

<p>DISTRICT COURT, MONTROSE COUNTY, COLORADO 1200 North Grand Avenue Montrose, Colorado 81401</p>	<p>DATE FILED: January 4, 2019 4:21 PM FILING ID: 611633A4AFA7D CASE NUMBER: 2019CV30002</p> <p style="text-align: center;">▲ Court Use Only ▲</p>
<p>TERRI THORSBY, individually, and as Executor of The Estates of Mildred Carl and Larry L. Carl. Plaintiffs,</p> <p>v.</p> <p>SUNSET MESA FUNERAL FOUNDATION, INC., d/b/a Sunset Mesa Funeral Directors, a Colorado nonprofit corporation, SUNSET MESA FUNERAL FOUNDATION, INC., d/b/a Donor Services, a Colorado nonprofit corporation, and MEGAN M. HESS, individually. Defendants.</p>	
<p>Attorney for Plaintiffs: James McDonough, #48462 Chris Cowan, #48434 Margaret E. Foley, #40960 Downs, McDonough & Cowan, LLC 2051 Main Ave. Durango, CO 81301 Office No.: (970) 247-8020 Fax No.: (970) 247-8877 E-mail: james@swcolaw.com E-mail: chris@swcolaw.com E-mail: meg@swcolaw.com</p>	<p>Case Number:</p> <p>Division:</p>
<p>COMPLAINT FOR DAMAGES</p>	

COMES NOW, the Plaintiff, Terri Thorsby, individually, and as Executor of The Estates of Mildred Carl and Larry L. Carl, Plaintiffs, by and through undersigned counsel, and submits the following Complaint for Damages against Defendants, and as grounds therefore, states and alleges as follows:

I. PARTIES

1. Plaintiff Terri Thorsby is a natural person, and a resident of La Plata County, Colorado.

2. Plaintiff Terri Thorsby was appointed as the Executor of The Estates of Mildred Carl and Larry L. Carl.

3. Defendant Sunset Mesa Funeral Foundation, Inc., d/b/a Sunset Mesa Funeral Directors (“Sunset Mesa”) is a Colorado nonprofit corporation licensed and organized under the laws of Colorado. Sunset Mesa principal place of business is located at 155 Merchant Drive, Montrose, Colorado 81401. Sunset Mesa’s registered agent is Megan M. Hess, located at 155 Merchant Drive, Montrose, Colorado 81401.

4. Upon information and belief, Sunset Mesa provides burial and cremation services for deceased persons located in and around Montrose, Colorado.

5. Defendant Sunset Mesa Funeral Foundation, Inc., d/b/a Donor Services (“Donor Services”) is a Colorado nonprofit corporation licensed and organized under the laws of Colorado. Donor Services’ principal place of business is located at 155 Merchant Drive, Montrose, Colorado 81401. Donor Services’ registered agent is Megan M. Hess, located at 155 Merchant Drive, Montrose, Colorado 81401.

6. Upon information and belief, Donor Services provides organ and whole-body donation services following death.

7. Defendant Megan M. Hess (“Hess”) is a natural person, and upon information and belief, is a resident of Montrose County, Colorado at 155 Merchant Drive, Montrose, Colorado 81401; momma81401me@hotmail.com.

8. Upon information and belief, Hess is the owner and operator of both Sunset Mesa and Donor Services.

II. JURISDICTION AND VENUE

9. Jurisdiction is proper for Plaintiffs’ claims against Defendants pursuant to C.R.S. §13-1-124.

10. Venue is proper in Montrose County, Colorado, pursuant to C.R.C.P. 98(c) because Defendants conducted business or reside in Montrose County, Colorado, Plaintiff resides in Durango, LaPlata County, Colorado, and a substantial part of the events or omissions giving rise to the claims asserted herein occurred in Montrose County, Colorado.

