

2020 JAN -3 PM 2:07

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

JESSICA K. PRIDE (SBN 249212)
jpride@pridelawfirm.com
ALANA MCMAINS (SBN 285942)
amcmains@pridelawfirm.com
THE PRIDE LAW FIRM
2831 Camino Del Rio S, Suite 104
San Diego, California 92108
Telephone: 619-516-8166
Facsimile: 619-785-3414

Attorneys for Plaintiff L.F., a minor,
by and through her guardian ad litem, P.F.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – HALL OF JUSTICE**

L.F., a minor, by and through her guardian
ad litem, P.F.,

Plaintiff,

v.

DIVISION WEST MANAGEMENT dba
FRANK MODEL MANAGEMENT, LLC,
a limited liability company; NICOLE
HEROLD, *an individual*; and DOES 1
through 25, inclusive;

Defendants.

Case No. 37-2020-00001594-CU-PO-CTL

PLAINTIFF'S COMPLAINT FOR:

1. Negligent Hiring, Supervision, or Retention of Employee; and
2. Sexual Harassment – Civil Code § 51.9

JURY TRIAL DEMANDED

-IMAGED CASE-

COMES NOW, Plaintiff L.F., a minor, by and through her guardian ad litem, P.F.
(hereinafter "Plaintiff"), for causes of action against the Defendants, and each of them, alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is an individual residing in San Diego County, California.
2. Plaintiff's full name is being withheld to protect her identity, pursuant to her California statutory and constitutional rights to privacy. It is alleged herein that she is the victim

1 of a sexual assault. An Application to File Complaint Under Seal to protect Plaintiff's true
2 identity has been filed herewith.

3 3. Defendant DIVISION WEST MANAGEMENT dba FRANK MODEL
4 MANAGEMENT, LLC ("FMM"), is a limited liability company that was doing business in
5 California at all times relevant to the allegations in this Complaint. FMM was dissolved on April
6 11, 2019.

7 4. Defendant NICOLE HEROLD (hereinafter "HEROLD") is an individual currently
8 residing in New York, New York. At all times relevant to the allegations in this Complaint, she
9 was residing in San Diego County, California.

10 5. This Court has jurisdiction over the subject matter of this action because the claims
11 asserted herein arise under state law. This Court has personal jurisdiction over each named
12 defendant because each defendant either resides in California or has sufficient minimum contacts
13 with California to make jurisdiction over each defendant appropriate.

14 6. Venue is proper in the San Diego County Superior Court because the acts which
15 form the basis of Plaintiff's claims occurred in San Diego County, California.

16 7. Plaintiff is ignorant to the true names and capacities of the defendants sued herein
17 as DOES 1 through 25 and therefore sues these defendants by such fictitious names. Plaintiff will
18 amend this Complaint to allege the true names and capacities when they are ascertained.

19 8. Plaintiff is informed and believes and thereon alleges that each fictitiously named
20 defendant is responsible in some manner for the occurrences herein alleged and Plaintiff's injuries
21 and damages as herein alleged are directly, proximately and/or legally caused by defendants and
22 all of their acts.

23 9. Plaintiff is informed and believes and thereon alleges that the aforementioned
24 DOES are somehow responsible for the acts alleged herein as the agents, employers,
25 representatives or employees of other named defendants and in doing the acts herein alleged were
26 acting within the scope of their agency, employment or representative capacity of said named
27 defendants or of each other.

SPECIFIC FACTUAL ALLEGATIONS

10. Defendant FMM was a boutique modeling agency located in Carlsbad, California. FMM contracted with young women who were interested in working as models. FMM would book jobs for them, including photo shoots and fashion shows. In exchange for FMM's arrangement of modeling performances, the models would pay 20% of their compensation from the jobs to FMM.

11. FMM was owned and managed by Defendant HEROLD. FMM employed Robert Koester (also known as "Bert Kay") as a photographer. HEROLD would arrange for models under contract with FMM to have their photographs taken by Koester. HEROLD told FMM models that being photographed by Koester was crucial to being successful at FMM.

12. Koester regularly posted his photographs on his personal Instagram account. Many of these photographs are of young women posing topless and/or nude. FMM, through its social media account, followed Koester, and clicked the "like" button for many of the photographs of topless young women.

