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Attorney for Plaintiff, [redacted],
a Minor, by and through her Guardian ad Litem,
Stacey Conley

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MONTEREY

UNLIMITED JURISDICTION

[redacted], a Minor, by and through her Guardian ad Litem, Stacey Conley Plaintiff, v. MISS BARBARA'S CHILD DEVELOPMENT CENTERS, INC., a corporation dba MISS BARBARA'S CHILD DEVELOPMENT CENTER; MIMS ENTERPRISES, INC., a corporation dba MISS BARBARA'S CHILD DEVELOPMENT CENTER; CHRISTINE MARIE AIELLO, an individual; JOHN MIMS, an individual; BARBARA MOORE, individual and DOES 1through 50, inclusive, Defendants.	CASE NO.: 24CV002744 **COMPLAINT FOR DAMAGES (Negligence; Negligent Supervision; Intentional Infliction of Emotional Distress; Assault and Battery)** Claim Over $35,000.00

Plaintiff, [redacted], a Minor, by and through her Guardian ad Litem, Stacey Conley, complains of defendants, and each of them, as follows:

FACTS COMMON TO ALL CAUSES OF ACTION

1. Plaintiff, [redacted] is a minor, born on October 1, 2019. She proceeds with this action by and through her mother and Guardian ad Litem, Stacey Conley. A Petition for Appointment of Guardian ad Litem is filed concurrently with this complaint. At all times

herein mentioned, plaintiff [redacted] and Guardian ad litem Stacey Conley were and are residents of the County of Monterey.

2. Plaintiff is informed and believes, and upon such information and belief alleges that at all times herein mentioned, defendant MISS BARBARA'S CHILD DEVELOPMENT CENTERS, INC. was a California corporation, licensed to conduct business in the County of Monterey, with its principal place of business located at 226 Beach Road, Marina, California. At all times herein mentioned, defendant MISS BARBARA'S CHILD DEVELOPMENT CENTERS, INC. was doing business as MISS BARBARA'S CHILD DEVELOPMENT CENTER (hereinafter "MBCDC"). MBCDC was a child care center that provided care for children from two through five years of age, including children with special needs.

3. Plaintiff is informed and believes, and upon such information and belief alleges that at all times herein mentioned, defendant MIMS ENTERPRISES, INC. was a California corporation, licensed to conduct business in the County of Monterey, with its principal place of business located at 226 Beach Road, Marina, California. At all times herein mentioned, defendant MIMS ENTERPRISES, INC. (hereinafter "MIMS, INC.") was doing business as MISS BARBARA'S CHILD DEVELOPMENT CENTER ("MBCDC"). MBCDC was a child care center that provided care for children from two through five years of age, including children with special needs.

4. Plaintiff is informed and believes, and upon such information and belief alleges that at all times herein mentioned, defendant CHRISTINE MARIE AIELLO (hereinafter "AIELLO") was and is a resident of the County of Monterey, State of California. Plaintiff is further informed and believes, and upon such further information and belief alleges that at all times herein mentioned, AIELLO was a teacher and director at MBCDC during all times that the events and occurrences alleged herein occurred. At all times herein alleged, AIELLO was an employee, agent, and/or servant of MBCDC and was under its complete control and/or active supervision.

5. Plaintiff is informed and believes, and upon such information and belief alleges that at all times herein mentioned, defendant JOHN MIMS (hereinafter "MIMS") was and is a resident of the County of Monterey, State of California. Plaintiff is further informed and believes,

and hereby alleges that during the period of time in which the abuse of [redacted], a Minor, described below occurred, MIMS was the administrator and business partner at MBCDC. At all times herein alleged, MIMS was an employee, agent, and/or servant of MBCDC and was under its complete control and/or active supervision.

6. Plaintiff is informed and believes, and on that basis alleges, that at all times herein mentioned, defendant BARBARA MOORE (hereinafter "MOORE") was and is a resident of the County of Monterey, State of California. Plaintiff is further informed and believes, and hereby alleges that during the period of time in which the abuse of [redacted], a Minor, took place, MOORE was an owner, partner, and/or employee, agent, servant of MBCDC and was under its complete control and/or active supervision.

7. The true names or capacities, whether individual, corporate, associate or otherwise, of defendants DOES 1 through 50, inclusive, are not now known to or ascertainable by plaintiff, and plaintiff prays leave of Court to amend this complaint to insert their true names and capacities when the same are ascertained. Plaintiff is informed and believes, and on such information and belief alleges that each of the defendants designated herein was negligently responsible in some manner for the events and happenings herein referred to, and negligently caused injury and damages proximately thereby to plaintiff, as herein alleged.

8. At all times herein mentioned, each defendant was the agent, servant and employee of each of the remaining defendants, and was acting in the scope of his of her employment as such agent, servant and employee.

9. This action is filed in the County of Monterey, California because the events and occurrences alleged herein occurred within the County of Monterey, California.