III. GENERAL ALLEGATIONS

11. Mildred Carl and Larry L. Carl were husband and wife.
12. Mildred Carl died July 6, 2014.
13. Larry L. Carl died January 18, 2015.
14. Their daughter, Plaintiff Terri Thorsby, was appointed executor for both her parents.
15. Plaintiff engaged Four Corners Cremation & Burial Society of Cortez as funeral home for both her parents.
16. Plaintiff authorized Four Corners to take possession of and make arrangements for cremation of the remains at Defendant Sunset Mesa Crematory.
17. On November 15, 2018, Plaintiff received a letter from the U.S. Department of Justice Federal Bureau of Investigation as a possible victim of a crime.
18. Plaintiff learned from the FBI that Defendants harvested her mother's pelvis, both arms from the shoulder down, right knee to her foot, left knee, and her head.
19. Plaintiff never consented to the harvesting of her mother's remains and had no knowledge of her mother's organ and/or body part removal.
20. Plaintiff believes her father's body parts or organs were likewise harvested by Defendants without consent or knowledge based upon investigative news stories, as well as the FBI's investigation.
21. Upon information and belief, Hess, as owner and operator of both Sunset Mesa and Donor Services, was taking in cremation clients through Sunset Mesa and then donating all or parts of the decedent to Donor Services without the authority and consent of the surviving party who contracted with Sunset Mesa for cremation services.
22. Upon information and belief, after Donor Services received the decedent, Sunset Mesa, through Hess, would (a) give the surviving party either the cremated remains of someone other than the decedent, (b) give the surviving party cement or concrete instead of cremated remains, or (c) cremate the parts of the decedent not used by Donor Services and give them to the surviving party with the representation that it was the whole decedent.
23. Upon information and belief, the FBI and the Colorado Department of Regulatory Agencies ("DORA") are currently investigating the conduct of Hess, Sunset Mesa, and Donor Services for allegations of mishandling remains.

24. On February 12, 2018, DORA issued an Order of Summary Suspension for Sunset Mesa.
25. DORA further stated in the February 12, 2018 Order that Sunset Mesa is “guilty of multiple deliberate and willful violations of the Mortuary Science Code.”
26. Upon information and belief, DORA has summarily suspended Sunset Mesa’s mortuary license, requiring it to cease all operations until further notice.
27. As a result of Defendants’ conduct, Plaintiff has sustained damages and losses, including loss of the money paid to Defendants’ for cremation services, severe emotional distress, unpleasant mental reactions, nervous shock, horror, grief, humiliation, embarrassment, anger, disappointment, and worry.

**IV. CLAIMS FOR RELIEF
FIRST CLAIM FOR RELIEF**

(Plaintiff’s Outrageous Conduct claim against all Defendants)

28. Plaintiffs hereby incorporate by reference the preceding paragraphs of the Complaint.
29. Defendants engaged in extreme and outrageous conduct, including, without limitation:
 - a. Hess and Sunset Mesa harvested the body parts and organs of Plaintiff’s mother and father without Plaintiff’s consent or authorization and gave the organs to Donor Services;
 - b. Hess and Sunset Mesa withheld Plaintiff’s mother and father’s remains from Plaintiff so that the remains could be given to Donor Services;
 - c. Donor Services accepted Plaintiff’s mother and father’s remains with knowledge that Plaintiff had not authorized or consented to their remains being donated;
 - d. Hess, Sunset Mesa, and Donor Services conspired to defraud Plaintiff and set up a system by which they could entice Plaintiff to use Hess and Sunset Mesa to cremate her parents and then take the remains and give them to Donor Services without consent or authorization for the Defendants’ own pecuniary gain; and
 - e. Hess, Sunset Mesa, and Donor Services took advantage of Plaintiff’s emotional state following her parents’ death for their own pecuniary gain.
30. Defendants engaged in extreme and outrageous conduct recklessly, or with the intent of causing Plaintiff severe emotional distress.