13. Plaintiff was a teenage girl with aspirations to work as a model and actress. On the day after her sixteenth birthday, on April 12, 2018, she signed a contract with FMM. When signing the contract, she also filled out a questionnaire in which she stated that she would not be willing to do "nude" or "semi-nude" modeling work.

14. HEROLD advised Plaintiff and her parents that FMM had a policy requiring minor clients to be accompanied on all shoots by a parent, guardian, or staff from FMM. However, HEROLD failed to enforce this policy. She routinely allowed minors to arrive alone at their shoots, and did not verify that the minor females were being chaperoned when she was not personally at the shoot. HEROLD would often tell parents to leave a photo shoot, stating she would be responsible for their minor children, but then fail to supervise the children. HEROLD was also aware that Koester would photograph minor females alone, in private rooms without any supervision.

15. In around July of 2018, HEROLD arranged for Plaintiff to be photographed by Koester, someone HEROLD had known since she was a teenager. HEROLD encouraged

1 Plaintiff to model for Koester, stating that it would be helpful for Plaintiff's career. HEROLD
2 noted that this would be "great" for Plaintiff because Koester did "a little mini model boot camp"
3 during the shoot and would be able to discuss the "progression of [Plaintiff's] development" with
4 her and her parents. HEROLD would also encourage parents to send their minor female
5 daughters to Koester's "modeling camp" in the state of Oregon, where the girls would be
6 photographed by Koester. Parents were not permitted to attend this event.

7 16. After one of their photo shoots, Koester texted Plaintiff several photographs of
8 nude models. Koester followed these with a text message asking if Plaintiff would be interested
9 in that kind of photography. Plaintiff told him she did not want to do that.

10 17. FMM set up a session for Plaintiff to be photographed by Koester on or around
11 November 12, 2018. Koester advised Plaintiff that it would be a "sleepover" and many models
12 would be there. HEROLD promised Plaintiff's parents that she would be present to supervise.

13 18. On or about November 12, 2018, Plaintiff went to the home where the shoot had
14 been scheduled. Koester and HEROLD were both present at the house.

15 19. Koester instructed L.F. to go into a room where he would take her photograph.
16 The two of them were alone in the room together. Koester pressured L.F. to take her top off.
17 L.F. refused at first, asking Koester if naked photographs of her would be considered illegal child
18 pornography given her age. Koester assured her that it would not be illegal as long as it was not a
19 pornographic video. L.F. felt pressured and unsure of what to do, so she eventually removed her
20 clothes.

21 20. Koester took photographs of L.F. at various stages of undress, including when she
22 was naked. He positioned her in several different ways, taking photographs in which her breasts,
23 vagina, and anus were fully exposed to the camera.

24 21. During the shoot, Koester touched L.F.'s breasts, vagina, buttocks, and anus with
25 his hands. He also had L.F. pose with his fingers in her mouth, telling her he was checking her
26 gag reflex. He had her pose with his hands around her neck, as if he was choking her.

27 22. The next day, on or about November 13, 2018, L.F. filed a police report against
28 Koester with the Carlsbad Police Department. Upon his arrest, Koester admitted to the police that

1 he had taken hundreds of naked photos of L.F. and that he had touched her breasts, vagina, and
2 anus. Koester told the police that the purpose of the photographs was to prepare L.F. for a future
3 modeling career with Playboy.

4 23. After Koester's arrest, several other minor females also reported to the police that
5 they had been assaulted by Koester. Koester eventually pleaded guilty to 23 felony counts,
6 including felony sexual battery and production of child pornography. He was sentenced to 25
7 years prison.

8 24. Koester also has pending criminal charges in three jurisdictions: the Southern
9 District of California, the District of Oregon, and Yamhill County, Oregon. All the charges relate
10 to his sexually assaulting minor female models and taking nude photographs of them. The FBI
11 has stated that some of his alleged criminal acts date back to 1994.

12 FIRST CAUSE OF ACTION

13 **Negligent Hiring, Supervision and Retention**

14 **(Against All Defendants)**

15 25. Plaintiff re-alleges and incorporates herein by reference each and every allegation
16 in the proceeding and subsequent paragraphs.

17 26. Koester was an employee of FMM.

