

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MAYDAY HEALTH,

*Plaintiff,*

v.

MARTY J. JACKLEY, Attorney  
General for the State of South Dakota  
in his official capacity,

*Defendant.*

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Case No. 1:26-cv-00078-KPF

ANSWER

COMES NOW, the above-named Defendant, Marty J. Jackley, Attorney General for the State of South Dakota, by and through his undersigned counsel, Amanda Miiller, Deputy Attorney General, and hereby provides his Answer to the Plaintiff's Complaint.

**PRELIMINARY STATEMENT<sup>1</sup>**

1. The first sentence of paragraph 1 contains Plaintiff's characterization of this action, to which no response is required. Regarding the remainder of paragraph 1, Attorney General Jackley admits only that he caused to be mailed a cease-and-desist letter to Plaintiff that directed it to refrain from any advertising related to the delivery of abortion drugs into the State of South Dakota, which is illegal under SDCL 22-17-5.1. Attorney General Jackley denies all other allegations contained in paragraph 1.

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<sup>1</sup> Defendant repeats the headings from Plaintiff's Complaint for ease of reference, without admission of the allegations contained therein.

2. Attorney General Jackley denies that Plaintiff publishes truthful information about reproductive healthcare, that Plaintiff has no customers, and that Plaintiff provides people with information they need to make informed reproductive healthcare choices, including terminating pregnancies lawfully. Attorney General Jackley lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 2.
3. Attorney General Jackley admits that he commenced an investigation into Plaintiff's advertising activities in the State of South Dakota at the request of Governor Larry Rhoden, as is his duty under SDCL 1-11-1(2). Attorney General Jackley denies the remainder of allegations contained in paragraph 3.
4. Paragraph 4 consists of legal conclusions couched as factual allegations, to which no response is required. To the extent that a response is required, the Attorney General denies that Plaintiff is publishing truthful information and denies that the State of South Dakota lacks a legitimate interest in protecting consumers from advertising that is deceptive and that promotes illegal conduct.
5. Paragraph 5 describes the relief sought in this action, to which no response is required. To the extent a response is required, Attorney General Jackley denies that Plaintiff is entitled to the relief sought or any other relief.

### **PARTIES**

6. Paragraph 6 consists of Plaintiff's characterization of itself, to which no response is required. To the extent a response is required, Attorney General Jackley lacks knowledge or information sufficient to form a belief about the truth of paragraph 6.
7. Attorney General Jackley admits to the allegations contained in paragraph 7.

### **JURISDICTION AND VENUE**

8. Attorney General Jackley denies this Court has subject matter jurisdiction over this action and respectfully requests the Court abstain under *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971), and defer to the action filed in South Dakota State Court on December 22, 2025, Case No. 32Civ25-000339.
9. Attorney General Jackley denies this Court has subject matter jurisdiction over this action and respectfully requests the Court abstain under *Younger*, 401 U.S. 37, and defer to the action filed in South Dakota State Court on December 22, 2025, Case No. 32Civ25-000339.
10. Attorney General Jackley denies this Court has personal jurisdiction over him under NY CPLR § 302 and the Due Process Clause.
11. Attorney General Jackley denies that venue is proper in this District.

**FACTUAL ALLEGATIONS**

12. Attorney General Jackley lacks knowledge or information sufficient to form a belief about the truth of paragraph 12.
13. Attorney General Jackley lacks knowledge or information sufficient to form a belief about the truth of paragraph 13.
14. Attorney General Jackley admits that a limited portion of the Plaintiff's website asks South Dakota consumers what category of information they are looking for—abortion, morning-after pills, birth control, or gender-affirming care. Attorney General Jackley lacks knowledge or information sufficient to form a belief about the truth of the remainder of paragraph 14.
15. Attorney General Jackley admits that Plaintiff's website advertises and facilitates access to abortion pills, such as mifepristone and misoprostol. Attorney General Jackley lacks knowledge or information sufficient to form a belief about the truth of the remainder of paragraph 15.
16. Attorney General Jackley denies that Plaintiff does not receive valuable consideration from the operation of its website. Plaintiff sells merchandise that displays Plaintiff's deceptive advertising messages and solicits charitable donations on its website. Attorney General Jackley lacks knowledge or information sufficient to form a belief about the truth of the remainder of paragraph 16.
17. Attorney General Jackley lacks knowledge or information sufficient to form a belief about the truth of paragraph 17.

