

17-19018 October 12, 2017
Attorney for Defendant, Agave Azul Authentic
Mexican Restaurant 3 LLC
(JPS/ACS:nrw)

STATE OF INDIANA) TIPPECANOE CIRCUIT COURT
)
COUNTY OF TIPPECANOE) CAUSE NO. 79C01-1708-CT-000142

CYNTHIA ZDRAVICH, as Personal
Representative of the Estate of Alexander
Zdravich, Deceased, et al.,

Plaintiffs,

V.

AGAVE AZUL AUTHENTIC MEXICAN
RESTAURANT 3 LLC,

Defendant.

Judge Thomas H. Busch

ANSWER OF DEFENDANT TO
PLAINTIFFS' COMPLAINT

Comes now Defendant, Agave Azul Authentic Mexican Restaurant 3 LLC (“Agave Azul”), by and through its undersigned counsel, and for its Answer to Plaintiffs’ Complaint, states as follows:

1. Defendant denies the allegations contained in Paragraph 1 of Plaintiffs' Complaint for want of information sufficient to form a belief as to their truth.

2. Defendant admits the allegations contained in Paragraphs 2 through 6 of Plaintiffs' Complaint.

3. Defendant denies the allegations contained in Paragraph 7 of Plaintiffs' Complaint for want of information sufficient to form a belief as to their truth.

4. The allegations in Paragraph 8 of Plaintiffs' Complaint state conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 8.

5. The allegations in Paragraph 9 of Plaintiffs' Complaint state conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 9.

6. Defendant denies the allegations contained in Paragraph 10 of Plaintiffs' Complaint.

7. The allegations in Paragraph 11 of Plaintiffs' Complaint state conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 11.

8. Defendant denies the allegations contained in Paragraphs 12 through 19 of Plaintiffs' Complaint.

AFFIRMATIVE DEFENSES

1. The complaint fails to state a claim upon which relief can be granted.

2. Plaintiff was contributorily negligent.

3. Plaintiff assumed the risk.

4. The alleged injuries and damages were caused or contributed to by the actions of third-parties or other circumstances which constitute intervening or superseding causes.

5. Venue in this matter is improper.

6. This court lacks subject matter jurisdiction.

7. This court lacks personal jurisdiction.

8. Cynthia Zdravich is not the real party in interest in this matter.

9. The Plaintiff has failed to minimize or mitigate her damages.

WHEREFORE, Defendant, Agave Azul Authentic Mexican Restaurant 3 LLC prays that the Complaint be dismissed at cost to Plaintiffs, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ J. Patrick Schomaker
J. Patrick Schomaker, Esq. (25086-15)
Smith, Rolfes & Skavdahl Company, LPA
600 Vine Street, Suite 2600
Cincinnati, Ohio 45202
Phone: (513) 579-0080
Fax: (513) 579-0222
pschomaker@smithrolfes.com
Counsel for Defendant, Agave Azul Authentic Mexican Restaurant 3 LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served this 12th day of October, 2017, upon the following:

Sarah Jane M. Dufour, Esq.
Franklin Law Group
505 W. Ormsby Avenue
Louisville, Kentucky 40203
Counsel for Plaintiffs

/s/ J. Patrick Schomaker
J. Patrick Schomaker, Esq.