

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

TAMARA HOLDER and)
JOHANNA J. RAIMOND,)
)
Plaintiffs,) Case No. 2020CH00678
)
CUNNINGHAM, MEYER &)
VERDINE, P.C., MICHAEL R. SLOVIS, and)
CHAD M. SKARPIAK,)
)
Defendants.)

8132302

VERIFIED COMPLAINT

Now come the plaintiffs, Tamara Holder, and Johanna J. Raimond., and
complain of defendants, Cunningham, Meyer & Verdine, P.C., Michael R. Slovis, and
Chad M. Skarpiak as follows:

VENUE AND JURISDICTION

1. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101 because transaction or some part thereof occurred in Cook County, Illinois, and the causes of action arise, in relevant part, in Cook County.
2. Jurisdiction is proper in this Court pursuant to 735 ILCS 5/2-209 because defendants have entered into a contract in Illinois and committed tortious acts in Illinois, and as a result, caused harm in Illinois.
3. Pursuant to the Illinois Constitution art. VI, §9, this Court has subject matter jurisdiction over plaintiffs' claims.

PARTIES

4. Plaintiff Tamara Holder is the principal of The Law Firm of Tamara N. Holder, LLC ("Holder"), and is licensed to practice law in the State of Illinois.

5. Plaintiff Johanna J. Raimond is the principal of Law Offices of Johanna J. Raimond Ltd. ("Raimond"), and is licensed to practice law in the State of Illinois.

6. Defendant Cunningham, Meyer & Verdine, P.C. ("Cunningham Group") is licensed to do business in the State of Illinois.

7. Defendant Michael R. Slovis ("Slovis") is an attorney employed by defendant Cunningham Group.

8. Defendant Chad M. Skarpiak ("Skarpiak") is an attorney employed by defendant Cunningham Group.

NATURE OF THE CASE

9. Plaintiffs represent Jane Doe, who filed a lawsuit on July 16, 2019, in DuPage County, Illinois, alleging among other things, that her doctor, Dr. Samuel Botros ("Botros"), engaged in predatory conduct and sexually abused her during a procedure at his medical clinic, Med Spa Womens Health Center ("Med Spa"), where she trusted was a safe place.

10. Defendants represent Botros and Med Spa.

11. Upon Botros' request, in December 2019, Jane Doe agreed to attempt to resolve the litigation through a mediation. The parties retained the services of ADR

Systems to facilitate the mediation and a former Cook County law division judge to serve as mediator.¹

12. Prior to the mediation, the parties entered into a written Mediation Agreement. Slovis, on behalf of Botros and defense counsel, and Raimond, on behalf of Jane Doe and plaintiff's counsel, signed the Agreement on December 17, 2019, and December 24, 2019, respectively. The contract is attached to this complaint as Exhibit A.

13. Paragraph III of the Mediation Agreement, entitled "Rules Governing Mediation" states: "Each party to this agreement hereby agrees to submit the above dispute for mediation to ADR Systems of America, L.L.C. The Parties further agree that The Honorable REDACTED, shall serve as the mediator in this matter."

14. Paragraph III(A)(1), entitled "Confidentiality Agreement," states:

1. Mediation is a facilitated negotiation. All offers, promises, conduct and statements, whether oral or written, made in the course of the Mediation, including those made in Pre-Mediation and Post-Mediation submissions to the Mediator collectively, by any Party, witness and/or the Mediator,

a. shall be considered confidential and privileged settlement communications that may only be disclosed to persons associated with the Parties;

b. shall be deemed inadmissible and may not be used for any purpose, in any arbitration, judicial, administrative or regulatory proceeding (other proceedings); and

¹ Plaintiffs have redacted the name of the mediator out of respect for his privacy.

c. may not be disclosed to non-participants in the Mediation (including any arbitrator, hearing officer or court).

(Exhibit A at 1).

15. The mediation was held on December 27, 2019, in Chicago, Illinois.

16. The mediation ended without a settlement; however, the parties agreed to continue confidential settlement discussions with the assistance of the mediator.

17. That evening, the mediator memorialized the confidential mediation in an email to the attorneys. The top of his email, which he sent to defendants and plaintiffs, was marked "Confidential."

18. On January 9, 2020, the parties returned to DuPage County for a routine status call on the pending litigation. Plaintiff Raimond appeared for the plaintiff.

