

North Carolina. It was formed for the purpose of providing holistic health and chiropractic services.

5. Defendant Sandrine Martin, D.C. (hereinafter "Dr. Martin") is a resident of Iredell County, North Carolina and a chiropractor licensed to practice in North Carolina. Dr. Martin is the owner and registered agent of defendant Center for Holistic Care, PLLC.

6. Defendant Joe Neal Martin (hereinafter "Joe Martin") is a resident of Iredell County, North Carolina.

7. At all times relevant to this suit, Dr. Martin employed and supervised Joe Martin as a massage therapist for the Center for Holistic Care, PLLC.

8. At all times relevant, defendants Center for Holistic Care, PLLC and Dr. Martin offered massages provided by defendant Joe Martin as a service that they recommended and endorsed to promote healing and wellness.

9. At all times relevant, defendant Joe Martin had the actual and apparent authority to provide professional services on the part of defendants Center for Holistic Care, PLLC and Dr. Martin.

10. Prior to the events involving plaintiffs, Dr. Martin was aware that Joe Martin, in the course of his employment with defendants, was acting inappropriately toward female patients.

11. As owner of the Center for Holistic Care, PLLC and Martin's immediate supervisor, Dr. Martin had the ability to stop his misconduct. However, Dr. Martin took no effective steps to stop Martin's behavior and permitted him to continue acting improperly toward female patients.

N.D.

12. N.D. is 46 years old. In 2007, she began seeing Dr. Martin for chiropractic care.

13. Dr. Martin treated N.D. and other members of her family for several years. Dr. Martin was able to relieve N.D.'s pain and was able to treat the health conditions of N.D.'s children. N.D. came to trust and depend on Dr. Martin.

14. In 2011, Dr. Martin encouraged N.D. to schedule a massage with Joe Martin, which she did.

15. At the beginning of the appointment, Joe Martin instructed N.D. to let him know whether the massage felt good or bad by making guttural noises, moans, or groans. When N.D. said she felt too inhibited, Martin encouraged her to try. N.D. agreed.

16. N.D. asked Martin what clothing she should take off during the massage. Martin said he preferred her naked. Martin claimed N.D.'s underwear would interfere with the massage. N.D. followed Martin's instructions and disrobed.

17. Martin's massage was painful, so N.D. groaned as Martin instructed. Martin responded with a deep moan that frightened N.D.

18. As he massaged N.D.'s thigh, Martin touched her genital area. N.D. was shocked and told herself it was a mistake, but it happened again. Martin touched N.D.'s genitalia five or six times during the massage. N.D. endured this by trying to reassure herself that Martin was a professional and that his actions were clinical.

19. Martin next massaged N.D.'s back and lower back, and then moved to the buttocks. Martin told N.D. she had "tight-ass-itis." N.D. again tried to tell herself that Martin was a professional and the husband of her chiropractor, whom she trusted.

20. During the massage, Martin tried several times to separate N.D.'s legs. She resisted. After asking whether he was hurting her, Martin did not try this again. Martin did, however, lift N.D.'s feet and ankles off the table in a way that exposed her vagina.

21. Martin began rocking N.D. back and forth. The rocking increased in speed and intensity. It appeared to N.D. that Martin was rhythmically rubbing his genitalia against the table. The intensity of Martin's rocking peaked. Martin told N.D. he was "releasing her chi." He said she was going to feel warm, tingly, and energized. He asked whether she felt anything. Out of fear, N.D. said yes.

22. Martin asked N.D. if she enjoyed the massage. Frightened, N.D. answered that she had enjoyed it. Martin said if she continued to get massages, every fifth one would be free. N.D. paid for the session and left.

23. A few days later, N.D. told her husband what happened. He encouraged her to report Joe Martin to the police. N.D. filed a police report.

24. As a result of her experience with Joe Martin, N.D. suffered severe psychological harm and required therapy and medical care.

25. N.D.'s injury impaired her ability to work as she had before the incident. N.D. and her husband own a business. Prior to the incident, N.D. performed many tasks for the company. After the incident, N.D. was unable to work as she had before, and as a result, she and her husband were required to give more work to a company employee and increase that individual's salary.

26. Also as a result of the conduct of Joe Martin and the other defendants' tolerance of that conduct, plaintiff N.D. was required to seek alternative health care providers for her children, adding to her emotional distress and her inconvenience.

T.D.

27. T.D. is 81 years old. She is a breast cancer survivor who has undergone a mastectomy and chemotherapy.

28. In 2009, one of T.D.'s cancer physicians recommended she see Joe Martin for pain she was suffering because of her surgery. T.D. began to receive massage treatment from Martin and continued to see him through 2011.

