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8 **MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT**
9 **GALLATIN COUNTY, MONTANA**

10 BRETT MCMILLAN) CAUSE NO. _____
11)
12 Plaintiff,)
13)
14 v.)
15)
16 JONATHAN WILHELM AND PRO) COMPLAINT
17 CHIROPRACTIC,)
18)
19 Defendants.)
20)
21)
22) [JURY TRIAL DEMANDED]
23)
24)
25)
26)
27)

COMES NOW, PLAINTIFF BRETT MCMILLAN, by and through her undersigned counsel, and hereby alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff, Brett McMillan (hereinafter “Plaintiff”) is a natural person who is, and at all relevant times was, a resident of the United States and a domiciliary of the State of Montana.

2. Plaintiff is informed, believes, and alleges that Defendant, Jonathan Wilhelm, is an individual and domiciliary of the State of Montana.

3. Plaintiff is informed, believes and alleges that Defendant, Pro-Chiropractic

1 Bozeman (hereinafter “Defendant “Pro-Chiropractic”) is, and at all relevant times herein
2 mentioned was, a business entity doing business in the State of Montana.

3 4. Upon information and belief, Jonathan Wilhelm (hereinafter “Defendant
4 Wilhelm”) was at all times relevant herein an employee, servant, actual agent or ostensible agent
5 of Defendant Pro-Chiropractic, acting within the scope of his employment or agency.

6 5. Specifically, Defendant Wilhelm was a chiropractor at Defendant Pro-
7 Chiropractic. In 2022 through present day, Defendant Wilhelm was acting within the course and
8 scope of his duties and employment with Defendant Pro-Chiropractic, pursuant to actual,
9 ostensible or apparent authority, such that Defendant Pro-Chiropractic should be responsible for
10 the acts of said individual defendants, employees, agents or servants under the doctrine of
respondeat superior, or actual, apparent or ostensible agency.

11 6. Jurisdiction and venue are appropriate in Gallatin County, Montana.

12 7. Defendants had constructive knowledge of the tortious acts and/or omissions
13 alleged herein as the result of participating in the wrongful acts or of ratifying or affirming the
14 acts once heard or known of.

15 8. As a further proximate result of the unlawful actions of Defendants, and each of
16 their agents, against Plaintiff as alleged herein, Plaintiff has been harmed in that she has suffered
17 physical pain, emotional pain, humiliation, mental anguish, and emotional distress.

18 **SPECIFIC FACTUAL ALLEGATIONS**

19 9. Plaintiff re-alleges and incorporates by reference each and every allegation
20 contained in the preceding paragraphs as though fully set forth herein.

21 10. Defendant Pro-Chiropractic is a chiropractic franchise and/or business providing
22 massage, stretch and chiropractic services. Defendants have multiple locations, specifically in
23 Bozeman, Montana.

24 11. Plaintiff is a nurse and cosmetic injector who lives and works in Bozeman,
25 Montana. Plaintiff was approached by Defendant Jonathan Wilhelm to provide potential
26 chiropractic services to Plaintiff. Plaintiff had been experiencing neck pain and agreed to
27 treatment by Defendant Wilhelm. Plaintiff proceeded to make an appointment in Pro

1 Chiropractic's Bozeman clinic in June of 2022.

2 12. Plaintiff went to an appointment with Defendant Wilhelm in Pro Chiropractic's
3 Bozeman clinic in June of 2022. Plaintiff informed Defendant Wilhelm of issues and pain
4 located in her neck and shoulders. Defendant Wilhelm then proceeded to grab Plaintiff's calf,
5 and pulled for an alleged "alignment." Defendant Wilhelm did this lower body "adjustment" on
6 Plaintiff in an incredibly aggressive manner. Plaintiff felt so jarred by his adjustments that it felt
7 as though her body had been in a car accident, and her entire body was sore. Defendant Wilhelm
8 did not explain this procedure, warn Plaintiff, or otherwise inform her of this adjustment before
9 proceeding. This "adjustment" caused pain and injury in Plaintiff's groin area, which was an area
10 where Plaintiff had not experienced any pain in prior. Plaintiff also experienced full body pain,
11 aches, and sharp shooting pains during and immediately following Plaintiff's initial treatment
12 with Defendant Wilhelm. This injury was severe and Plaintiff experiences flare-ups and pain to
13 this day.