19. At the status, and without providing proper notice to plaintiffs pursuant to DuPage County Rule 6.08 governing emergency motions, defendant Skarpiak stated to the judge that he was, *sua sponte*, filing an Emergency Motion for Protective Order to Limit Public Extra Judicial Statements, claiming, without citation to a supporting affidavit, in part:

Counter-defendants have been apprised that if mediation is unsuccessful that plaintiff will begin to engage in further extrajudicial dissemination of this case through press conference and other extrajudicial means.

(Exhibit B, Defendants' Emergency Motion at ¶10).

20. Alarmed at the prospect raised by defendants that they had been “apprised” plaintiffs had imminent plans to contact the press, the DuPage County judge granted the emergency motion on a temporary basis, and imposed a gag order on plaintiffs Holder and Raimond and their client Jane Doe pending a final rule. (Exhibit C, January 9, 2020 Order). That gag order is in place as of the time of the filing of this complaint.

21. The DuPage County judge required, however, defendants to file an affidavit disclosing their source of their allegation that they were “apprised” that plaintiff would make extrajudicial statements about the case if the mediation is unsuccessful. This was the sole allegation in defendants brief that gave cause for granting the gag order pending a filing ruling on the motion.

22. On January 13, 2020, defendant Slovis filed an Affidavit in Support of the Protective Order stating in relevant part:

- a. I was present for the mediation.
- b. Judge REDACTED advised the defense that Plaintiff stated that if the case was not resolved by the time limit, she would go to the press and use social media to raise the case’s profile.

(Exhibit D, Affidavit of Michael Slovis).

23. The affidavit a bald-faced lie and is hearsay.

24. Regardless, any statements made, or allegedly made, during a mediation are privileged communications under the Illinois Uniform Mediation Act, 710 ILCS 35/1

et al., which provides that a mediation communication is not admissible in evidence in a judicial proceeding. 710 ILCS 35/4.

25. Additionally, the written Mediation Agreement provides that statements made during mediation “shall be considered confidential and privileged” and “shall be deemed inadmissible and may not be used for any purpose” in a judicial proceeding. (Ex. A at 1).

26. Mediation is deemed by the legal profession as one of the safest places for the parties and their lawyers, as well as the mediator, to air out their differences in an attempt to settle their disputes. “This general concern for professional standards is nowhere greater than in relation to mediation...the absence of any structure of procedural or substantive rules in mediation is viewed as presenting the greatest danger of abuse by inept or unscrupulous practitioners.”²

27. The defendants here are not inept but they are unscrupulous. They have abused the integrity of the practice of law and the sanctity of the mediation process.

28. The defendants have also misrepresented (ret.) Judge REDACTED’s statements made to them in a confidential mediation, in an effort to obtain an expeditious court ruling in their favor.

29. Defendants’ unethical and illegal tactic worked to their benefit: The DuPage County judge granted a temporary gag order on plaintiffs, thus denying them their First Amendment right to free speech.

² Robert A. Baruch Bush, *Efficiency and Protection, or Empowerment and Recognition?: The Mediator's Role and Ethical Standards in Mediation*, 41 U. Fla. L. Rev. 253 (1989).

30. When ADR Systems learned of what defendants had done they took swift action. On January 16, 2020, ADR Systems sent defendants a letter advising them that their statements to the DuPage County court violated the Mediation Agreement as well as the Illinois Uniform Mediation Act, and asked them to take action in the DuPage County case to strike any reference to the mediation and amend their affidavit so that it made no reference to mediation statements. (Exhibit E, ADR Letter to Defendants).

31. As of the filing of this complaint, defendants have not done as ADR requested. Indeed, as of the time of the filing of this complaint defendants have not taken any action to mitigate the damage caused by their breach of contract and violation of the Illinois Uniform Mediation Act.

32. The temporary gag order has had, and continues to have, an immediate, direct, and adverse impact on plaintiffs as it operates as a prior constraint on their First Amendment rights.

33. Moreover, plaintiffs have had to, and continue to have to, spend hours responding to the DuPage County emergency motion, which thus far has resulted in thousands of dollars in plaintiffs' time.

COUNT I
Breach of Contract
(by all plaintiffs against all defendants)

34. Plaintiffs incorporate all paragraphs of this complaint as if fully set forth under this count.

35. Defendants are in breach of the Mediation Agreement contract through the above-established facts.

36. Defendants' breach of contract caused, and continues to cause, plaintiffs harm through the abridgement of their First Amendment rights and the value of their time in responding to a motion that is based on information that defendants are barred, by contract and statute, from using in a judicial proceeding.