18. Attorney General Jackley denies that Plaintiff provides truthful, non-commercial information. Attorney General Jackley lacks knowledge or information sufficient to form a belief about the truth of the remainder of paragraph 18.
19. Attorney General Jackley denies that Plaintiff ensures that individuals make informed decisions about their health and well-being. Attorney General Jackley lacks knowledge or information sufficient to form a belief about the truth of the remainder of paragraph 19.
20. Attorney General Jackley admits that signs were placed at gas stations around South Dakota that read: “Pregnant? Don’t want to be?” with a prompt for consumers to “Learn more” by visiting Mayday’s website. Attorney General Jackley lacks knowledge or information sufficient to form a belief about the truth of the remainder of paragraph 20.
21. Attorney General Jackley admits that paragraph 21 contains a limited, self-serving quote from an interview Plaintiff conducted with a local news station. Attorney General Jackley denies that the information Plaintiff provides through its advertising is accurate medical information. Attorney General Jackley lacks knowledge or information sufficient to form a belief about the truth of the remainder of paragraph 21.
22. Attorney General Jackley admits that Governor Larry Rhoden issued a press release on December 9, 2025, urging him to investigate Plaintiff’s activities because “[a]ccording to Keloland news, Mayday Health is

advertising abortion pills[,]” which are illegal in the State of South Dakota. Attorney General Jackley further admits that he stated, “[w]e will review these ads and determine if any laws have been broken.” Attorney General Jackley further admits that Governor Rhoden affirmed South Dakota’s pro-life stance. Attorney General Jackley lacks knowledge or information sufficient to form a belief about the truth of the remainder of paragraph 22.

23. Attorney General Jackley admits that he received a letter from Governor Larry Rhoden urging him to investigate Plaintiff’s activities, which he is entitled to do statutorily under SDCL 1-11-1(2). Attorney General Jackley admits that the Governor accused Plaintiff of “advertising an illegal service in the State of South Dakota” and that Plaintiff’s “comments . . . make clear that they are facilitating the mailing of pills into our state, which would be illegal under the telemedicine abortion ban signed during the Noem-Rhoden Administration.” Attorney General Jackley further admits that Governor Rhoden affirmed South Dakota’s pro-life stance. Attorney General Jackley lacks knowledge or information sufficient to form a belief about the truth of the remainder of paragraph 23.
24. Attorney General Jackley admits to paragraph 24 with the caveat that the Governor’s letter alleges that Plaintiff was “advertising an illegal service in the State of South Dakota[,]” not selling the pills itself. Emphasis added.
25. Attorney General Jackley admits that he commenced an investigation into Plaintiff’s advertising activities in the State of South Dakota. Attorney

General Jackley denies the remainder of allegations contained in paragraph 25.

26. As to the first sentence in paragraph 26, Attorney General Jackley admits that a portion of Investigator Klemann's investigation involved reading Mayday's website and reviewing some of the third-party websites to which Mayday's website links. Attorney General Jackley admits that his office received 657 complaints about the advertisement from South Dakota consumers including the one lodged by Cowboy Country Stores. The remainder of the paragraph calls for a legal response as, under SDCL 37-24-6, it is irrelevant whether a consumer was actually deceived. *See* SDCL 37-24-6 (listing prohibited acts and providing "regardless of whether any person has in fact been misled, deceived, or damaged thereby[.]"). Attorney General Jackley denies the remainder of allegations contained in paragraph 26.
27. Attorney General Jackley admits that he investigated Plaintiff's advertising activities in the State of South Dakota to determine whether any state laws had been broken. Attorney General Jackley denies the remainder of the allegations contained in paragraph 27.
28. Attorney General Jackley admits that he attempted to mail a cease-and-desist to Plaintiff's New York Address, but that letter was returned, unopened and marked undeliverable. Attorney Jackley admits that he directed Plaintiff to refrain from any advertising related to the delivery of

abortion drugs into the State of South Dakota. Attorney Jackley admits that he advised Plaintiff of the potential consequences under South Dakota law if they continued to engage in deceptive advertising. Attorney General Jackley denies the remainder of allegations contained in paragraph 28.

29. Attorney General Jackley admits that he received a letter from Plaintiff's counsel dated December 19, 2025, wherein Plaintiff refused to comply with the cease-and-desist letter. Attorney General Jackley admits that within the letter Plaintiff denied engaging "the sale or advertisement of any merchandise[,] despite Attorney General Jackley's investigation finding that Plaintiff 1) engages in the sale of merchandise that displays Plaintiff's deceptive advertising messages; 2) advertises merchandise and services; and 3) solicits charitable donations on its website; bringing Plaintiff squarely within South Dakota's regulatory jurisdiction under SDCL 37-24-6. Attorney General Jackley denies the remainder of allegations in paragraph 29.

