

STEPHEN W. OWENS - #6957
JAMES T. EGAN - #15479
EPPERSON & OWENS, P.C.
10 West 100 South, Suite 500
Salt Lake City, Utah 84101
Tel: (801) 983-9800
Fax: (801) 983-9808
sowens@eolawoffice.com
jegan@eolawoffice.com
*Attorneys for Defendant and
Counterclaimant Gwyneth Paltrow*

**IN THE THIRD JUDICIAL DISTRICT COURT
SUMMIT COUNTY, STATE OF UTAH**

TERRY SANDERSON,)	
	)	DEFENDANT AND
Plaintiff,	)	COUNTERCLAIM PLAINTIFF
v.	)	GWYNETH PALTROW'S
	)	(1) ANSWER TO PLAINTIFF'S
GWYNETH PALTROW; ERIC	)	AMENDED COMPLAINT,
CHRISTIANSEN; DEER VALLEY)	
RESORT COMPANY, LLC; and JANE	)	(2) JOINDER IN JURY DEMAND,
AND JOHN DOE EMPLOYEES 1 AND 2,	)	AND
)	
Defendants.	)	(3) COUNTERCLAIM AGAINST
	)	PLAINTIFF
)	
	)	Case No. 190500048
GWYNETH PALTROW,)	
	)	Judge Kent Holmberg
Counterclaim Plaintiff,)	
v.	)	Tier 3
)	
TERRY SANDERSON,)	
)	
Counterclaim Defendant.)	

Defendant Gwyneth Paltrow, by and through counsel, Stephen W. Owens and James T. Egan, of the law firm of Epperson & Owens, P.C., hereby files her Answer to Plaintiff's

“Amended Complaint,” joins in Plaintiff’s jury demand, and Counterclaims Against Plaintiff for causing this ski collision.

INTRODUCTION

Three years after a ski collision, Plaintiff threw a press conference to assert that Gwyneth Paltrow had struck him on a ski slope, causing him permanent brain damages. He asserted that she had simply skied off, leaving him unconscious--a “hit and run.” He demanded Ms. Paltrow pay him millions. If she did not pay, she would face negative publicity resulting from his allegations.

Plaintiff admits he does not remember what happened. Ms. Paltrow remembers what happened very clearly. She was enjoying skiing with her family on vacation in Utah, when Plaintiff—who was uphill from Ms. Paltrow--plowed into her back. She sustained a full “body blow.” Ms. Paltrow was angry with Plaintiff, and said so. Plaintiff apologized. She was shaken and upset, and quit skiing for the day even though it was still morning.

A Deer Valley employee was present on the scene. The Deer Valley employee asked Plaintiff, whose friend had now caught up to Plaintiff, whether Plaintiff was okay. Plaintiff said he was. The Deer Valley employee prepared a report that determined Plaintiff had “taken [Paltrow] out from behind” and that Plaintiff was the uphill skier, and thus responsible for the collision.

Plaintiff, age 69, had told his doctor about one year earlier that he was blind in his right eye, and that his vision in his left eye was decreasing. Just three weeks before the incident, Plaintiff told his doctor that Plaintiff had “gotten old all of a sudden.” Other than his vision problems, he had 15 other chronic medical issues.

After the accident, Plaintiff's doctor conducted neuropsychological testing that did not demonstrate any deficits in his cognitive functioning. Plaintiff's friend, who was skiing with Plaintiff, said that in his interactions with Plaintiff since the collision, Plaintiff acted the same mentally as before the collision.

DEFENDANT PALTROW'S ANSWER TO AMENDED COMPLAINT

Defendant Gwyneth Paltrow (hereafter "Ms. Paltrow") responds to the claims in Plaintiff's Amended Complaint, and admits, denies, and asserts as follows:

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim against Ms. Paltrow upon which relief may be granted.