COUNT II
Willful and Wanton Conduct
(by all plaintiffs against all defendants)

37. Plaintiffs incorporate all paragraphs of this complaint as if fully set forth under this count.

38. Defendants had "actual" or "deliberate" intent to injure plaintiffs or acted with utter indifference and/or conscious disregard of the Mediation Agreement and the Illinois Uniform Mediation Act.

39. Defendants were conscious, from their knowledge of the surrounding circumstances and existing conditions, that their conduct would naturally and probably result in injury to plaintiffs.

40. Defendants did, in fact, injure plaintiffs by using confidential information they obtained from the mediation in breach of the Mediation Agreement and in violation of the Uniform Mediation Act, to obtain a gag order against the plaintiffs and cause them to expend thousands of dollars in attorney time responding to a motion based on such confidential information.

COUNT IV
Negligence
(by all plaintiffs against all defendants)

41. Plaintiffs incorporate all paragraphs of this complaint as if fully set forth under this count.

42. The above-described facts constitute negligence under Illinois law.

43. Plaintiffs and defendants entered into a legally valid, written Mediation Agreement.

44. Defendants engaged in negligent conduct by disclosing information other than to the “persons associated with the Parties,” in violation of the Mediation Agreement.

45. Defendants engaged in negligent conduct by disclosing to the DuPage County court confidential information they claim came from the mediation, in violation of the Mediation Agreement and the Uniform Mediation Act.

COUNT V
Violation of Uniform Mediation Act, 710 ILCS 35/3
(by all plaintiffs against all defendants)

46. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

47. The above-described facts constitute a violation of the Uniform Mediation Act under Illinois law.

48. Plaintiffs and defendants entered into a legally valid, written Mediation Agreement contract.

49. Pursuant to the Uniform Mediation Act, "Unless subject to the Open Meetings Act or the Freedom of Information Act, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this State. 710 ILCS 35/8.

50. Defendants breached the Uniform Mediation Act by disclosing confidential mediation communications to the DuPage County court.

51. Plaintiffs were injured as a result of defendants' disclosure.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs Tamara Holder and Johanna Raimond respectfully request that this Court grant judgment against defendants and award plaintiffs all remedies provided by the law including but not limited to:

1. A mandatory injunction ordering defendants to withdraw their motion and defendant Slovis's affidavit in support of their motion.
2. A declaratory judgment that defendants have breached the Mediation Agreement contract and the Uniform Mediation Act;
3. A permanent injunction enjoining defendants from continuing to use any information obtained from the confidential mediation, as well as subsequent conversations and emails with (Ret.) Judge REDACTED, related to the Jane Doe matter;
4. Compensatory damages;
5. Consequential damages, including but not limited to compensation for the attorney hours expended in responding to defendants' emergency motion;
6. Pre-judgment and post-judgment interest on the above damages;

7. Punitive damages;
8. Out of pocket losses, attorney's fees, costs and litigation expenses; and
9. All other relief this Court deems fair and just.

Respectfully submitted,


/s/ Tamara Holder
One of the Plaintiffs

Tamara Holder
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Cook County Attorney No. 41895

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Cook County Attorney No. 43475

VERIFICATION

I, Tamara Holder, under penalties provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, hereby certify that I have read the foregoing Verified Complaint; that the factual statements set forth in this Verified Complaint are true and correct, except for those alleged on information and belief; and that I am informed and I believe that the facts alleged on information and belief are also true.



Tamara Holder

EXHIBIT A



Mediation Agreement
ADR Systems File # 47075MNB
Insurance Claim # Court # 19L 773 (Dupage)

I. Parties

- A. Jane Doe, by attorneys, Tamara Holder and Johanna Raimond
 - B. Dr. Samuel Botros and Women's Med Spa, by attorney, Michael Slovis
- **SPECIAL BILLING – Section V.B.5 – Party B has agreed to pay the total cost of the Mediation.**

II. Date, Time and Location of the Non-Binding Mediation

Date: Friday, December 27, 2019
Time: 9:00 A.M. – 1:00 P.M.
Location: Cunningham, Meyer & Vedrine, P.C.
One E. Wacker Drive
Suite 2200
Chicago, IL 60601
Contact: Nikkita Brown
312.224.0562

III. Rules Governing the Mediation

Each party ("Party") to this agreement ("Agreement") hereby agrees to submit the above dispute for mediation ("Mediation") to ADR Systems of America, L.L.C., ("ADR Systems".) The Parties further agree that The Honorable [REDACTED] (Ret.) shall serve as the mediator ("Mediator") in this matter.