14 13. For a period after the initial "adjustment" by Defendant Wilhelm, Plaintiff
15 continued to attend visits at Pro Chiropractic's clinic with Defendant Wilhelm, due to the pain
16 she experienced after the initial treatment and "adjustment" by Defendant Wilhelm. Defendant
17 Wilhelm's subsequent "adjustments" were completely different, which Plaintiff noted as her
18 initial "adjustment" had been so aggressive. At this time, Plaintiff's injury and pain was so
19 severe that she could not open her legs fully, exercise, or be intimate with her husband without
20 experiencing extreme pain. Plaintiff had trouble getting in and out of the car, and could not
21 butterfly her legs open or otherwise turn her knees outward. Plaintiff's pain was primarily
22 located deep within her groin, in an area where Plaintiff had never experienced pain prior to the
23 initial treatment session with Defendant Wilhelm.

24 14. Plaintiff explained her injury and issues to Defendant Wilhelm, still wanting to
25 believe Defendant Wilhelm might be able to help. Defendant Wilhelm claimed that Plaintiff
26 mainly needed treatment around her vagina and administered alleged "muscle therapy," which
27 were therapies Defendant Wilhelm performed directly adjacent to Plaintiff's vagina. Defendant
28 Wilhelm directed Plaintiff to put on shorts for this treatment, further exposing Plaintiff to

1 Defendant Wilhelm for allegedly medical purposes. At one visit, Plaintiff was wearing a dress
2 and Defendant Wilhelm stated Plaintiff could just “move up and hike it out of the way.” During
3 Defendant Wilhelm’s treatment of Plaintiff, his fingers would be deep in Plaintiff’s groin,
4 against her vulva, and touching the edge of her vulva and labia majora area (right where
5 Plaintiff’s underwear covered this intimate area). Defendant Wilhelm would press his fingers
6 firmly in this intimate area, and roll his fingers back and forth “massaging the area,” which was
7 so close to Plaintiff’s vagina that it was moving the skin of her labia majora and minora.
8 Defendant Wilhelm’s treatment of Plaintiff and touching of Plaintiff at these appointments was
9 excruciating to Plaintiff. Defendant Wilhelm would move his fingers and hands around this area
10 on Plaintiff’s body, again massaging and firmly pressing into Plaintiff’s groin, right against
11 Plaintiff’s vulva and labia and inner thigh, allegedly assessing to see if new placement of where
12 his hand was would “relieve” the pain. Defendant Wilhelm’s “treatment” of Plaintiff did not
13 serve to alleviate Plaintiff’s pain.

14 15. Plaintiff’s injury continued to worsen as Plaintiff continued attending Pro
15 Chiropractic’s clinics in Bozeman and Belgrade for “treatment” with Defendant Wilhelm.

16 16. At one of Plaintiff’s appointments with Defendant Wilhelm at Pro Chiropractic’s
17 Belgrade clinic, Defendant Wilhelm instructed Plaintiff to undress. Defendant Wilhelm claimed
18 that Plaintiff had a top on that was too bulky to receive a neck adjustment, as she was wearing a
19 light sweater/sweatshirt. Defendant Wilhelm asked what Plaintiff had on underneath, and
20 Plaintiff responded that she had a bra on. Defendant Wilhelm said “that’s fine. Go ahead and
21 take off your top.” Plaintiff did as directed, thinking that Defendant Wilhelm would give Plaintiff
22 a medical gown or scrubs to cover her up during the “treatment.” Instead, Defendant Wilhelm
23 proceeded with the entire adjustment with Plaintiff in only her bra. Plaintiff continued through
24 the appointment extremely uncomfortable. Afterwards, she was in shock by the lack of
25 professional care and struggled with a sense of shame for not speaking up for herself during the
26 appointment but felt unable to because of Defendant Wilhelm’s position of authority and her lack
27 of knowledge surrounding what is acceptable during chiropractic treatments/appointments.
Defendant Wilhelm gave no explanation for why Plaintiff needed to undress.

