

**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, STATE OF FLORIDA
CIVIL DIVISION**

JANE DOE,

Plaintiff,

CASE NO.: 16-2018-CA-4476

vs.

DIVISION: CV-F

MARCELL DAREUS,

Defendant.

_____ /

COMPLAINT

COMES NOW, the Plaintiff, JANE DOE, complaining of the actions and omissions of Defendant, MARCELL DAREUS, and would respectfully show the Court as follows:

I. NATURE OF CASE

1. This is an action for damages that exceed \$15,000.00.
2. This case arises out of the severe physical and emotional injury caused by Defendant after he assaulted Plaintiff and infected Plaintiff with a sexually transmitted disease without her knowledge or consent.

II. PARTIES

3. Plaintiff is a Texas resident.
4. Defendant, Marcel Dareus is a resident of Duval County, State of Florida.

III. FACTS

5. On or about April 7, 2018, Plaintiff and Defendant went out on a date together in Houston. They returned to Hotel Zara where they ordered room service and Plaintiff spent the night. Plaintiff woke up in physical pain and is unable to remember anything after ordering room service. Defendant informed Plaintiff that they had engaged in sexual intercourse the previous night, which Plaintiff was unable to remember.

6. Plaintiff and Defendant saw each other again over the next two days. Plaintiff and Defendant engaged in sexual intercourse on both days. At no point did Defendant ever mention that he had a sexually transmitted disease, nor did Defendant make any attempt to protect Plaintiff from this sexually transmitted disease.

7. Plaintiff began experiencing physical symptoms related to the sexually transmitted disease later that same week. Plaintiff saw her doctor who diagnosed her with herpes.

IV. NEGLIGENCE, NEGLIGENCE PER SE, GROSS NEGLIGENCE

8. Plaintiff hereby incorporates Paragraphs 1 -7 as though fully stated herein.

9. Defendant's sexual intercourse with Plaintiff on their first evening together and failure to disclose a sexually transmitted disease at any point proximately caused Plaintiff to suffer mental anguish and severe physical injuries.

10. Specifically, Defendant was negligent and grossly negligent in:

a. failing to obtain consent from Plaintiff prior to engaging in sexual intercourse;

- b. failing to use protection during the assault;
- c. failing to use protection during sexual intercourse;
- d. failing to disclose that he had a sexually transmitted disease;
- e. failing to prevent the transmission of a sexually transmitted disease;
- f. failing to abstain from sexual intercourse while infected with a sexually transmitted disease;
- g. failing to prevent the incidents in question; and
- h. other acts deemed negligent and grossly negligent.

11. Defendant is also liable to negligence per se because he violated Texas Penal Code §§22.02.

12. Defendant committed aggravated assault by knowingly transmitting herpes to the Plaintiff without her knowledge or consent, causing her serious bodily injury. *See* Tex. Penal Code §§22.02 and Florida Statute §384.24.

13. Defendant's negligence and negligence per se has caused Plaintiff to suffer severe physical and mental injuries, including, but not limited to, past and future medical costs, past and future pharmaceutical costs, past and future physical pain and suffering, past and future mental anguish and loss of enjoyment of life.

WHEREFORE, Plaintiff, JANE DOE, demands judgment for damages against the Defendant, MARCELL DAREUS, as well as any other relief this Court deems just and proper.

V. ASSAULT AND BATTERY

14. Plaintiff hereby incorporates Paragraphs 1 through 13, as though fully stated herein.

15. Defendant intentionally caused a harmful or offensive contact with Plaintiff by engaging in unprotected sexual intercourse and infecting her with a sexually transmitted disease while she was unconscious and therefore without her consent.

16. Defendant also intentionally caused a harmful or offensive contact with Plaintiff by engaging in consensual, unprotected sexual intercourse with her without informing her that he was carrying a sexual transmitted disease, to wit: herpes.