A. Confidentiality Agreement

1. Mediation is a facilitated negotiation. All offers, promises, conduct and statements, whether oral or written, made in the course of the Mediation, including those made in Pre-Mediation and Post-Mediation submissions to the Mediator collectively, ("Mediation Communication") by any Party, witness and/or the Mediator,
 - a. shall be considered confidential and privileged settlement communications that may only be disclosed to persons associated with the Parties;
 - b. shall be deemed inadmissible and may not be used for any purpose, in any arbitration, judicial, administrative or regulatory proceeding (other proceedings); and
 - c. may not be disclosed to non-participants in the Mediation (including any arbitrator, hearing officer or court).
2. The Parties shall not subpoena or otherwise seek to compel any of the participants, including any Party, the Mediator, ADR Systems employee, or any other person who participated in the Mediation, to testify about, respond to any request to admit, or respond to any discovery request regarding any Mediation Communication or any other aspect of the Mediation.

3. The Mediator will be disqualified as a witness, consultant or expert, for any Party in connection with any matter relating whatsoever to this dispute or the Mediation. The Mediator will treat any Mediation Communication as confidential and will refrain from disclosing any Mediation Communication except to the Parties.
4. No portion of the Mediation, including any conversation with the mediator or any other party participating in the Mediation, shall be recorded without written consent of all parties to that Mediation.

B. Effect of a Settlement Agreement

1. Notwithstanding anything to the contrary in this Agreement, an executed written settlement agreement shall be considered binding upon the Parties and may be enforced by any Party to the settlement agreement.
2. Information disclosed to or known by a Party through a source other than the Mediation, or that is otherwise discoverable or admissible, shall not be rendered confidential, privileged, inadmissible, or not discoverable solely as a result of its use in the Mediation.

C. Pre-Mediation Submission

1. The Parties agree that a submission of each Party's understanding of the facts and theory of liability and damages ("Submissions") presented to the Mediator prior to the Mediation would facilitate the Mediator's ability to conduct a more expeditious and effective Mediation.
2. The Submission should be delivered to the Mediator and may be exchanged between the Parties not less than **9 (nine)** days prior to the Mediation. If a Party deems a Submission to be confidential and to be read by the Mediator only, that Party must indicate as such in the Submission. The Submission may include the following (to the extent applicable):
 - a. Statement of facts, including a description of the injury and a list of special damages and expenses incurred and expected to be incurred;
 - b. Theory of liability and damages and authorities in support thereof;
 - c. Summary of opinion witnesses (including expert witnesses) and non-opinion fact witnesses;
 - d. Status of the case, and if in suit, expected trial date;
 - e. Last demand and offer, if any;
 - f. Photographs;
 - g. Police reports; and
 - h. Any other document not specifically referenced by any of the foregoing provisions that would assist the Mediator in understanding any claim and/or defense.
3. Each Party submitting a Submission must deliver it to the Mediator and/or all other Parties no later than **Wednesday, December 18, 2019** at each of the following addresses:

If emailing Submissions, please send to submissions@adrsystems.com, however, any emailed and electronic form of Submissions over 50 pages, including exhibits, will incur a print charge.

The Honorable [REDACTED] (Ret.) (Mediator)
 C/O ADR SYSTEMS
 20 North Clark Street
 Floor 29
 Chicago, IL 60602

Tamara Holder, Esq. (Plaintiff Attorney)
LAW OFFICES OF TAMARA HOLDER
917 W Washington Blvd - Suite 222
Chicago, IL 60607

Johanna Raimond, Esq. (Plaintiff Attorney)
LAW OFFICES OF JOHANNA J. RAIMOND LTD.
431 South Dearborn - Suite 1002
Chicago, IL 60605

Michael Slovis, Esq. (Defense Attorney)
CUNNINGHAM, MEYER & VEDRINE, P.C.
One E. Wacker Drive - Suite 2200
Chicago, IL 60601

4. The Submission is considered delivered as of the date that one of the following events occur:
 - a. If mailed, by the date of the postmark;
 - b. If delivered by a courier or a messenger, the date the item is received by the courier or messenger; and
 - c. The date transmitted by facsimile or email.