10. At all times relevant to this action, plaintiff [redacted] attended MBCDC from October, 2021 through June, 2023. Plaintiff's attendance was daily, Monday through Friday, beginning at 7:30 AM until approximately 5:00 PM. Upon arrival at 7:30 AM until 8:00 AM, plaintiff [redacted] was under the exclusive instruction, oversight, direction and supervision of defendant AIELLO. After 8:00 AM, defendant AIELLO assumed responsibilities in other classrooms and areas. While under the exclusive instruction, oversight,

direction and supervision of defendant AIELLO, plaintiff [redacted] was subjected to emotional abuse, intimidation, maltreatment and humiliation by defendant [redacted]LLO. This consisted of the following:

- Defendant AIELLO physically assaulted and struck plaintiff [redacted]
- Plaintiff Mahoney saw defendant AIELLO physically strike another student.
- Plaintiff [redacted] saw defendant AIELLO drag another student by the arm.
- Defendant AIELLO regularly screamed at and was verbally abusive toward [redacted] in such a manner as to intimidate and emotionally harm [redacted]
- Defendant AIELLO humiliated [redacted] by subjecting her to severe discipline in the presence of other children.
- Plaintiff [redacted] also witnessed and saw defendant AIELLO physically and emotionally abuse, intimidate, maltreat and humiliate other students who attended MBCDC.
- Other children were also subjected to physical and emotional abuse, intimidation, maltreatment and humiliation by defendant AIELLO. These other children shared their fear and terror with plaintiff [redacted], which reinforced and intensified [redacted]'s fear of AIELLO.

Due to the emotional harm caused upon [redacted] by AIELLO, [redacted] has been required to seek and undergo psychological counseling and therapy, described herein.

11. Defendant AIELLO's abuse, humiliation, maltreatment and intimidation upon at least one other child who attended MBCDC prompted a complaint by a parent which triggered an investigation, the details of which are the following:

- On May 26, 2023, a complaint by a parent of a child who attended MBCDC was made to the California Department of Social Services Community Care Licensing Division. The complaint was based upon a incident involving abuse upon another child that occurred on or about May 25, 2023.
- Following the complaint, an unannounced visit to MBCDC was conducted by

Licensing Program Analyst Joe Macias. The purpose of the visit was to investigate the allegations of the complaint. Analyst Macias met with then administrator MIMS, designated defendant herein, to discuss the complaint allegations.

- In conducting the investigation, Mr. Macias interviewed staff members, children, and defendant AIELLO. Additionally, he reviewed classroom surveillance video and documents containing pertinent information. Analyst Macias concluded that the classroom surveillance video showed a teacher forcefully and repeatedly slamming the child involved in the May 25, 2023 incident resulting in injuries to the child.
- Analyst Macias further found MIMS to have been aware of the wrongful conduct consisting of the abuse and maltreatment of the children attendees, but failed to report this mistreatment of children. Based on the information gathered, Analyst Macias found that the preponderance of evidence standard had been met, and the allegations were substantiated.

12. On June 12, 2023, defendant AIELLO was arrested after officers of the Marina Police Department were made aware of the allegations of physical abuse against the child involved in the May 25, 2023 incident. Defendant AIELLO was charged by the Monterey County District Attorney's Office with felony child abuse and misdemeanor child abuse due to that incident.

13. On June 13, 2023, Analyst Macias issued an order to MBCDC for the immediate exclusion of defendant AIELLO from the facility. The department determined from its investigation that AIELLO's continued or future contact with clients or presence in any facility licensed by the California Department of Social Services constituted a threat to the health and safety of the children in such licensed facilities. Further, Analyst Macias determined that the facility remained out of compliance and that there was no documentation as to who was currently designated as the responsible party for the license. According to Analyst Macias, based on the interviews with MIMS and MOORE, there had been a verbal agreement of a partnership between

them. However, the California Department of Social Services had not received any documents supporting the sale and/or partnership of the business. Previously, Analyst Macias had requested that the administrator, MIMS, and the owner, MOORE, submit all required licensing documents supporting any changes to the license; these documents were never submitted.

14. On July 19, 2023, defendant MIMS posted a letter on the door outside of MBCDC advising parents that the facility had closed.

FIRST CAUSE OF ACTION

(Negligence - Against All Defendants)

15. Plaintiff refers to paragraphs 1 through 14 of this complaint and realleges each and every allegation as though fully set forth herein.

16. Defendants and each of them had special duties to proect the minor plaintiff when such students were entrusted to their care by their parents. Plaintiff's care, welfare and/or physical custody was entrusted to defendants. Defendants voluntarily accepted the entrusted care of plaintiff. As such, defendants owed plaintiff, a minor child, a special duty of care, in addition to a duty of ordinary care, and owed plaintiff the higher duty of care that adults dealing with children owe to protect them from harm. The duty to protect and warn arose from the special, trusting, confidential, and/or fiduciary relationship between defendants and plaintiff. Plaintiff's parents felt great trust, faith and confidence in defendants, and in AIELLO as plaintiff's teacher, and in the administration of MBCDC.

17. Defendants breached their duties of care to the minor plaintiff by failing to adequately monitor and supervise AIELLO; by failing to investigate or otherwise confirm or deny such facts about AIELLO; by failing to tell or concealing from plaintiff's parents, guardians or law enforcement officials that plaintiff was or may have been physically abused, thereby enabling plaintiff to continue to be endangered and abused, and/or by holding out AIELLO to plaintiff's parents as being in good standing and trustworthy.