29. During her massage sessions with Martin, T.D. would take off all of her clothing except her underwear. She would lie face down on the table. When Martin massaged T.D.'s back, he would position her arms so they were at her side with her palms facing the ceiling. On several occasions, after Martin had been treating T.D. over a considerable period of time, Martin placed his testicles in T.D.'s hand. T.D. tried to move her hand away but was unable to do so. When she was unable to avoid Martin's testicles, T.D. tried to imagine she was someplace else. On at least one occasion, Martin put his hand on T.D.'s genitalia.

30. Despite these incidents, T.D. continued to see Joe Martin because she believed he was a professional. She told herself Martin's actions were accidents and that he would never do such things intentionally with his wife present. However, T.D. finally had to acknowledge that Joe Martin's conduct was too repeated to be accidental.

31. In 2011, T.D. wrote a note to Joe Martin requesting a refund for the massage treatments she pre-paid for but no longer wanted to use. The first note was ignored, so T.D. wrote another. This time, T.D. received a refund check signed by Dr. Sandrine Martin.

32. T.D. tried to forget what happened and move on with her life. Her husband was suffering from a grave and life-threatening illness. However, in 2011, she saw a newspaper

report of Joe Martin's arrest. T.D. was finally able to overcome her fear and speak about her experience with Joe Martin, and she gave a statement to the police.

33. As a result of her experience with Joe Martin, T.D. suffered severe psychological harm and required therapy and medical care.

R.B.

34. R.B. is 56 years old. In 2011, she went to the Center for Holistic Care, PLLC for pain in her neck, arm, and lower back. R.B. had two massage appointments with Joe Martin. During both sessions, without her consent, Martin placed his hands close to R.B.'s genitalia. As Martin massaged R.B., the table moved up and down. Martin was rubbing his genitalia against the table. Martin rubbed his penis on R.B.'s arm and touched her breasts.

35. R.B. filed a police report describing Martin's improper conduct.

36. As a result of her experience with Martin, R.B. suffered severe psychological harm and required therapy and medical care.

Other Evidence of Joe Martin's Improper Conduct

37. Joe Martin has acted improperly toward multiple women who are not parties to this suit. For example, in 2009, during a massage session with a female patient, Martin exposed her breasts. When this patient was face down on the table, Martin positioned her so that her hands touched his genitalia. Martin touched the patient's pubic area and tried to penetrate her with his finger. While massaging her buttocks, Martin yelled, "Why won't you let go? Why won't you let me in there?" The patient felt Martin's breath on her buttocks.

38. In another instance, during 2005 or 2006, Martin was massaging a different female patient when he placed his fingers in her genital area and attempted to penetrate, or did

penetrate her vagina with his fingers. When this patient complained, Martin said he had thought that they “had a connection.”

39. Both of the other female patients described above reported Joe Martin’s conduct to the police.

40. In July 2012, as a result of his conduct with female massage therapy patients, Joe Martin pled guilty in Mecklenburg County to assault on a female. He was sentenced to three years probation, lost his North Carolina license to practice massage, and is not permitted to reapply for licensure anywhere.

41. With regard to each claim below, plaintiffs incorporate every allegation contained in this complaint.

42. With regard to each claim below, the amount of damages pled is in excess of the superior court jurisdictional amount designated in N.C. Gen. Stat. § 7A-243, and in excess of the amount specified in N.C. Gen. Stat. § 7A-37.1(c).

Claim 1: Battery
Defendant Joe Martin

43. Defendant Joe Martin’s inappropriate conduct with plaintiffs, described in the foregoing paragraphs, amounts to intentional infliction of harmful or offensive contact upon plaintiffs’ bodies, without plaintiffs’ consent.

44. As a result of Joe Martin’s battery, plaintiffs were severely injured by Martin. As a direct and proximate result of Martin’s battery, each plaintiff suffered damages in excess of \$10,000.00.

Claim 2: General Negligence
Defendants Dr. Martin and the Center for Holistic Care, PLLC

45. Defendants owed a duty of reasonable care to plaintiffs as patients of the Center for Holistic Care, PLLC. This included specific duties regarding the actions of defendants' employees to (a) make appropriate supervision decisions, (b) make appropriate retention decisions, and (c) warn or protect plaintiffs of foreseeable risk of injury.

46. When Joe Martin acted inappropriately toward plaintiffs, he was acting as defendants' employee.

47. Prior to Martin's conduct with plaintiffs, defendants were aware that he had acted inappropriately toward other female patients of the Center for Holistic Care, PLLC because multiple female patients had complained to Dr. Martin and to staff of defendant Center for Holistic Care, PLLC that Joe Martin's massages had included inappropriate touching.

48. Defendants took no effective action to end Martin's improper conduct nor to warn plaintiffs of the risks Martin posed. Instead, Martin was permitted continued access to female massage therapy patients. Defendants' conduct was not reasonably prudent.

49. As a result of defendants' negligent failure to address Martin's continuing misconduct, plaintiffs were severely injured by Martin. As a direct and proximate result of defendants' negligence, each plaintiff suffered damages in excess of \$10,000.00.