IV. Mediation Participation

The Mediator prefers that counsel and the Parties participate in person at the Mediation. If this is not possible, opposing counsel shall be notified before the 14-day notice of cancellation and it will be presumed that the Parties have discussed this matter prior to consenting to the Mediation. If a Party will not participate in person at the Mediation, a representative with authority shall be in attendance. Opposing counsel shall also notify ADR Systems no less than two weeks prior to the Mediation whether special equipment is required for remote participation.

V. Mediation Costs

A. ADR Systems Fee Schedule

1. A deposit is required for the Administrative Fee, Mediator's estimated review, session, and follow-up time ("Mediation Costs"). Mediation session time is billed at a four hour minimum. The required deposit amount is **\$2,990.00 from Party B and is due by December 18, 2019**. Any unused portion of the deposit will be refunded based on the four hour session time minimum. If the Mediator's review, session and follow-up time go over the estimated amount, each Party will be invoiced for the additional time.
2. For sessions requiring multiple, consecutive days, Parties must reserve and submit a deposit to cover all days. Any unused days will be billed at the four hour minimum, unless the Mediator's time can be rescheduled. Example: if a session is scheduled for two consecutive days, and it concludes on day one, Parties are still responsible for the four hour minimum charge for day two, unless the Mediator's time can be rescheduled. For matters requiring multiple sessions, an additional administration fee will be assessed.
3. Mediation Costs are usually divided equally among all Parties, unless otherwise agreed upon by the Parties. **ADR Systems must be notified of special fee arrangements.**

4. All deposits are due two weeks prior to the session. ADR Systems reserves the right to cancel a session if deposits are not received from all Parties two weeks prior to the session.
5. ADR Systems requires **14-day notice in writing or via electronic transmission** of cancellation or continuance. For Mediations **cancelled or continued** within 14 days of the session, the Party causing the cancellation will be billed for the Mediation Costs of all the Parties involved, which includes the four hour per day minimum, review time, and any other expenses incurred ("cancellation fees"). If the cancellation is by agreement of all Parties, or if the case has settled, the cancellation fees will be split equally among all Parties, unless ADR Systems is instructed otherwise. The cancellation fees may be waived if the Mediator's lost time can be filled by another matter.

Administrative Fee	\$450.00 (Non-refundable)
Mediator's Review Time	\$600.00 per hour
Session Time	\$600.00 per hour
Mediator's Follow Up Time (if any)	\$600.00 per hour
Mediator's Travel Time (if any)	\$75.00 per hour

B. Responsibility for Payment **SPECIAL BILLING

1. Each Party and its counsel (including that counsel's firm) shall be jointly and severally responsible for the payment of that Party's allocated share of the Mediation Costs as set forth above.
2. All expenses and disbursements made by ADR Systems in connection with the Mediation, including, but not limited to, outside room rental fee, meals, express mail and messenger charges, and any other charges associated with the Mediation, will be billed ~~equally to the Parties at the time of the invoice.~~ *to Defendants. JR*
3. In the event that a Party and/or its counsel fails to pay ADR Systems in accordance with the terms of this Agreement, then that Party and/or its counsel shall be responsible for all costs, including attorney's fees, incurred by ADR Systems in connection with the collection of any amount due and owing. Payment of additional costs incurred by ADR Systems in connection with the collection of any amount due and owing shall be made within 15 days of invoice.
4. In the event ADR Systems' session rooms are completely booked on your selected session date, ADR Systems will attempt to find another complimentary venue for your session. If ADR Systems cannot find a complimentary venue or the parties cannot agree on the complimentary venue, ADR Systems reserves the right to schedule your case in a location that may involve a facilities charge. The facilities charge will be split equally among the parties unless ADR Systems is instructed otherwise.
5. ** Party B has agreed to pay the total cost of the Mediation.

C. Amendments to the Agreement

1. No Party shall amend the Agreement at any time without the consent and approval of such changes by the opposing Party, and ADR Systems.
2. When changes or amendments to the Agreement are being requested, the Parties shall inform the ADR Systems case manager by telephone. The agreed proposal must also be submitted to the ADR Systems case manager in writing, by fax or email, if necessary, and the changes **MUST** be made by ADR Systems. No changes made outside these guidelines will be accepted. Furthermore, if the amended Agreement made by ADR Systems is not signed by both Parties, the Agreement shall be enforced in its original form, without changes.