18 27. Koester was unfit, unqualified, and incompetent to perform the work for which he
19 was hired.

20 28. FMM, HEROLD, and DOES 1 through 25 were responsible for hiring, training,
21 supervising, and retaining Koester.

22 29. FMM, HEROLD, and DOES 1 through 25 knew or should have known that
23 Koester had a decades-long history of sexually harassing and assaulting minor females. They
24 knew or should have known that he took pictures of young women topless and that he posed a
25 particular risk to minor female models working for FMM.

26 30. FMM, HEROLD, and DOES 1 through 25 negligently hired Koester, despite his
27 history of being a sexual predator and/or behaving inappropriately with minors.
28

1 31. FMM, HEROLD, and DOES 1 through 25 negligently failed to supervise Koester.
2 They allowed him to be alone with minor females whose photographs he was taking. They did
3 not instruct him to not take naked photographs of minor models, nor did they prevent him from
4 doing so. Instead, they ratified his conduct by "liking" his pictures on social media, continuing to
5 tout him as a crucial part of FMM model development, and funneling him a stream of underage
6 girls to photograph alone.

7 32. FMM, HEROLD, and DOES 1 through 25 failed to have adequate policies and
8 procedures in place for the protection of minor female models. They failed to have a policy and
9 procedure to ensure that minor models would not be asked to disrobe or take nude photographs.
10 They also failed to properly enforce the policies that they did have, allowing minor females to be
11 alone with Koester without a parent or guardian.

12 33. As a direct and proximate result of the aforesaid negligence of Defendants and
13 DOES 1 through 25 inclusive, Plaintiff suffered physical, mental, and emotional distress,
14 humiliation, embarrassment, and injuries.

15 34. As a direct and proximate result of the aforementioned negligence of Defendants
16 and DOES 1 through 25 inclusive, Plaintiff suffered injuries and damages in a sum within the
17 jurisdiction of this Court and which will be shown according to proof.

18 35. FMM, HEROLD, and DOES 1 through 25's negligence in hiring, supervising,
19 training, and retaining Koester was a substantial factor in causing Plaintiff's harm.

20 **SECOND CAUSE OF ACTION**

21 **Sexual Harassment – Civil Code § 51.9**

22 **(Against All Defendants)**

23 36. Plaintiff re-alleges and incorporates herein by reference each and every allegation
24 in the proceeding paragraphs.

25 37. At all times herein, there was a business and professional relationship between
26 Plaintiff and Defendants.
27
28

1 38. As alleged more fully above, Koester, an employee of Defendants, engaged in
2 physical contact of a sexual nature with Plaintiff based on her gender that was unwelcome and
3 severe.

4 39. Because Plaintiff was a minor female who was working for Defendants and relied
5 on them to help her with her modeling career, she was unable to stop the harassment or to
6 terminate her relationship with the Defendants.

7 40. At all times Koester was committing sexual harassment/assault/battery of Plaintiff,
8 Defendants FMM, HEROLD, and DOES 1 through 25 knew or should have known that Koester
9 posed a sexual threat to minor female models. These Defendants knew or should have known that
10 Koester was sexually harassing and assaulting minor female models, as well as taking nude
11 photographs of them, and they should not have permitted him to be alone and/or unsupervised
12 with minor females.

13 41. As a result of this sexual conduct, Plaintiff suffered injuries and damages in a sum
14 within the jurisdiction of this Court and which will be shown according to proof.

15 **PRAYER FOR RELIEF**

16 WHEREFORE THE Plaintiff respectfully prays for judgment against Defendants and the
17 following relief:

18 For general and compensatory damages in an amount according to proof at trial;

19 For special damages in an amount according to proof at trial;

20 For loss of earnings, medical expenses, and all incidental expenses according to proof;

21 For costs of litigation and expert costs;

22 For attorney's fees per California Civil Code § 51.9 and 52.4;

23 For interest and prejudgment interest at the legal rate of 10%; and,

24 For such other and further relief as the court deems proper and just under all
25 circumstances.

26 ///

27 ///

28 ///


JURY DEMAND

The Plaintiff demands a jury trial on all issues in this case.

Dated: January 3, 2020

THE PRIDE LAW FIRM

By:


JESSICA K. PRIDE
ALANA MCMAINS
Attorneys for Plaintiff