RESPONSE TO PLAINTIFF'S "BRIEF FACTUAL SUMMARY"

The allegations made in the "brief factual summary" of Plaintiff's Amended Complaint are unnumbered, making it difficult to respond to each asserted fact. Therefore, Ms. Paltrow denies the whole section and offers the following brief factual summary instead:

On February 26, 2016, Gwyneth Paltrow went skiing with her family at Deer Valley Resort in Park City, Utah. At about 11:55 am, according to an incident report created that day, Ms. Paltrow had been making "short turns" on the right-side of Bandana, one of the resort's easier runs, when a male skier hit her from behind. According to the written report, Plaintiff "took her out from behind" (hereafter "the collision"). She did not hear or see the man approach.

After the collision, Plaintiff stood up. Ms. Paltrow told Plaintiff to be more careful since he had run into her. He apologized and explained to Defendant Eric Christiansen that he had not seen Ms. Paltrow. As Mr. Christiansen recorded in an incident report later that day, Plaintiff told

him “that she appeared right in front of him, thus admitting he was the uphill skier.” His report also indicated that she “never saw [Plaintiff] because he came in from behind.”

After the collision, Craig Ramon, a member of Plaintiff’s skiing group, arrived on the scene. By his own admission, he had been at least forty feet away from the scene on a pretty crowded, busy hill. Mr. Christiansen told Ms. Paltrow and the family’s other ski instructor to stay with Ms. Paltrow’s children, who were further down the hill. As Mr. Christiansen continued to speak with Plaintiff, a ski patroller and mountain host representative passed and inquired whether everyone was alright. Plaintiff and Mr. Ramon each assured them that they were fine.

Ms. Paltrow denies that she caused the collision, and denies she injured or harmed Plaintiff.

JURISDICTION AND VENUE

Ms. Paltrow responds paragraph by paragraph to Plaintiff’s Amended Complaint as follows:

1. Admit.
2. Deny that Ms. Paltrow caused any damages. Deny remaining allegations of this paragraph.
3. Admit that the events addressed by Plaintiff’s allegations occurred in Summit County, Utah. Deny remaining allegations.
4. Admit that venue is proper. However, pursuant to 28 U.S.C.A. § 1446 and relevant law, Ms. Paltrow reserves the right to remove this case to federal court if co-defendants are dismissed, as she is a resident of the State of California.
5. Deny that Ms. Paltrow caused any damages. Deny remaining allegations of this paragraph.

PARTIES

6. Admit on information and belief.
7. Admit.
8. Admit on information and belief.
9. Admit on information and belief.
10. No answer is required since the allegation is not directed to Ms. Paltrow. To the extent an answer is required, deny for lack of information or belief.

GENERAL ALLEGATIONS

11. Admit on information and belief that on February 26, 2016, Plaintiff was skiing on a green run known as Bandana. Deny any knowledge of Plaintiff's skiing ability. Deny remaining allegations of this paragraph.
12. Admit that Ms. Paltrow was skiing on February 26, 2016, with Defendant Eric Christiansen and her family and friends. Deny that Ms. Paltrow was above and behind Plaintiff on Bandana just prior to the collision. Just the opposite is true.
13. Deny. Ms. Paltrow was skiing carefully. At the time of the collision, as recorded in Defendant Eric Christiansen's incident report, she had been making "short turns" on the right-side of Bandana, a wide green run. She skied slowly to stay behind her children, who were receiving skiing instruction slightly further down the mountain.
14. Deny.
15. Deny.
16. Admit that Ms. Paltrow was skiing in a group of skiers including family, friends, and Deer Valley employees, with a plan to have lunch. Deny the remaining allegations of this paragraph.

