

BRIAN P. MILLER [6933]  
CHRISTOPHER W. DROUBAY [12078]  
JURHEE A. RICE [15911]  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, Eleventh Floor  
Post Office Box 45000  
Salt Lake City, Utah 84145  
Telephone: (801) 521-9000  
[bpm@scmlaw.com](mailto:bpm@scmlaw.com)  
[cwd@scmlaw.com](mailto:cwd@scmlaw.com)  
[jar@scmlaw.com](mailto:jar@scmlaw.com)  
*Attorneys for Defendants*

---

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

JESSICA LANCASTER,

Plaintiff,

vs.

TEXAS ROSE INVESTING, LLC dba  
THE JOINT CHIROPRACTIC and THE  
JOINT CHIROPRACTIC SUGAR  
HOUSE, a Utah Limited Liability  
Company and KELBY MARTIN, an  
individual,

Defendants.

**DEFENDANTS' ANSWER TO  
PLAINTIFF'S AMENDED COMPLAINT  
AND RELIANCE ON JURY DEMAND**

Civil No. 220907799  
Judge Barry Lawrence

**(TIER 2)**

---

Defendants Texas Rose Investing, LLC dba The Joint Chiropractic, the Joint Chiropractic Sugar House and Kelby Martin (hereinafter "Defendants") answer Plaintiff's Amended Complaint as follows:

**FIRST DEFENSE**

Plaintiff's Amended Complaint fails to state a claim upon which relief may be granted against these Defendants.

## **SECOND DEFENSE**

Defendants answer the specific allegations of Plaintiff's Amended Complaint as follows:

### **PARTIES, JURISDICTION & VENUE**

1. Defendants are without knowledge or information sufficient to form a belief as to the accuracy of the allegations contained in Paragraph 1 of Plaintiff's Amended Complaint and, therefore, denies the same.

2. Defendants admit the allegations contained in paragraphs 2 and 3 of Plaintiff's Amended Complaint.

3. Defendant admits that jurisdiction and venue is proper in this Court.

### **DISCOVERY DESIGNATION**

4. The allegations in paragraph 6 are legal conclusions to which no answer or response is required. To the extent a response is required, Defendants deny that the amount at issue is more than \$50,000 and less than \$300,000 or non-monetary relief.

### **GENERAL ALLEGATIONS**

5. In response to paragraphs 7 and 8 of Plaintiff's Amended Complaint, Defendants admit that The Joint is a franchise that conducts business in Salt Lake City with two locations established as The Joint Chiropractic-Sugar House and The Joint Chiropractic-Downtown Salt Lake City.

6. In response to paragraph 9 of Plaintiff's Amended Complaint, Defendants admit Plaintiff received chiropractic treatment from Dr. Martin, D.C. at The Joint, but deny the remaining allegations contained in paragraph 9 of Plaintiff's Amended Complaint for lack of information.

7. In response to paragraphs 10 of Plaintiff's Amended Complaint, Defendants deny the allegations for lack of information.

8. In response to paragraph 11 of Plaintiff's Amended Complaint, Defendants deny the allegations for lack of information. Defendants aver the medical records speak for themselves and affirmatively allege that any care and treatment provide to Plaintiff was within the standard of care.

9. Defendants deny the allegations contained in paragraph 12 of Plaintiff's Amended Complaint for lack of information.

10. Defendants admit the allegations contained in paragraph 13 of Plaintiff's Amended Complaint.

11. Defendants deny the allegations contained in paragraphs 14, 15, 16, and 17 of Plaintiff's Amended Complaint.

12. Defendants admit the allegations contained in paragraph 18 of Plaintiff's Amended Complaint.

**FIRST CAUSE OF ACTION**  
**Battery – Against Dr. Martin**

13. Defendants reincorporate the preceding responses as if fully set forth herein

14. The allegations contained in paragraphs 20 and 21 of Plaintiff's Amended Complaint are legal conclusions to which no answer or response is required.

15. Defendants deny the allegations contained in paragraphs 22 and 23 of Plaintiff's Amended Complaint.

**SECOND CAUSE OF ACTION**

**Intentional Infliction of Emotional Distress – Against Dr. Martin**

16. Defendants reincorporate the preceding responses as if fully set forth herein .

17. Defendants deny the allegations contained in paragraphs 25, 26, and 27 of Plaintiff's Amended Complaint.

**THIRD CAUSE OF ACTION**

**Negligent Infliction of Emotional Distress – Against Dr. Martin**

18. Defendants reincorporate the preceding responses as if fully set forth herein.

19. Defendants deny the allegations contained in paragraphs 29, and 30 of Plaintiff's Amended Complaint.

**FOURTH CAUSE OF ACTION**

**Negligence – Against The Joint**

20. Defendants reincorporate the preceding responses as if fully set forth herein.

21. Defendants admit they owed any duties imposed by law and aver Defendants met such duties. Defendants deny the remaining allegations contained in paragraph 32 and 33 of Plaintiff's Amended Complaint.

22. Defendants deny the allegations contained in paragraphs 34 and 35 of Plaintiff's Amended Complaint.

23. Defendants deny any allegations inherent in Plaintiff's Prayer for Relief.

24. Defendants deny each and every allegation contained in Plaintiff's Amended Complaint not herein specifically admitted.

**FIRST AFFIRMATIVE DEFENSE**

Defendants adopt and incorporate all affirmative defenses raised by any other defendants in this case.

## **SECOND AFFIRMATIVE DEFENSE**

Defendants affirmatively plead that the Plaintiff has a duty to mitigate damages, including but not limited to, any past or future medical damages. This duty may require the Plaintiff to maintain or avail themselves of the applicability of the Patient Protection and Affordable Care Act, along with other traditional public and private health insurance sources, which serve to mitigate expenses and medical damages for the Plaintiff.