18. Under the Child Abuse and Neglect Reporting Act, defendants, by and through their employees and agents, were child care custodians and were under a statutory duty to report known or suspected incidents of abuse of minors to a child protective agency, pursuant to

California Penal Code, §11166, and/or not to impede the filing of any such report.

19. Plaintiff is informed and believes, and on that basis alleges, that defendants knew, or should have known, that AIELLO, their teacher and director had physically abused and caused injuries to plaintiff, giving rise to a duty to report such conduct under California Penal Code, §11166.

20. By failing to report the continuing harassment and abuse, which defendants and each of them knew, or should have known, and by ignoring the fulfillment of the mandated compliance with the reporting requirements provided under California Penal Code, §11166, defendants created the risk and danger contemplated by the Child Abuse and Neglect Reporting Act and, as a result, unreasonably and wrongfully exposed plaintiff and other minors to abuse.

21. Plaintiff was a member of the class of persons for whose protection California Penal Code, §11166 was specifically adopted to protect.

22. The physical, mental and emotional damages and injuries resulting from the sexual abuse and harassment by plaintiff by AIELLO, were the type of occurrence and injuries that the Child Abuse and Neglect Reporting Act was designed to prevent.

23. As a result, defendants' failure to comply with the mandatory reporting requirements of California Penal Code, §11166 also constituted a *per se* breach of defendants' duties to plaintiff.

24. As a proximate result of the negligence of defendants, and each of them, plaintiff was injured in her health, strength, and activity, sustaining injury to her body, and shock and injury to her nervous system and person, all of which said injuries have caused, and continue to cause plaintiff great mental, physical, and nervous pain and suffering, all to her general damage in an amount to be proven at trial.

25. As a further result of the negligence of defendants, and each of them, as aforesaid, and because of the injuries, it was necessary for plaintiff to receive psychological care, counseling and treatment, and plaintiff did incur counseling expenses and will in the future be compelled to incur additional obligations therefore, in an amount unknown to plaintiff at the present time, and will be proven at trial.

SECOND CAUSE OF ACTION

(Negligent Supervision - Against Defendants MBCDC, INC. MIMS, INC., MIMS, MOORE and DOES 1 through 50)

26. Plaintiff refers to paragraphs 1 through 25 of this complaint and realleges each and every allegation as though fully set forth herein.

27. As a child care institution, where all minors are entrusted to the administrators and teachers, defendants expressly and implicitly represented that AIELLO was not a threat to children and others who would fall under her control, direction and guidance.

28. Defendants negligently failed to supervise AIELLO in her position of trust as an administrator, teacher, and/or authority figure, where she was able to commit wrongful acts against plaintiff. Defendants failed to provide reasonable supervision of AIELLO. Defendants further failed to take reasonable measures to prevent abuse of minors, including plaintiff.

29. Plaintiff is informed and believes, and on that basis alleges, that at no time during the periods of time alleged did defendants have in place a system or procedure to reasonably investigate, supervise and/or monitor teachers, including AIELLO, to prevent abuse of children, nor did they implement a system or procedure to oversee or monitor conduct towards minors, students and others in defendants' care.

30. Defendants' conduct was a breach of their duties to plaintiff. As a result of said negligence, plaintiff has incurred the damages as alleged herein.

THIRD CAUSE OF ACTION

(Intentional Infliction of Emotional Distress - Against All Defendants)

31. Plaintiff refers to paragraphs 1 through 30 of this complaint and realleges each and every allegation as though fully set forth herein.

32. Defendants' conduct toward plaintiff, as described herein, was outrageous and extreme.

33. A reasonable person would not expect nor tolerate the abuse of plaintiff by AIELLO. Plaintiff and her parents had great trust, faith and confident in AIELLO and in defendants which, by virtue of AIELLO's and defendants' wrongful conduct, turned to feare.

34. AIELLO's and defendants' conduct described herein was intentional and malicious and done for the purpose of causing or with the substantial certainty that plaintiff would suffer emotional and physical distress. As a result of said intentional and malicious conduct, plaintiff has suffered emotional distress as alleged herein.

35. Plaintiff is informed and based thereon alleges that the conduct of AIELLO and defendants was malicious and despicable in that it was intentional and done in conscious disregard for the rights and safety of others and was carried out with a conscious disregard of plaintiff's right to be free from such tortious behavior, such as to constitute malice pursuant to California Civil Code, §3294, entitling plaintiff to an award of punitive damages against the defendants.

WHEREFORE, plaintiff prays for judgment against defendants, and each of them, as follows:

1. For general damages in a sum according to proof;

2. For past and future counseling and incidental expenses incurred in a sum according to proof;

3. For an award of punitive damages according to proof;

4. For costs of suit incurred herein;

5. For attorney's fees; and

6. For such other and further relief as the Court may deem just and proper.

DATED: June 26, 2024

LAW OFFICES OF ROBERT D. PONCE

BY: _____

ROBERT D. PONCE
Attorney for Plaintiff