17. Admit that two ski instructors, including Defendant Eric Christiansen, skied with Ms. Paltrow and her family on the day of the collision. Deny remaining allegations for lack of information and belief.
18. Deny as this is a legal conclusion. Defer to Utah law on a skier's duty. Ms. Paltrow complied with any applicable duty. Deny that Plaintiff was the "downhill skier," or further down the mountain than Ms. Paltrow at the time of the collision. Plaintiff was, rather, further up the mountain from Ms. Paltrow when he skied into her back.
19. Deny. This allegation is unclear, and therefore no response can be given.
20. Deny as this is a legal conclusion. Ms. Paltrow ensured that a Deer Valley employee was aware of the collision. In fact, the employee was present. The employee – based on his conversation with Plaintiff – determined Plaintiff exhibited no injuries requiring emergent attention. A ski patroller and Deer Valley Resort representative arrived on the scene shortly after the collision. Plaintiff and his friend assured them that Plaintiff was fine.
21. Deny. See response to Paragraph 13.
22. Admit that Ms. Paltrow was aware of general ski safety rules on the day of the collision. Deny that Plaintiff was the downhill skier in the collision. Ms. Paltrow was the downhill skier (the skier further down the mountain) at the time of the collision. Deny the remaining allegations of this paragraph.
23. Deny. Ms. Paltrow did not slam into Plaintiff's back. Plaintiff slammed into hers. She did not knock him down. He knocked her down. He was not knocked out. Immediately after the collision, he stood up and addressed Ms. Paltrow. Ms. Paltrow expressed her anger that he ran into her, and he apologized. She did not cause the collision. Deny the remaining allegations of this paragraph.

24-29. These paragraphs are directed to co-defendants. Therefore, no answer is provided by Ms. Paltrow. To the extent an answer is required, the allegations are denied. Ms. Paltrow did not knock down or injure Plaintiff. Plaintiff exhibited no injuries requiring emergent attention. A ski patroller and Deer Valley Resort representative arrived on the scene shortly after the collision, and Plaintiff and his friend assured them that he was fine. Defendant Christiansen's incident report concerning the collision accurately described events relating to it.

30. Deny. Specifically deny that Plaintiff suffered a permanent traumatic brain injury. On the contrary, records of Mr. Sanderson's subsequent medical treatment do not show any permanent traumatic brain injury. Rather, they show a diagnosis of a "mild" concussion and intact normal cognitive abilities. The records also suggest that Mr. Sanderson has vacationed internationally for extended periods of time since the collision.

31. Deny. Because Plaintiff ran into Ms. Paltrow, she was not the cause of any injuries or expenses resulting from the collision. Mr. Sanderson's medical history (prior to the collision) include conditions similar to his claimed damages. Mr. Sanderson had experienced a prior skiing injury. He had a history of blurriness of vision, and vision problems, including a central retinal artery occlusion in his right eye causing him to be blind in that eye, with decreasing vision in his left eye.

FIRST CAUSE OF ACTION – NEGLIGENCE

~ Gwyneth Paltrow ~

32. Ms. Paltrow reasserts and incorporates her responses to paragraphs 1 through 31, above, as though fully set forth herein.

33. Admit that Ms. Paltrow had a duty imposed under Utah law governing skiers. She met her duty. Deny that Plaintiff was the “downhill skier,” or further down the mountain than Ms. Paltrow, at the time of the collision. Plaintiff was, rather, further up the mountain from Ms. Paltrow when he skied into her back. She did not knock him down, or cause him to suffer a concussion, brain injury, or broken ribs. Deny any remaining allegations in this paragraph.
34. Deny that Ms. Paltrow breached any duty or caused Plaintiff any damages or injuries.

**SECOND CAUSE OF ACTION – NEGLIGENT INFLECTION OF
EMOTIONAL DISTRESS**

~ All Defendants ~

35. Ms. Paltrow reasserts and incorporates her responses to paragraphs 1 through 34, above, as though fully set forth herein.
36. Deny.
37. Deny. Ms. Paltrow did not ignore or deny assistance to Plaintiff. Ms. Paltrow did not strike or injure Plaintiff, nor did she cause Plaintiff emotional distress. A Deer Valley employee was present and aware of the collision.
38. Deny. Ms. Paltrow did not “hit and run,” nor did she leave Plaintiff alone. Plaintiff exhibited no injuries requiring emergent attention. A ski patroller and Deer Valley Resort representative arrived on the scene shortly after the collision, and Plaintiff assured them that he was fine. Plaintiff was also with his friend. Ms. Paltrow did not cover up the facts of the crash, and did not cause Plaintiff any illness or harm.
39. This paragraph of Plaintiff’s Complaint is not directed toward this answering Defendant. To the extent an answer is required, deny for lack of information and belief.
40. Deny that Ms. Paltrow breached any duty or caused Plaintiff any damages.