1 17. Further, at one of Plaintiff's appointments Pro Chiropractic treated Plaintiff using
2 a magnet machine. At the time, Plaintiff was undergoing delicate IVF procedures, which came at
3 significant emotional, physical, and fiscal expense to Plaintiff. Plaintiff asked both Pro
4 Chiropractic's assistant and Defendant Wilhelm whether this machine was safe for fertility and
5 egg quality, and whether there was any contraindication or warnings for women undergoing IVF.
6 Defendant Wilhelm and Pro Chiropractic assured Plaintiff this magnet treatment was safe,
7 despite Plaintiff experiencing pain. However, at Plaintiff's very next egg retrieval a couple
8 weeks later, which she traveled all the way to New York for, Plaintiff's eggs literally
9 disintegrated, per Plaintiff's fertility physicians. Defendants' actions and inactions negatively
10 affected and/or caused the loss of Plaintiff's eggs, at expense to Plaintiff.

11 18. It became clear to Plaintiff that Defendant's initial treatment of Plaintiff
12 deliberately caused injury to her to create access to intimate areas of her body in order for
13 Defendant Wilhelm to molest and abuse Plaintiff under the guise of medical treatment. Plaintiff
14 recalls commenting to her husband that Defendant Wilhelm and Pro-Chiropractic's initial
15 treatment caused an injury to her that strangely resulted in "treatments" wherein Defendant
16 Wilhelm then touched intimate parts of Plaintiff's body. However, like many survivors of abuse
17 and sexual misconduct, Plaintiff struggled to accept the abuse for what it was for a period of
18 time. It was particularly difficult for Plaintiff to come to terms with the fact that a medical
19 provider she'd entrusted to help her heal from physical pain would instead hurt to provide access
20 and sexual gratification for himself.

21 19. After a period of abuse under the guise of treatment during Plaintiff's
22 appointments at Pro Chiropractic's clinic, Plaintiff eventually ceased all treatment with
23 Defendant Wilhelm. Plaintiff had to seek treatment at a different physical therapist to address her
24 pain caused by Defendant Wilhelm, and the treatment by other chiropractic providers for the
25 very same problem areas included none of the "treatment" techniques or abuse perpetrated by
26 Defendant Wilhelm.

27 20. Defendant Pro-Chiropractic did not warn Plaintiff that Defendant Wilhelm was
known to have been sexually inappropriate, injurious, or otherwise crossed the line with clients

1 before her treatment.

2 21. As a result of Defendants' actions, Plaintiff has suffered and continues to suffer
3 emotional distress, anxiety, depression, sleeplessness, stress, worry and humiliation, in addition
4 to the lingering pain and injury Defendants' treatment caused. Plaintiff also suffered significant
5 financial loss, as she had to leave work and she was unable to work for periods of time.

6 **FIRST CAUSE OF ACTION**

7 **SEXUAL ASSAULT WITHOUT CONSENT**

8 22. Plaintiff re-alleges and incorporates by reference each and every allegation
9 contained in the preceding paragraphs as though fully set forth herein.

10 23. As a result of Defendant Wilhelm's aforementioned actions on or about 2022,
11 wherein he intentionally and knowingly subjected Plaintiff to sexual contact without consent,
12 Defendant Wilhelm violated Mont. Code Ann. § 45-5-502 and Mont. Code Ann. § 45-5-503
(Sexual Assault Without Consent).

13 24. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff
14 has suffered and continues to suffer from emotional distress, humiliation, and mental and
15 physical pain and anguish, all to her damage in a sum to be established according to proof.

16 25. In addition to all other damages properly recovered herein, Plaintiff is entitled to
17 recover punitive and exemplary damages in an amount commensurate with Defendants'
18 wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

19 **SECOND CAUSE OF ACTION**

20 **NEGLIGENCE**

21 **v. Defendant PRO-CHIROPRACTIC**

22 26. Plaintiff re-alleges and incorporates by reference each and every allegation
23 contained in the preceding paragraphs as though fully set forth herein.