31. Defendants engaged in extreme and outrageous conduct for the purpose, in whole or in part, of causing Plaintiff severe emotional distress.
32. Defendants engaged in extreme and outrageous conduct with the knowledge that their conduct was certain or substantially certain to cause Plaintiff's severe emotional distress.
33. Defendants engaged in extreme and outrageous conduct with the knowledge, or, because of other facts known to Defendants, reasonably should have known that there was a substantial probability that their conduct would cause Plaintiff's severe emotional distress.
34. Defendants' conduct caused Plaintiffs severe emotional distress.
35. Defendants' conduct was so outrageous in character, and so extreme in degree, that a reasonable member for the community would regard the conduct as atrocious, going beyond all possible bounds of decency and utterly intolerable in a civilized society.
36. Knowledge of the Defendants' conduct by a reasonable member of the community would arouse that person's resentment against the defendant and would lead a reasonable member of the community to conclude that the conduct was extreme and outrageous.
37. Plaintiff was peculiarly susceptible to emotional distress because of her parents' deaths.
38. Defendants knew or should have known that Plaintiff was peculiarly susceptible to emotional distress because of her parents' deaths.
39. Defendants' extreme and outrageous conduct was willful and wanton. As a direct and proximate result of Defendants' extreme and outrageous conduct, Plaintiff incurred and will continue to incur damages and losses, including loss of the money paid to Defendants, severe emotional distress, unpleasant mental reactions, nervous shock, horror, grief, humiliation, embarrassment, anger, disappointment, and worry.
40. A reasonably careful person, under the same or similar circumstances, would have anticipated that a person in Plaintiff's situation might suffer injury, and specifically, severe emotional distress, from Defendants' extreme and outrageous conduct.

WHEREFORE, Plaintiff pray for judgment in her favor and against Defendants Hess, Sunset Mesa, and Donor Services for such actual damages, general damages, special damages, consequential damages, and incidental damages as proven at trial, pre-judgment interest from the date of Defendants' extreme and outrageous conduct, post-judgment interest as provided for by law, Plaintiff's reasonable attorney fees and costs, including, without limitation, expert witness fees, deposition costs, and all other costs incurred in connection with the prosecution of this action, and all other damages to be determined at trial, and for such other and further relief as the Court deems just and proper in the premises.

SECOND CLAIM FOR RELIEF
(Plaintiff's Fraud Claim against Defendants Sunset Mesa and Hess)

41. Plaintiff hereby incorporates by reference the preceding paragraphs of the Complaint.

42. Sunset Mesa and Hess made representations to Four Corners and Plaintiff that concealed material facts about what the handling of Plaintiff's parents' remains.

43. Sunset Mesa's and Hess's cremation representations concerning their performance in accordance with all governing laws, the rules, regulations and policies of Sunset Mesa and Four Corners were false.

44. Sunset Mesa and Hess knew that their representations about their cremation services and underlying intentions to illegally harvest body parts and organs without consent or knowledge of Plaintiff were false when the representations were made.

45. Sunset Mesa's and Hess's representations were made with utter disregard and recklessness as to whether the representations were true or false.

46. Sunset Mesa and Hess had a duty to disclose the true material facts about their cremation services and underlying intentions to harvest body parts and organs.

47. Sunset Mesa and Hess made the representations with the intent to mislead Plaintiff.

48. Sunset Mesa and Hess intended for Plaintiff to rely on their representations.

49. Plaintiff reasonably and justifiably relied on Sunset Mesa's and Hess's representations concerning their cremation services.

50. Hess was authorized by Sunset Mesa to make representations to clients and potential clients, including Four Corners and Plaintiff, concerning the services that Sunset Mesa claimed it offered.

51. Sunset Mesa intended to be bound by the representations that Hess made to clients and potential clients, including Four Corners and Plaintiff, concerning Sunset Mesa's offered services.

52. Hess, on behalf of Sunset Mesa, made false and fraudulent representations concerning what Sunset Mesa would do in a simple cremation.