SECOND DEFENSE

As an affirmative defense, Ms. Paltrow alleges that the injury and damages complained of by Plaintiff were caused by third persons, events, or conditions (including pre-existing conditions) not under her control or supervision.

THIRD DEFENSE/NOTICE OF INTENT TO APPORTION FAULT

Ms. Paltrow asserts that the negligence, carelessness, or fault of others, whether named or unnamed in this suit, proximately caused or proximately contributed to Plaintiff's injuries, damages or expenses, if any, and that Plaintiff's award, if any, should be reduced by a percentage of fault attributed to Plaintiff and to others. Ms. Paltrow hereby provides notice of intent to request an apportionment of fault at the time of trial to Plaintiff, all other parties to this lawsuit, and others who may be at fault in causing or contributing to Plaintiff's alleged injuries, damages, and losses, pursuant to the provisions of Utah Code Ann. §78-27-37 et seq. This includes Plaintiff's fault in deciding to ski with his health conditions (including being blind in the right eye and decreasing vision in the left eye) and his negligent skiing that caused the collision and his failure thereafter to follow directions of his medical providers.

FOURTH DEFENSE

As a further affirmative defense, Ms. Paltrow alleges that Plaintiff assumed the risk of skiing, which is an inherently dangerous activity. Defenses are available to Ms. Paltrow under Utah Code 78B-4-401 to 404. See also Ricci v. Schoultz, 963 P.2d 784 (Utah Ct. App. 1998) (upholding dismissal of skier due to inherent risk of skiing).

FIFTH DEFENSE

As a further, separate, and affirmative defense, Defendant Ms. Paltrow alleges that to the extent the Plaintiff's Complaint requests compensation for speculative future damages, these damages are prohibited by Utah law. *See Seale v. Gowans*, 923 P.2d 1361 (Utah 1996).

SIXTH DEFENSE

As a further affirmative defense, Plaintiff's punitive damages claim is barred because,

- (1) the facts of this case do not support a claim for punitive damages;
- (2) punitive damages are barred by law under the facts of this case;
- (3) Ms. Paltrow did not act with actual malice;
- (4) no act or omission of Ms. Paltrow was done with reckless indifference or reckless disregard toward the rights or safety of Plaintiff or others; and
- (5) as a matter of law, punitive damages may not be awarded in this case because any outrageous and malicious conduct, if any (it is expressly denied), is likely to be deterred by other means or punitive damages are not justified by statute and the Utah constitution.

SEVENTH DEFENSE

Plaintiff's economic damages claim for medical expenses is limited to amounts actually paid out-of-pocket by Plaintiff and to amounts actually paid by Plaintiff's health insurance providers.

EIGHTH DEFENSE

With specific reference to future medical damages, under the Patient Protection and Affordable Care Act, and his V.A. benefits, Plaintiff has a federally-mandated mechanism for mitigating future medical damages.

NINTH DEFENSE

If Plaintiff settles or otherwise dismisses one of the named Defendants to this lawsuit at any time prior to trial, Ms. Paltrow hereby requests that the jury apportion fault to any such dismissed Defendants as empty chair Defendants at the time of trial. Ms. Paltrow expressly relies upon all evidence, facts, expert opinions, and legal bases which will hereafter be developed through the efforts of Plaintiff, any other Defendants or witnesses through fact and/or expert discovery as the legal and factual bases upon which to request apportionment of fault by the jury to the empty chair Defendants at trial.

TENTH DEFENSE

Ms. Paltrow hereby incorporates affirmative defenses made by Co-Defendants in their Answers.

ELEVENTH DEFENSE

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

TWELFTH DEFENSE

As additional affirmative defenses as it relates to Plaintiff's claim for punitive damages:

1. There is no good faith basis for Plaintiff to demand punitive damages.
2. If Plaintiff is allowed to pursue his claim for punitive damages, federal and state constitutional provisions, including but not limited to, due process clauses and provisions

prohibiting cruel and unusual punishment or unnecessary rigor, demand that such claim must be proven beyond reasonable doubt.

3. As an affirmative defense, punitive damages are barred by the United States Constitution, by the Utah Constitution, and by the facts of this case.

4. The Sixth Amendment of the United States Constitution and Article I, Section X of the Utah Constitution may prohibit any award of punitive damages unless there is a unanimous verdict.