24 27. At all relevant times, Defendant PRO-CHIROPRACTIC had an
25 employer/employee, master/servant, contractor/contractee, respondeat superior, and/or agency
26 relationship with Defendant WILHELM.

27 28. Defendant PRO-CHIROPRACTIC had a duty to use reasonable care to select,

1 hire, train, retain, and supervise an employee, agent, and/or contractor who was competent and
2 fit to perform the duties required as an employee, servant, contractee, and/or agent.

3 29. On or before 2021, Defendant PRO-CHIROPRACTIC decided not to properly
4 train and/or supervise its employees/agents in the performance of safe chiropractic techniques,
5 and this failure to train and/or supervise caused injury to Plaintiff.

6 30. Defendant Wilhelm took action against Plaintiff in violation of Montana law,
7 including by sexual assault.

8 31. Defendant Pro-Chiropractic knew and should have known that Defendant
9 Wilhelm's conduct was unlawful and in violation of Montana law.

10 32. Defendant Pro-Chiropractic knew and should have known that Wilhelm's prior
11 behavior was negligent and/or breached the standards of care applicable to a chiropractor in his
12 position.

13 33. On or before 2021, Defendant Pro-Chiropractic was aware or should have been
14 made aware that Defendant Wilhelm lacked the proper training and/or supervision to the extent
15 that DEFENDANT Wilhelm created a substantial risk to customers such as Plaintiff

16 34. Defendant Pro-Chiropractic failed to take steps necessary to prevent the unlawful
17 conduct described herein.

18 35. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff
19 has sustained and continues to suffer humiliation, emotional distress, loss of reputation, and
20 mental and physical pain and anguish, for which Defendant Pro-Chiropractic is directly and/or
21 vicariously liable.

22 **THIRD CAUSE OF ACTION**

23 **RESPONDEAT SUPERIOR**

24 **v. Defendant PRO-CHIROPRACTIC**

25 36. Plaintiff re-alleges and incorporates by reference each and every allegation
26 contained in the preceding paragraphs as though fully set forth herein.

27 37. Plaintiff affirmatively pleads that any alleged tortious acts of Jonathan Wilhelm
were committed while he was acting in the course and scope of his employment with Pro

1 Chiropractic, or while he was acting as an agent or on behalf of Pro Chiropractic, and are thus
2 imputed to Pro Chiropractic under a legal theory of *respondeat superior*.

3 38. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff
4 has sustained and continues to suffer humiliation, emotional distress, loss of reputation, and
5 mental and physical pain and anguish, for which Defendant Pro-Chiropractic is directly and/or
6 vicariously liable.

7 **FOURTH CAUSE OF ACTION**

8 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS v. All Defendants**

9 39. Plaintiff re-alleges and incorporates by reference each and every allegation
10 contained in the preceding paragraphs as though fully set forth herein.

11 40. Defendants' intentional conduct, as set forth herein, was extreme and outrageous.

12 41. Defendants acted with a reckless disregard that the intentional outrageous conduct
13 would cause extreme emotional distress on Plaintiff. Plaintiff suffered extreme emotional distress
14 as a result.

15 42. As a further direct, foreseeable, and proximate result of Defendants' conduct,
16 Plaintiff has sustained and continues to suffer humiliation, emotional distress, loss of reputation,
17 and mental and physical pain and anguish, all to Plaintiff's damage in an amount according to
18 proof at trial.

19 **WHEREFORE**, Plaintiff prays for the following relief:

- 20 1. For compensatory damages;
- 21 2. For special damages in an amount according to proof;
- 22 3. For mental and emotional distress damages;
- 23 4. For punitive damages in an amount necessary to make an example of and to
24 punish defendants, and to deter future similar misconduct;
- 25 5. For costs of suit, including attorney's fees as permitted by law, including those
26 available pursuant to;
- 27 6. For such other and further relief as the Court deems proper and just under all the
circumstances.

1 **PLAINTIFF** demands a jury trial on all issues in this case.

2 DATED: January 8th, 2024

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