VI. Acknowledgment of Agreement

- A. By signing this Agreement, I acknowledge that I have read and agree to all the provisions as set forth above.
- B. Each Party is responsible for only his/her own signature where indicated and will submit this signed Agreement to ADR Systems within 10 days of receipt of the Agreement. Counsel may sign on behalf of the Party.

By: _____
Jane Doe / Plaintiff Date

By: _____
Tamara Holder / Attorney for the Plaintiff Date

By: _____
Jane Doe / Plaintiff Date

By:  _____ 12/24/19
Johanna Raimond / Attorney for the Plaintiff Date

By: _____
Michael Slovis / Attorney for the Defendant Date

ADR Systems File # 47075MNB
Court # 19L 773 (Dupage)
ADR Systems Tax I.D. # 36-3977108
Date of Hearing: Friday, December 27, 2019

3. In the event that a Party and/or its counsel fails to pay ADR Systems in accordance with the terms of this Agreement, then that Party and/or its counsel shall be responsible for all costs, including attorney's fees, incurred by ADR Systems in connection with the collection of any amount due and owing. Payment of additional costs incurred by ADR Systems in connection with the collection of any amount due and owing shall be made within 15 days of invoice.
4. In the event ADR Systems' session rooms are completely booked on your selected session date, ADR Systems will attempt to find another complimentary venue for your session. If ADR Systems cannot find a complimentary venue or the parties cannot agree on the complimentary venue, ADR Systems reserves the right to schedule your case in a location that may involve a facilities charge. The facilities charge will be split equally among the parties unless ADR Systems is instructed otherwise.

C. Amendments to the Agreement

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2. When changes or amendments to the Agreement are being requested, the Parties shall inform the ADR Systems case manager by telephone. The agreed proposal must also be submitted to the ADR Systems case manager in writing, by fax or email, if necessary, and the changes MUST be made by ADR Systems. No changes made outside these guidelines will be accepted. Furthermore, if the amended Agreement made by ADR Systems is not signed by both Parties, the Agreement shall be enforced in its original form, without changes.

VI. Acknowledgment of Agreement

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- B. Each Party is responsible for only his/her own signature where indicated and will submit this signed Agreement to ADR Systems within 10 days of receipt of the Agreement. Counsel may sign on behalf of the Party.

By: _____
Jane Doe / Plaintiff Date

By: _____
Tamara Holder / Attorney for the Plaintiff Date

By: _____
Johanna Raimond / Attorney for the Plaintiff Date

By: Michael Slovis 12/17/19
Michael Slovis / Attorney for the Defendant Date

ADR Systems File # 47075MNB
Court # 19L 773 (dupage)
ADR Systems Tax I.D. # 36-3977108
Date of Hearing: Friday, December 27, 2019

EXHIBIT B

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

JANE DOE,

Plaintiff,

v.

SAMUEL F. BOTROS and MED SPA WOMENS
HEALTH CENTER, LTD.,

Defendants,

Chris Kachiroubas
e-filed in the 18th Judicial Circuit Court
DuPage County
ENVELOPE: 8009502
2019L000773
FILEDATE: 1/9/2020 11:31 AM
Date Submitted: 1/9/2020 11:31 AM
Date Accepted: 1/9/2020 2:35 PM
KB

Case No. 2019 L 773

SAMUEL F. BOTROS and MED SPA
WOMENS HEALTH CENTER, LTD.,

Counter-Plaintiffs,

v.

JANE DOE,

Counter-Defendant.

**Defendant/Counter-Plaintiff's Emergency Motion for Protective Order to
Limit Public Extrajudicial Statements**

Defendants/Counter-Plaintiffs, Samuel F. Botros and Med Spa Women's Health Center, LTD, by their undersigned counsel, move this Honorable Court to enter a protective order limiting public extrajudicial statements by the parties and their counsel during the pendency of this case:

I. Background

1.) On July 24, 2019, Plaintiff/Counter-Defendant filed suit against these Defendants/Counter Plaintiffs alleging, among other things, allegations of sexual assault. (Complaint, attached as Exh. A).

2.) Ms. Doe sought to protect her privacy by filing a motion to proceed under fictitious name, which this Court granted, citing the nature of the claim alleged and balancing that claim against the public's right to access. (Ex. A at pp. 16–17).