53. As a direct and proximate result of Sunset Mesa's and Hess's representations to Four Corners and Plaintiff about the cremation of Plaintiff's parents, Plaintiff incurred and will continue to incur damages and losses, including the money paid to Defendants, severe emotional

distress, unpleasant mental reactions, nervous shock, horror, grief, humiliation, embarrassment, anger, disappointment, and worry.

54. A reasonably careful person, under the same or similar circumstances, would have anticipated that persons in Plaintiff's situation might suffer injury, and specifically, severe emotional distress, from Sunset Mesa's and Hess's representations concerning cremation services to Plaintiff and the illegal harvest of body parts and organs without consent or knowledge of Plaintiff.

55. Sunset Mesa's and Hess's false and fraudulent representations were occasioned by malice or like motives.

56. It was reasonably foreseeable at the time that Sunset Mesa and Hess made the fraudulent representations that Plaintiff would sustain damages and losses, including severe emotional distress, mental anguish, unpleasant mental reactions, nervous shock, horror, grief, humiliation, embarrassment, anger, disappointment, and worry.

WHEREFORE, Plaintiff prays for judgment in her favor and against Defendants Sunset Mesa and Hess for such actual damages, general damages, special damages, consequential damages, and incidental damages as proven at trial, pre-judgment interest from the date of Defendants' fraud, post-judgment interest as provided for by law, Plaintiff's reasonable attorney fees and costs, including, without limitation, expert witness fees, deposition costs, and all other costs incurred in connection with the prosecution of this action, and all other damages to be determined at trial, and for such other and further relief as the Court deems just and proper in the premises.

**THIRD CLAIM FOR RELIEF
(Breach of Contract Claim against Defendant Sunset Mesa)**

57. Plaintiffs hereby incorporate by reference the preceding paragraphs of the Complaint.

58. Plaintiff and Sunset Mesa entered into a contract whereby Plaintiff agreed to pay Sunset Mesa for cremating her parents and returning the remains to Plaintiff.

59. Plaintiff completely and fully performed her obligations under the contract by paying Sunset Mesa.

60. Sunset Mesa breached the contract, without limitation, by absconding with Plaintiff's parents' remains, and harvesting or selling all or portions of her father's remains and her mother's pelvis, both arms from the shoulder down, right knee to her foot, left knee, and her head to Donor Services or other organ donation companies.

61. Sunset Mesa's breach of the contract between it and Plaintiff caused Plaintiff damages.

WHEREFORE, Plaintiff prays for judgment in her favor and against Defendant Sunset Mesa for such actual damages, general damages, special damages, consequential damages, and incidental damages as proven at trial, pre-judgment interest from the date of Defendant's breach of contract, post-judgment interest as provided for by law, Plaintiff's reasonable attorney fees and costs, including, without limitation, expert witness fees, deposition costs, and all other costs incurred in connection with the prosecution of this action, and all other damages to be determined at trial, and for such other and further relief as the Court deems just and proper in the premises.

FOURTH CLAIM FOR RELIEF
(Breach of Contract resulting in Severe Emotional Distress Claim against Defendant Sunset Mesa)

62. Plaintiff hereby incorporate by reference the preceding paragraphs of the Complaint.

63. Plaintiff and Sunset Mesa entered into a contract whereby Plaintiff agreed to pay Sunset Mesa for cremating her parents and returning her parents' remains to her.

64. Plaintiff completely and fully performed her obligations under the contract by paying Sunset Mesa.

65. Sunset Mesa breached the contract, without limitation, by absconding with Plaintiff's parents' remains, and harvesting or selling all or portions of her father's remains and her mother's pelvis, both arms from the shoulder down, right knee to her foot, left knee, and her head to Donor Services or other organ donation companies.

66. Sunset Mesa's breach of the contract caused Plaintiff damages.

67. Sunset Mesa's breach of the contract was willful and wanton.

68. Sunset Mesa's breach of contract was accompanied by its willful and wanton extreme and outrageous conduct.

69. As a direct and proximate result of Sunset Mesa's breach of contract, Plaintiff incurred and will continue to incur damages and losses, including loss of the money paid to Defendants, severe emotional distress, mental anguish, unpleasant mental reactions, nervous shock, horror, grief, humiliation, embarrassment, anger, disappointment, and worry.