17. Defendant's harmful and offensive contacts have caused Plaintiff to suffer severe physical and mental injuries, including but not limited to, past and future medical costs, past and future pharmaceutical costs, past and future physical pain and suffering, past and future mental anguish and loss of enjoyment of life.

WHEREFORE, Plaintiff, JANE DOE, demands judgment for damages against the Defendant, MARCELL DAREUS, as well as any other relief this Court deems just and proper.

VI. FRAUDULENT MISREPRESENTATION

18. Plaintiff hereby incorporates Paragraphs 1-17, as though fully set forth herein.

19. Defendant failed to disclose to Plaintiff that he had herpes prior to engaging in sexual intercourse with her. Plaintiff did not have any other information that would have led her to believe that Defendant was infected with a sexually transmitted disease and Defendant knew that Plaintiff was unaware of his condition.

20. Defendant failed to disclose the fact that he was infected with herpes on multiple occasions: (1) when he had sexual intercourse with Plaintiff without her consent to the intercourse or consent to sexual relations with someone infected with a sexually transmitted disease, and (2) each time Plaintiff and Defendant engaged in consensual sexual intercourse without Plaintiff's prior consent to sexual relations with someone infected with a sexually transmitted disease.

21. If Plaintiff had known that Defendant was infected with a sexually transmitted disease, she would not have engaged in sexual intercourse with him.

22. Defendant's fraudulent misrepresentation has caused Plaintiff to suffer severe physical and mental injuries, including, but not limited to, past and future medical costs, past and future pharmaceutical costs, past and future physical pain and suffering, past and future mental anguish and loss of enjoyment of life.

WHEREFORE, Plaintiff, JANE DOE, demands judgment for damages against the Defendant, MARCELL DAREUS, as well as any other relief this Court deems just and proper.

VII. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

23. Plaintiff hereby incorporates Paragraphs 1-22 as though fully stated herein.

24. Defendant knew or reasonably should have known that he was infected with a sexually transmitted disease.

25. Defendant knew or reasonably should have known that Plaintiff was unaware of Defendant's sexually transmitted disease.

26. Defendant also knew or reasonably should have known that Plaintiff was unconscious and did not give consent to sexual intercourse on the first night that Plaintiff and Defendant engaged in sexual intercourse.

27. Defendant intentionally and/or recklessly failed to disclose that he had a sexually transmitted disease and intentionally and/or recklessly sexually assaulted Plaintiff while she was unconscious. This type of conduct is utterly intolerable in civilized society.

28. As a result of Defendant's intentional and reckless conduct, Plaintiff has suffered and will continue to suffer severe physical and mental injuries, including, but not limited to, past and future medical costs, past and future pharmaceutical costs, past and future physical pain and suffering, past and future mental anguish and loss of enjoyment of life.

WHEREFORE, Plaintiff, JANE DOE, demands judgment for damages against the Defendant, MARCELL DAREUS, as well as any other relief this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury on all issues.

Respectfully Submitted,

ARNOLD & ITKIN LLP

/s/ Kurt Arnold

Kurt Arnold
SBN: 24036150
karnold@arnolditkin.com
Caj Boatright
SBN: 24036237
cboatright@arnolditkin.com
Alison Baimbridge
SBN: 24040160
abaimbridge@arnolditkin.com
Roland Christensen
SBN: 24101222

rchristensen@arnolditkin.com
6009 Memorial Drive
Houston, Texas 77007
Tel: 713.222.3800
Fax: 713.222.3850
e-service@arnolditkin.com

Respectfully Submitted,

/s/ J.D. Dowell

J.D. Dowell, Esquire
Florida Bar Number 0789720
Pitisci, Dowell & Markowitz
101 S. Moody Avenue, Suite 200
Tampa, Florida 33609
Phone: (813) 228-9233 x 4
Fax: (813) 229-5979
Primary E-Mail: jdowell@pdmmlaw.com
Secondary E-Mail: alutz@pdmmlaw.com

ATTORNEYS FOR PLAINTIFF