30. Attorney General Jackley lacks knowledge or information sufficient to form a belief about the truth of paragraph 30.

31. Attorney General Jackley admits that he commenced an action against Plaintiff on December 22, 2025, in a South Dakota State Court. Attorney General Jackley denies that he did not properly serve Plaintiff under SDCL 37-24-23 and 37-24-16. Attorney General Jackley denies that he was required to file summons and complaint under SDCL 37-24-23 and 37-24-



16. Attorney General Jackley denies the remainder of allegations in paragraph 31.
32. Attorney General Jackley denies the allegations contained in paragraph 32.
33. Attorney General Jackley denies the allegations contained in paragraph 33. and respectfully moves this Court to strike Plaintiff's mischaracterization that his press release dated June 13, 2024, acknowledged that federal rules permit access to abortion pills by mail in South Dakota. The press release informed the public that the ruling did not impact South Dakota's state abortion laws and that the illegality of mifepristone in South Dakota remained the same.
34. Attorney General Jackley denies that the information on Plaintiff's website, whether original content or that which has been disseminated or reproduced on behalf of others, is true. Attorney General Jackley further denies that his press release dated June 13, 2024, acknowledged that federal rules permit access to abortion pills by mail in South Dakota. The press release informed the public that the ruling did not impact South Dakota's state abortion laws and that the illegality of mifepristone in South Dakota remained the same. Attorney General Jackley respectfully requests the Court to strike Plaintiff's mischaracterization.
35. Attorney General Jackley denies the allegations contained in paragraph 35.
36. Attorney General Jackley lacks knowledge or information sufficient to form a belief about the truth of paragraph 36.

37. Attorney General Jackley lacks knowledge or information sufficient to form a belief about the truth of paragraph 37.

38. Attorney General Jackley lacks knowledge or information sufficient to form a belief about the truth of paragraph 38.

**CLAIMS FOR RELIEF**

39. Paragraph 39 does not require a response.

40. Attorney General Jackley admits paragraph 40.

41. Attorney General Jackley admits paragraph 41.

42. Attorney General Jackley admits paragraph 42.

43. Attorney General Jackley denies the allegations contained in paragraph 43.

44. Attorney General Jackley denies the allegations contained in paragraph 44.

45. Attorney General Jackley denies the allegations contained in paragraph 45.

46. Attorney General Jackley denies the allegations contained in paragraph 45.

47. Paragraph 47 does not require a response.

48. Attorney General Jackley admits paragraph 48.

49. Attorney General Jackley admits paragraph 49.

50. Attorney General Jackley admits paragraph 50.

51. Attorney General Jackley denies the allegations contained in first sentence of paragraph 51. Attorney General Jackley lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in the second sentence of paragraph 51.

52. Attorney General Jackley denies the allegations contained in paragraph 52.

53. Attorney General Jackley denies the allegations contained in paragraph 53.

54. Attorney General Jackley denies the allegations contained in paragraph 54.

### **PRAYER FOR RELIEF**

The remainder of the Complaint consists of Plaintiff's prayer for relief, to which no response is required; to the extent a response is deemed required, Defendant denies that Plaintiff is entitled to the relief requested or to any relief at all.

Except to the extent expressly admitted or qualified above, Defendant denies each and every allegation of the Complaint.

### **AFFIRMATIVE DEFENSES**

1. Defendant affirmatively alleges this Court lacks subject matter jurisdiction over this action and respectfully requests the Court abstain under *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971), and defer to the action filed in South Dakota State Court on December 22, 2025, Case No. 32Civ25-000339.
2. Defendant affirmatively alleges this Court lacks personal jurisdiction over him under NY CPLR § 302 and the Due Process Clause.
3. Defendant affirmatively alleges this Court is the improper venue for this matter.
4. Defendant affirmatively alleges that Plaintiff has failed to state a claim upon which relief can be granted.

5. Defendant affirmatively alleges he is immune from suit based on sovereign and qualified immunity.
6. Defendant affirmatively alleges there was no intent, purpose, or deliberate indifference on his part to deny Plaintiff its constitutional or statutory rights, or any rights alleged to have been deprived by the Complaint, and the Plaintiff is barred from any relief therein.

Notwithstanding this Answer, Defendant reserves all rights concerning the Court's lack of personal and subject matter jurisdiction, which has been asserted at each proceeding in this matter.

Defendant may have additional defenses that are not known at this time. Defendant reserves the right to assert each and every affirmative or other defense that may be available, including any defenses available pursuant to Rule 8 and 12 of the Federal Rules of Civil Procedure.

**WHEREFORE**, for the reasons stated above, Defendant, Attorney General Marty J. Jackley, respectfully requests that Plaintiff's request for declaratory and injunctive relief be denied in all respects and that Plaintiff's Complaint be dismissed with prejudice, in its entirety, and judgment be entered in favor of Defendant. Defendant further requests recovery of their costs and disbursements, and for such other and further relief that the Court deems proper and just. In the event this matter proceeds to trial, Defendant hereby demands a trial by jury on the factual issues of truthfulness presented in this matter pursuant to Rule 38(b)(1) of the Federal Rules of Civil Procedure.

Dated this 26th day of January, 2026.

/s/ Amanda Miiller

By: Amanda Miiller (SD Bar No. 4271)

*pro hac vice*

Deputy Attorney General

Marty J. Jackley

*pro hac vice*

South Dakota Attorney General

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#### **CERTIFICATE OF SERVICE**

I hereby certify that on the 26th day of January, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Southern District of New York by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/Amanda Miiller

By: Amanda Miiller (SD Bar No. 4271)

*pro hac vice*

Deputy Attorney General