5. Punitive damages against Ms. Paltrow are barred by law, including but not limited to, Utah Code Ann. § 78-18-1.

6. As an affirmative defense, Ms. Paltrow alleges that Plaintiff should be required to prove each and every element of a punitive damage award beyond a reasonable doubt, or, in the alternative, by clear and convincing evidence.

7. As an affirmative defense, Ms. Paltrow alleges that punitive damages are barred by the due process clause of the Fifth Amendment of the United States Constitution, and by Article I, Section VII of the Utah Constitution and by the facts of this case.

8. Punitive damages are not appropriate in this case because this is not an "exceptional" case.

9. A portion of any punitive damage award goes to the State of Utah and, therefore, constitutes an excessive fine made unconstitutional under the Eighth Amendment of the United States Constitution, and Article I Section IX of the Utah Constitution.

10. An award of punitive damages in this case is barred by the Due Process Clause of the Fifth Amendment to the United States Constitution and by Article I, Section VII of the Constitution of Utah.

THIRTEENTH DEFENSE

As an affirmative defense, Plaintiff has failed to reasonably mitigate his damages, if any, thereby reducing Plaintiff's recovery.

JOINDER IN JURY DEMAND

Ms. Paltrow hereby joins in the demand for a jury trial made by Plaintiff in his Amended Complaint, dated February 4, 2019. The required fee has already been paid.

PRAYER FOR RELIEF

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Ms. Paltrow respectfully requests that Plaintiff's claims and this case in its entirety be dismissed with prejudice and without payment by Ms. Paltrow, and that she be awarded her attorneys' fees and costs for having to defend this action and any other further relief as the Court deems appropriate under the circumstances.

COUNTERCLAIM AGAINST PLAINTIFF

Defendant Gwyneth Paltrow counterclaims against Plaintiff for negligently causing the skiing collision he blames on her. She hereby incorporates her statements, above, as if fully restated here. She alleges as follows:

NATURE OF THE ACTION

1. Ms. Paltrow seeks to recover damages from Plaintiff/Counterclaim Defendant Terry Sanderson arising from the collision he blames on her. Plaintiff caused the collision, injuring Ms. Paltrow. Because her injuries were relatively minor, she seeks only symbolic damages in the amount of \$1, plus her costs and attorneys' fees to defend this meritless claim. Resolution of this Counterclaim will demonstrate that Plaintiff ran into Ms. Paltrow and

nonetheless blamed her for it in an attempt to exploit her celebrity and wealth. Any recovery obtained by Ms. Paltrow will be donated to a charitable organization.

JURISDICTION AND VENUE

2. The acts and/or omission Ms. Paltrow complains of, and the resulting injuries and damages, occurred in Summit County, State of Utah. They comprise a counterclaim that is compulsory because it “arises out of the transaction or occurrence that is the subject matter of [Plaintiff’s] claim” and “does not require adding another party over whom the court cannot acquire jurisdiction.” Utah R. Civ. P. 13(a)(1)(A-B).

3. This Court has jurisdiction over this case.

4. Venue in this Court is proper.

PARTIES

5. Plaintiff Terry Sanderson resides in Salt Lake County, State of Utah.

6. Defendant Gwyneth Paltrow was in Summit County, Utah, on the date of the ski collision and resides in the State of California.

GENERAL ALLEGATIONS

7. On February 26, 2016, Gwyneth Paltrow went skiing with her family at Deer Valley Resort in Park City, Utah.

8. About 11:55 am, Ms. Paltrow had been making “short turns” on the right-side of the Bandana run when, according to an incident report created that day, Plaintiff/Counterclaim Defendant “took her out from behind” (hereafter “the collision”).

9. Ms. Paltrow was wearing a helmet and goggles and did not hear or see the man approach.

10. After the collision, Plaintiff stood up.

11. Ms. Paltrow told Plaintiff she was angry he had run into her. He apologized and explained to Defendant Eric Christiansen (an employee of Deer Valley) that he had not seen Ms. Paltrow.

12. As Mr. Christiansen recorded in an incident report, Mr. Sanderson told him “that she appeared right in front of him, thus admitting he was the uphill skier.”