70. It was reasonably foreseeable at the time that Sunset Mesa breached the contract that Plaintiff would sustain damages and losses, including severe emotional distress, mental anguish, unpleasant mental reactions, nervous shock, horror, grief, humiliation, embarrassment, anger, disappointment, and worry.

71. A reasonably careful person, under the same or similar circumstances, would have anticipated that a person in Plaintiff's situation might suffer injury, and specifically, severe emotional distress, from Sunset Mesa's breach of contract.

WHEREFORE, Plaintiff prays for judgment in her favor and against Defendant Sunset Mesa for such actual damages, general damages, special damages, consequential damages, and incidental damages as proven at trial, pre-judgment interest from the date of Defendant's breach of contract, post-judgment interest as provided for by law, Plaintiff's reasonable attorney fees and costs, including, without limitation, expert witness fees, deposition costs, and all other costs incurred in connection with the prosecution of this action, and all other damages to be determined at trial, and for such other and further relief as the Court deems just and proper in the premises.

FIFTH CLAIM FOR RELIEF

(Plaintiff's Colorado Consumer Protection Act Claim against Defendant Sunset Mesa)

72. Plaintiff hereby incorporate by reference the preceding paragraphs of the Complaint.

73. Sunset Mesa engaged in a deceptive trade practices, including, without limitation:

- a. Knowingly passing off services as those of another;
- b. Knowingly making a false representation as to the source, sponsorship, approval, or certification of services;
- c. Representing that services are of a particular standard, quality, or grade and knowing or should have known that they are of another;
- d. Advertises services with the intent not to sell them as advertised;
- e. Employing "bait and switch" advertising;
- f. Failing to disclose material information concerning services which information was known at the time of an advertisement or sale if such failure to disclosure such information was intended to induce the consumer to enter into a transaction; and
- g. Refusing or failing to obtain all governmental licenses or permits required to perform the services as agreed to or contracted for with a consumer.

74. The deceptive trade practices that Sunset Mesa engaged in occurred in the course of Sunset Mesa's business.

75. The deceptive trade practices that Sunset Mesa engaged in significantly impacted the public as actual or potential consumers of Sunset Mesa's services.

76. Plaintiff was an actual consumer of Sunset Mesa's services.

77. Plaintiff suffered injury in fact to a legally protected interest, including, without limitation, loss of money paid to Sunset Mesa, severe emotional distress, mental anguish, unpleasant mental reactions, nervous shock, horror, grief, humiliation, embarrassment, anger, disappointment, and worry.

78. The deceptive trade practices that Sunset Mesa engaged in caused Plaintiff to incur actual damages or losses.

79. The deceptive trade practices that Sunset Mesa engaged in were fraudulent, willful, knowing, and intentional.

80. Plaintiff is entitled to the damages permitted in Section 6-1-613, C.R.S. for Sunset Mesa's deceptive trade practices and bad faith conduct, including treble damages, attorney fees, and costs.

WHEREFORE, Plaintiff prays for judgment in their favor and against Defendant Sunset Mesa for such actual damages, general damages, special damages, consequential damages, and incidental damages as proven at trial, pre-judgment interest from the date of Defendant's breach of contract, post-judgment interest as provided for by law, Plaintiff's reasonable attorney fees and costs, including, without limitation, expert witness fees, deposition costs, and all other costs incurred in connection with the prosecution of this action, treble damages, and all other damages to be determined at trial, and for such other and further relief as the Court deems just and proper in the premises.

DATED January 4, 2019.

Respectfully submitted,

*/s/ Chris Cowan, Original Signature on
File in the offices of Downs,
McDonough & Cowan, LLC*

R. Chris Cowan, #48434
Attorney for Plaintiffs

Plaintiff's Address

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