3.) Even though acknowledging the inherently and “highly personal, personal, and private” nature of the allegations levelled in her complaint, Ms. Doe's complaint contained numerous inflammatory and ultimately irrelevant and inadmissible allegations against Defendants. Exh. A p. 2, ¶ 6 (lumping Defendant into “an increasingly long list of male doctors”); p. 6, ¶¶ 35–38 (allegations concerning other alleged unrelated statements made by unnamed third parties).

4.) Defendants/Counter-Plaintiffs subsequently filed a counter-claim against Ms. Doe, and on December 12, 2019, Plaintiff/Counter-Defendant, Jane Doe, filed a Motion to Dismiss Defendants/Counter-Plaintiff's Counter-Claim pursuant to 735 ILCS 5/2-615.

5.) Ms. Doe's motion levelled inflammatory and prejudicial statements, insinuating among other things that Defendants are akin to an individual with national notoriety. See Exh. B at p. 1, ¶¶ 1–3.

6.) Counter-Defendants have been made aware that Ms. Doe's counsel has published an article on her firm's website concerning this case. (Exh. C, printout of article, *last accessed* January 8, 2020)¹. The article is accessible publicly and appears if one searches for Dr. Botros online. The article contains statements from Ms. Doe's lawsuit, and also contains inflammatory insinuations such as:

- a. Police are investigating Ms. Doe's complaint and other unnamed complaints;
- b. Ms. Doe filed a complaint with the Department of Human Rights for retaliation.

¹ Defendants are currently not filing Exhibit C with the Clerk of Court, as further dissemination would compound the problem, but will provide a copy to Plaintiff's counsel and with this Court's courtesy copy.

- c. In bold and in italics, a statement concerning the exposure of “sexual predators” and doctors with “sexually deviant desires.”

See Exh. C.

7.) Ms. Doe did contact police in 2019—and the investigation has since concluded without charges filed. The article on counsel’s website remains without alteration, insinuating that investigations are still pending. Furthermore, the article is completely absent of any discussion that the litigation is disputed, that Defendants deny the claims against them, and that no determination of liability has ever been made.

8.) Plaintiff’s extrajudicial dissemination of this case will have deleterious and prejudicial effects on Defendants. The materials filed by Plaintiff in this case as well as on her counsel’s website employ inflammatory language that invite the reader to conclude that the allegations in this case have already been proven, and references to other alleged unrelated acts and other unrelated defendants constitute further inflammation of the proceedings.

9.) The parties recently attempted to mediate these disputed claims; discussions are still ongoing.

10.) Counter-Defendants have been apprised that if mediation is unsuccessful that Plaintiff will begin to engage in further extrajudicial dissemination of this case through press conference or other public means.

11.) Given the pervasiveness of media and the internet today, and the character of the case at bar, Plaintiff’s further extrajudicial dissemination of this case will ring a bell that cannot be un-rung, causing Defendants immediate and further reputational harm without ever being found liable in this Court. In addition to the innate prejudice caused by that reality, Plaintiff continued

efforts to publicize the case will unfairly prejudice potential jurors and this Court against Defendants.

II. Governing Standards

12.) “Few, if any, interests under the Constitution are more fundamental than the right to a fair trial by ‘impartial’ jurors, and an outcome affected by extrajudicial statements would violate that fundamental right.” *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1075 (1991); *see also* Ill. Const. 1970, art. 1 § 13 (“The right of trial by jury as heretofore enjoyed shall remain inviolate.”).

13.) “[The right of trial by jury] is the right to have the facts in controversy determined, under the direction and superintendence of a judge, by twelve impartial jurors who possess the qualifications and are selected in the manner prescribed by law.” *Kakos v. Butler*, 2016 IL 120377, ¶ 17 (quoting *Sinopoli v. Chicago Railways Co.*, 316 Ill. 609, 616, 147 N.E. 487 (1925)).

14.) Recognizing the prejudicial impact that extrajudicial statements can have on legal proceedings, our Supreme Court has promulgated rules professional conduct concerning extrajudicial statements—Rule 3.6. *See generally* ILL. SUP. CT. R.P.C. 3.6(b) (eff. Jan. 1, 2010) (“Trial Publicity”). In addition to the imprimatur given by the fact that this Rule and associated comments are promulgated by the Illinois Supreme Court, Rule 3.6 has also been found by the Northern District to comply with the First Amendment. *Devine v. Robinson*, 131 F. Supp. 2d 963, 969 (N.D. Ill. 2001).