13. Mr. Christiansen’s report also indicated that Ms. Paltrow “never saw [Plaintiff] because he came in from behind.”

14. A minute or so after the collision (i.e. not immediately), Craig Ramon, a friend of Mr. Sanderson, arrived on the scene. By his own admission, Mr. Ramon had been at least forty feet away from the scene on a pretty crowded, busy mountain.

15. Mr. Christiansen told Ms. Paltrow and the family’s other ski instructor to stay with Ms. Paltrow’s children, who were further down the hill.

16. As Mr. Christiansen continued to speak with Mr. Sanderson, a ski patroller and mountain host representative passed and inquired whether everyone was alright. Mr. Sanderson and Mr. Ramon assured them that Plaintiff was fine.

17. Ms. Paltrow skied down the mountain. The pain and soreness resulting from Plaintiff’s body blow caused her to stop skiing for the day, and was upsetting to her.

CAUSE OF ACTION - NEGLIGENCE

18. Ms. Paltrow re-alleges and incorporates by reference herein all other allegations in this document.

19. Plaintiff/Counterclaim Defendant Terry Sanderson had a duty to ski with reasonable prudence and as required under Utah law.

20. Mr. Sanderson negligently breached that duty when he struck Ms. Paltrow, who was ahead of him on the mountain, physically and violently knocking her to the ground.

21. Plaintiff, age 69, told his doctor about one year earlier that he was blind in his right eye and had decreasing vision in his left eye. He had 15 other chronic health problems. At a minimum, his vision problems impacted his inability to ski safely.

22. Mr. Sanderson breached his duty, caused Ms. Paltrow injuries and pain, and prevented her from continuing to ski that day and enjoying time with her family in Utah.

23. As a direct and proximate cause of Mr. Sanderson's breach of his duty of care, Ms. Paltrow suffered damages, including costs and attorneys' fees for having to defend this action.

REQUEST FOR RELIEF

24. **WHEREFORE**, Defendant/Counterclaimant Gwyneth Paltrow requests that this Court enter judgment against Plaintiff/Counterclaim Defendant Terry Sanderson as follows:

- a. \$1 in compensatory and actual damages as will be proven at trial;
- b. Costs and attorneys' fees associated with this matter for the bringing of this action in bad faith; and
- c. Such additional and further relief as is deemed just and appropriate.

JURY TRIAL DEMAND

Defendant/Counterclaimant Gwyneth Paltrow demands a jury trial for the claims for relief asserted in this Counterclaim. A jury trial has already been requested and the required fee was paid with Plaintiff's Complaint.

DATED this 20th day of February, 2019.

EPPERSON & OWENS, P.C.

/s/ Stephen W. Owens

STEPHEN W. OWENS

JAMES T. EGAN

Attorneys for Defendant and

Counterclaimant Gwyneth Paltrow

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANT AND COUNTERCLAIM PLAINTIFF GWYNETH PALTROW'S (1) ANSWER TO PLAINTIFF'S AMENDED COMPLAINT, (2) JOINDER IN JURY DEMAND, AND (3) COUNTERCLAIM AGAINST PLAINTIFF** was served via the Court's e-filing, by U.S. Mail, first-class postage prepaid, and by e-mail transmission, on this 20th day of February, 2019, to the following:

Robert B. Sykes
C. Peter Sorensen
SYKES MCALLISTER LAW OFFICES
311 South State Street, Suite 240
Salt Lake City, UT 84111
bob@sykesmcallister.com
pete@sykesmcallisterlaw.com
Attorneys for Plaintiff

Lawrence D. Buhler
LAWRENCE D. BUHLER, P.C.
311 South State Street, Suite 240
Salt Lake City, UT 84111
lbuhler@me.com
Attorneys for Plaintiff

Adam Strachan
STRACHAN, STRACHAN & SIMON, P.C.
401 South Main Street, 2nd Fl.
P.O. Box 1800
Park City, UT 84060
astrachan@strachanlaw.com
*Attorneys for Defendants Deer Valley
Resort Company, LLC, and Eric Christiansen*

/s/ Julie Hooley