Claim 3: Negligent Infliction of Emotional Distress
All Defendants

50. Defendants had a duty to exercise reasonable care in their dealings with plaintiffs, and to warn plaintiffs of foreseeable danger.

51. It was reasonably foreseeable to defendant Joe Martin that his conduct would cause, and did cause, emotional distress to plaintiffs.

52. It was reasonably foreseeable to defendants Center for Holistic Care, PLLC and Dr. Martin that their failure to effectively address Joe Martin's inappropriate behavior toward female patients would cause plaintiffs severe emotional distress.

53. Defendants' conduct did in fact cause plaintiffs severe emotional distress.

54. As a direct and proximate result of defendants' negligent infliction of emotional distress, plaintiffs were harmed. They are each entitled to damages in excess of \$10,000.00.

Claim 4: Vicarious Liability
Defendants Dr. Martin and Center for Holistic Care, PLLC

55. Defendants are vicariously liable for the improper conduct of their employee Joe Martin under theories of respondeat superior, apparent agency, and non-delegable duty.

56. Respondeat superior: There are three independent bases for imputing vicarious liability under respondeat superior. First, defendants expressly authorized Martin's conduct. Second, Martin's conduct was committed within the scope of his employment and in furtherance of defendants' business; Martin's inappropriate actions were within his implied authority. Third, Martin's conduct was ratified by defendants.

57. Apparent agency: Defendants represented to plaintiffs that Martin was defendants' agent in that he would care for plaintiffs through appropriate massage therapy. Plaintiffs, having placed their trust in defendants as health care providers, justifiably relied on defendants' representation that Martin was acting appropriately as their agent. Had plaintiffs known Martin was acting outside his apparent agency during massage therapy sessions, they would not have scheduled appointments with Martin.

58. Non-delegable duty: Defendants owed plaintiffs a non-delegable duty of protection against injury while in their care. Defendants breached their non-delegable duty by

permitting Martin access to plaintiffs during massage therapy sessions and by failing to warn plaintiffs of Martin's prior conduct.

59. The conduct for which defendants are vicariously liable was a direct and proximate cause of the injuries each plaintiff suffered. Each plaintiff's damages are in excess of \$10,000.00.

Claim 5: Reimbursement of Necessary Expenses
All Defendants

60. As a result of defendants' acts and omissions, plaintiffs were injured and are entitled to recover all prior, present, and future medical expenses, and all lost wages, related to the injuries caused by defendants. These damages for each Plaintiff are in excess of \$10,000.00.

Claim 6: Punitive Damages
All Defendants

61. Pursuant to Chapter 1D of the North Carolina General Statutes, plaintiffs are entitled to punitive damages because defendants are liable for compensatory damages and because defendants' injurious conduct involved fraud, malice, or willful or wanton conduct. Punitive damages are justified here to punish defendants for their egregiously wrongful acts and to deter defendants and others from committing similar wrongful acts. Defendants are liable to each plaintiff for punitive damages in excess of \$10,000.00.

Claim 7: Alternative Claim for Medical Malpractice
All Defendants

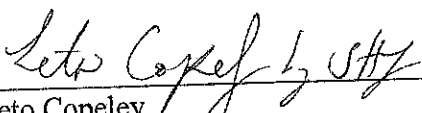
62. Plaintiffs' position is that the actions of Dr. Martin and Joe Martin constitute ordinary tort claims, not medical malpractice claims as defined in the common law and N.C. Gen. Stat. §§ 90.21.11 and 90.21.12. However, should the Court determine otherwise, plaintiffs provide the following information in compliance with the requirements of N.C. R. Civ. P. 9(j).

63. Prior to the filing of this complaint, the medical care and all medical records pertaining to the alleged negligence that are available to plaintiffs after reasonable inquiry have been reviewed by persons who are reasonably expected to qualify as expert witnesses under Rule 702 of the Rules of Evidence and who are willing to testify that the medical care did not comply with the applicable standard of care.

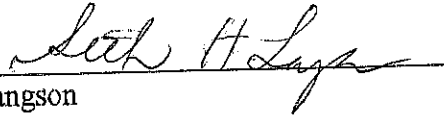
64. Plaintiffs preserve their objection to Rule 9(j) as unconstitutional. The rule seems to require plaintiffs to prove their cases before factual discovery is even begun. The rule denies medical malpractice plaintiffs their state and federal constitutional rights to due process of law, equal protection under the law, open courts, and to a jury trial. Plaintiffs further object on the basis that Rule 9(j) violates Amendments VII and XIV to the United States Constitution, as well as Article I, Sections 6, 18, 19, 25, and 32, and Article IV, Sections 1 and 13 of the North Carolina Constitution.

REQUESTS FOR RELIEF

65. Each plaintiff should be awarded compensatory and punitive damages in excess of \$10,000.00, the costs of litigation, pre and post-judgment interest, and any other relief the Court finds appropriate. Plaintiffs request a jury trial.



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