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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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ZACH JOHNSTON; BARBIE JOHNSTON;  
and ROES I-X,

Plaintiffs,

v.

INTERMOUNTAIN HEALTHCARE;  
INTERMOUNTAIN NORTH OGDEN  
CLINIC; MCKAY-DEE HOSPITAL; ASL  
COMMUNICATIONS; and ROES I-X,

Defendants.

**MEMORANDUM DECISION AND  
ORDER GRANTING MOTION  
FOR SUMMARY JUDGMENT**

Case No. 1:18-cv-0003-DN-DBP

District Judge David Nuffer

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Plaintiffs Zach and Barbie Johnston assert several claims against Defendants Intermountain Healthcare, Intermountain North Ogden Clinic, and McKay-Dee Hospital (collectively “Intermountain”) arising from multiple hospital visits at which the Johnstons allegedly requested, but were denied or refused accommodation for their hearing-impaired status.<sup>1</sup> Intermountain seeks summary judgment on the Johnstons’ claims arguing:

(i) the Johnstons’ claims based on events prior to March 22, 2017, are barred because the Johnstons did not disclose the claims in their prior bankruptcy proceedings;<sup>2</sup>

(ii) the Johnstons’ claims based on alleged conduct occurring before January 5, 2016, are time barred;<sup>3</sup>

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<sup>1</sup> Second Amended Complaint, [docket no. 51](#), filed Nov. 28, 2018. The Johnstons’ Second Amended Complaint identifies Intermountain Healthcare, Intermountain North Ogden Clinic, and McKay-Dee Hospital as defendants. *Id.* However, the correct name is IHC Health Services, Inc., of which the named entities are dbas.

<sup>2</sup> Intermountain’s Motion for Summary Judgment at 21-24, [docket no. 100](#), filed Sept. 12, 2019.

<sup>3</sup> *Id.* at 24-25.

(iii) the Johnstons' claims fail because the undisputed evidence demonstrates that Intermountain provided the Johnstons with effective communication;<sup>4</sup>

(iv) the Johnstons' claims seeking monetary damages fail because there is no evidence that Intermountain acted willfully or that the Johnstons suffered damages;<sup>5</sup>

(v) the Johnstons' professional negligence claim is barred because the Johnstons failed to provide the required notice and participate in pre-litigation procedures;<sup>6</sup>

(vi) the Johnstons' claim for injunctive relief is moot;<sup>7</sup> and

(vii) the Johnstons lack standing to seek injunctive relief.<sup>8</sup>

The Johnstons' response to Intermountain's Motion for Summary Judgment was due October 10, 2019.<sup>9</sup> The Johnstons failed to timely file a response. And to date, the Johnstons have not filed a response nor sought an extension of time to respond.

Pursuant to local rule, "[f]ailure to respond timely to a motion for summary judgment may result in the court's granting the motion without further notice, provided the moving party has established that it is entitled to judgment as a matter of law."<sup>10</sup>

Intermountain's Motion for Summary Judgment sets forth 80 undisputed material facts, which cite to record evidence.<sup>11</sup> These undisputed material facts support Intermountain's arguments and demonstrate that Intermountain is entitled to judgment on the Johnstons' claims as a matter of law.

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<sup>4</sup> *Id.* at 26-28.

<sup>5</sup> *Id.* at 29-35.

<sup>6</sup> *Id.* at 35-37.

<sup>7</sup> *Id.* at 37-39.

<sup>8</sup> *Id.* at 39-40.

<sup>9</sup> DUCivR 7-1(b)(3)(A).

<sup>10</sup> DUCivR 56-1(f).

<sup>11</sup> Motion for Summary Judgment at 4-21.

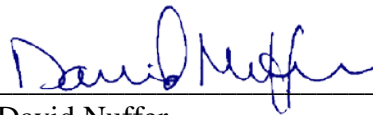
**ORDER**

THEREFORE, IT IS HEREBY ORDERED that Intermountain's Motion for Summary Judgment<sup>12</sup> is GRANTED. The Johnstons' claims against Intermountain<sup>13</sup> are DISMISSED with prejudice.

The Clerk is directed to close the case.

Signed November 20, 2019.

BY THE COURT



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David Nuffer  
United States District Judge

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<sup>12</sup> Docket no. 100, filed Sept. 12, 2019.

<sup>13</sup> Second Amended Complaint ¶¶ 49-107.