## **THIRD AFFIRMATIVE DEFENSE**

To the extent a claim sounding in lack of consent or informed consent has been made in this case, Plaintiff's claims are subject to the provisions of Utah Code Annotated Section 78B-3-406. Defendants request the Court find that all of the care and treatment provided to Plaintiff was either expressly or impliedly authorized and that, in order to challenge such authorizations, Plaintiff must prove all of the requirements under this Section.

## **FOURTH AFFIRMATIVE DEFENSE**

Pursuant to Utah Code Annotated Section 78B-5-821 (as amended), Defendants identify Plaintiff in this action as persons now known to them who may be at fault.

## **FIFTH AFFIRMATIVE DEFENSE**

Defendants are health care providers and, as such, are entitled to the protections provided by the Utah Health Care Malpractice Act, including, without limitation, specifically, Sections 78B-3-401 through 424 and 78B-3-404, 78B-3-405, 78B-3-410, 78B-3-411, 78B-3-414, 78B-3-422, 78B-3-423 and 78B-3-424, Utah Code Ann. (1953, as amended).

**SIXTH AFFIRMATIVE DEFENSE**

To the extent there is a vicarious liability claim in this case, Plaintiff's vicarious liability claims fail as a matter of law due to the doctrines of waiver, consent, the fact that these Defendants lacked sufficient control over independent contractors and because plaintiffs have failed to meet the elements of ostensible agency or any other vicarious liability theory.

**SEVENTH AFFIRMATIVE DEFENSE**

To the extent there are vicarious or ostensible agency claim asserted in this case, Plaintiff's vicarious liability/ostensible agency claims are precluded or limited by the provisions of Utah Code Ann. Section 78B-3-424(1) through (3).

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff voluntarily and knowingly submitted to the health care rendered to her is, therefore, presumed that what the health care providers did was either expressly or impliedly authorized to be done. Plaintiff has failed to comply with the provisions of Utah Code Ann. ' 78B-3- 406 and therefore may not recover.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for attorney's fees lack any factual or legal basis, are without merit, are not asserted in good faith and are subject to the provisions of Section 78B-5-825, UCA (1996 as amended). Defendants are entitled to an award of attorneys' fees related thereto.

**TENTH AFFIRMATIVE DEFENSE**

Defendants allege that Plaintiff's alleged damages resulted from independent, unforeseeable, pre-existing, superseding and/or intervening causes unrelated to Defendants' alleged acts or omissions.

**ELEVENTH AFFIRMATIVE DEFENSE**

Defendants are entitled to a determination of the proportion of fault attributable to them and others pursuant to Sections 78B-5-818 and 819, Utah Code Annotated (as amended) and a limitation of liability in proportion to Defendants' fault pursuant to Section 78B-5-820, Utah Code Annotated.

**TWELFTH AFFIRMATIVE DEFENSE**

Pursuant to Utah Code Annotated Section 78B-5-821 (as amended), Defendants identify Plaintiff as persons now known who may be at fault.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Evidence may reveal that some or any damage or injury sustained by Plaintiff was proximately caused or contributed to by her own negligence and her negligence was equal to or greater than the negligence, if any, of Defendants. Defendants reserve the right to assert this defense if discovery provides evidence of same.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's damages were proximately caused by individuals or entities over whom these Defendants had no right or duty to control or supervise.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Evidence may reveal that Plaintiff has failed to mitigate her damages, and Defendants reserve the right to assert this defense if such evidence is discovered.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims may be barred by the applicable statutes of limitation including, but not limited to '78B-3-404, Utah Code Ann.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for attorney's fees lacks any factual or legal basis, is without merit, is not asserted in good faith and is subject to the provisions of Section 78B-5-825, UCA (1996 as amended).

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's Second Cause of Action fails to state a claim against Defendants upon which relief can be granted. Plaintiff has not asserted, nor can she prove the elements required to state a claim for intentional infliction of emotional distress.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiff's Third Cause of Action fails to state a claim against Defendants upon which relief can be granted. Plaintiff has not asserted, nor can she prove the elements required to state a claim for negligent infliction of emotional distress.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiff's Amended Complaint fails to state a claim against Defendants upon which relief can be granted.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Defendants reserve the right to raise additional defenses not known at this time, which may become known during the course of discovery, investigation or trial.

**RELIANCE ON JURY DEMAND**

Defendants hereby rely upon the demand for a jury trial, filed by Plaintiffs and that the statutory fee required has already been paid. If there is any deficiency in the demand for jury made by Plaintiffs, Defendants hereby demand trial by jury and agree to remit the statutory fee required.



WHEREFORE, having fully answered Plaintiff's Amended Complaint, Defendants pray that Plaintiff's Amended Complaint be dismissed on the merits, and that they be awarded their costs and fees, and such other and further relief as the Court deems just and proper.

DATED this 24<sup>th</sup> day of February, 2023.

SNOW, CHRISTENSEN & MARTINEAU

*/s/ Christopher W. Droubay*

---

BRIAN P. MILLER

CHRISTOPHER W. DROUBAY

JURHEE A. RICE

***Attorneys for Defendants***

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 24<sup>th</sup> day of February, 2023, I served the foregoing **DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT AND RELIANCE ON JURY DEMAND** on the persons identified below as indicated:

Austin B. Egan  
STAVROS LAW, PC  
8915 South 700 East, Suite 202  
Sandy, Utah 84070  
[austin@stavroslaw.com](mailto:austin@stavroslaw.com)  
*Attorneys for Plaintiff*

U.S. Mail – Postage Prepaid  
 Hand Delivery  
 Electronic Filing  
 Email

*/s/ Shirley Neilson*  
\_\_\_\_\_  
Legal Assistant