fully set forth herein.

48. MAYS committed battery upon JANE DOE consisting of intentional, harmful, unwanted and offensive contact, sexual in nature, upon her person, where JANE DOE's was incapable of legally consenting to such.

49. As a direct and proximate result of the battery of JANE DOE by Defendant MAYS, Plaintiff JANE DOE has suffered severe psychological, emotional and physical injuries, and emotional distress arising out of the physical injuries, pain and suffering, mental

anguish, inconvenience, loss of capacity for the enjoyment of life, inability to lead a normal life, shame, humiliation and regression, and costs associated with medical/psychological care and treatment. Alternatively, Plaintiff sustained an aggravation of an existing disease or mental or physical defect or activation of a latent condition and the same losses associated with such. The injuries and damages are permanent and continuing in nature and the Plaintiff will suffer such losses in the future.

WHEREFORE, Plaintiff JANE DOE NO. 1 respectfully requests that this Court enter judgment against MARK R. MAYS, and award all damages including compensatory damages and special damages, punitive damages, costs, interest, attorneys' fees, and any other relief that this Court deems just and proper.

COUNT IV – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
AGAINST LA PETITE (ON BEHALF OF MOTHER DOE)

50. The Plaintiff readopts and realleges all of the allegations set forth in Paragraphs 1 through 49 as though fully set forth herein.

51. Defendant LA PETITE failed to remove MAYS or put in place any measures to protect children from MAYS after being alerted that MAYS kissed kids a little girl at their daycare. Instead, it allowed MAYS unsupervised, unfettered and intimate access to children, which he used to sexually assault multiple children at LA PETITE, including JANE DOE.

52. LA PETITE disregarded MOTHER DOE's request that MAYS not be allowed to change JANE DOE's diaper. In doing so, LA PETITE employees, acting in the course and scope of their employment, conspired to doctor records to conceal their malfeasance in allowing MAYS to change diapers. MAYS used his opportunity to change girls' diapers to commit acts of sexual abuse, including to JANE DOE.

53. Defendant's conduct was intentional and/or performed with reckless disregard for Plaintiff.

54. Defendant's conduct was extreme and outrageous and goes beyond the bounds of decency and is utterly intolerable in a civilized society.

55. As a result of Defendant's conduct, MOTHER DOE has suffered extreme and severe emotional distress, including, anxiety, shock, depression, severe pain and suffering, severe mental anguish, anger and embarrassment.

WHEREFORE, Plaintiff MOTHER DOE NO. 1 respectfully requests that this Court enter judgment against LA PETITE ACADEMY, INC., and award all damages including compensatory damages and special damages, punitive damages, costs, interest, attorneys' fees, and any other relief that this Court deems just and proper.

**COUNT V – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
AGAINST LA PETITE (ON BEHALF OF FATHER DOE)**

56. The Plaintiff readopts and realleges all of the allegations set forth in Paragraphs 1 through 55 as though fully set forth herein.

57. Defendant LA PETITE failed to remove MAYS or put in place any measures to protect children from MAYS after being alerted that MAYS kissed kids a little girl at their daycare. Instead, it allowed MAYS unsupervised, unfettered and intimate access to children, which he used to sexually assault multiple children at LA PETITE, including JANE DOE.

58. LA PETITE disregarded MOTHER DOE's request that MAYS not be allowed to change JANE DOE's diaper. In doing so, LA PETITE employees, acting in the course and scope of their employment, conspired to doctor records to conceal their malfeasance in allowing MAYS to change diapers. MAYS used his opportunity to change girls' diapers to commit acts of sexual abuse, including to JANE DOE.

59. Defendant's conduct was intentional and/or performed with reckless disregard for Plaintiff.

60. Defendant's conduct was extreme and outrageous and goes beyond the bounds of decency and is utterly intolerable in a civilized society.

61. As a result of Defendant's conduct, FATHER DOE has suffered extreme and severe emotional distress, including, anxiety, shock, depression, severe pain and suffering, severe mental anguish, anger and embarrassment.

WHEREFORE, Plaintiff FATHER DOE NO. 1 respectfully requests that this Court enter judgment against LA PETITE ACADEMY, INC., and award all damages including compensatory damages and special damages, punitive damages, costs, interest, attorneys' fees, and any other relief that this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial in this action.

Dated: **July 24, 2017**

Respectfully submitted,
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PRAECIPE

TO THE CLERK OF SAID COURT:

PLEASE ISSUE Summons and return to the offices of Gary R. Pearson Law Offices for forwarding to the Douglas County Sheriff for personal service **upon La Petite Academy, Inc.**, a Nebraska Corporation, one of said Defendants and upon **Mark R. Mays** one of said Defendants in the above-entitled case as prescribed by law.

Said Defendant, **La Petite Academy, Inc.**, may be served by presenting the Summons upon its Registered Agent, CSC-Lawyers Incorporating Service Company, Suite 1900, 233 South 13th Street, Lincoln, NE 68508-0000.

Said Defendant **Mark R. Mays** may be served by presenting the Summons upon Mark R. Mays, inmate at the Nebraska Department of Correctional Services Diagnostic and Evaluation Center, 3220 W. Van Dorn Street, Lincoln, Nebraska 68522.

Dated this **24th** day of **July, 2017**

/s/ Gary R. Pearson

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