15.) In the comments to Rule 3.6, our Supreme Court has noted that there are “certain subjects that would pose a serious and imminent threat to the fairness of a proceeding, particularly when they refer to a civil matter triable to a jury,” among other things, the 1.)

character or credibility of a party, or the expected testimony of a party or witness; 2.) information likely to be inadmissible at trial and, if disclosed, would create a substantial risk of prejudicing an impartial trial. ILL. SUP. CT. R.P.C. 3.6(b) at cmt. 5, ¶¶ 1–6.

16.) “The nature of the proceeding involved” is a relevant factor in determining the prejudice involved with an extrajudicial statement. *Id.* at cmt. 6.

17.) The case at bar includes allegations of sexual misconduct against an obstetrician. The allegations levelled are of the sort that, in the defamatory context, they are “so obviously and materially harmful” that injury is presumed by their publication. *E.g., Seith v. Chicago Sun-Times*, 371 Ill.App.3d 124, 134 (1st Dist. 2007) (quoting *Bryson v. News Am. Pub.*, 174 Ill.2d 77, 86 (1996)). Indeed, Plaintiff has certainly recognized the sensitive and personal nature of her allegations and decided to proceed under a pseudonym. Exh. A at 17–18.

18.) Given the allegations at bar, it is essentially inevitable that any extrajudicial statements would necessarily touch upon the character of the parties, as well as the credibility and expected testimony by the parties and by other potential witnesses. These types of statements have been presumed by our Supreme Court to pose a serious and imminent threat to the fairness of the proceeding. ILL. SUP. CT. R.P.C. 3.6(b) cmt. 5.

19.) Plaintiff has also demonstrated a willingness to rely on use of unrelated allegations and insinuations, such as in her motion to dismiss, which as this Court will appreciate would not be admissible to a jury. *See Exhs. B & C*. The statements contained within these documents are likewise presumed by the Illinois Supreme Court to pose serious and imminent threat to a fair proceeding. ILL. SUP. CT. R.P.C. 3.6(b) cmt. 5. Any attempt by Plaintiff to disseminate these materials in an extrajudicial manner will work further prejudice upon these Defendants.

20.) The danger is compounded by Plaintiff's decision to proceed anonymously. Defendants are inherently at a disadvantage with any sort of extrajudicial dissemination of this case. Indeed, any such dissemination is inherently paradoxical to Plaintiff's stated intent of maintaining anonymity. *See In re J.S.*, 267 Ill. App. 3d 145, 154 (2d Dist. 1994) (upholding order prohibiting parties and attorneys from discussing action with members of the media).

21.) As the U.S. Supreme Court has noted, "[t]he very word 'trial' connotes decisions on the evidence and arguments properly advanced in open court. Legal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper.'" *Gentile*, 501 U.S. at 1070 (quoting *Bridges v. California*, 314 U.S. 252, 271 (1941)).

22.) Defendants respectfully submit that Plaintiff has shown signs of attempting to pursue this case through extrajudicial means. Such an effort would cause irreparable harm to Defendants without any judicial determination of liability, and would constitute a functional deprivation of Defendants' right to a jury trial. This Court should properly protect against such a result.

III. Request for Relief

23.) It is within this Court's discretion to order limits upon the parties and their attorneys communications. *In re J.S.*, 267 Ill. App. 3d at 148. Defendants respectfully request that given the nature of this case and Plaintiff's prior activities, imposition of a protective order limiting public dissemination of extrajudicial statements is an appropriate and warranted exercise of that discretion to ensure that Defendants are afforded a full and fair opportunity to defend this case on the merits.

24.) Specifically, Defendants request that this Court enter a protective order equally precluding both parties and their counsel, during the pendency of this litigation and unless otherwise ordered by the Court, from:

- a. Discussing the case with the media;
- b. Disseminating information concerning this case to the public or subsets of the public (except for filing material with the Court), including press conferences, postings on websites and submissions on social media;
- c. Discussing the case with any third party other than the Court and its personnel (including court reporters); contractors, consultants, and experts engaged by counsel to assist in litigating the case; witnesses; and others by consent of the parties or by further Court order;
- d. Directing or causing third parties to engage in the activities in paragraphs 24(a)–(c).

25.) Defendants additionally request that this Court order Plaintiff's counsel to remove the article identified as Exhibit C to this motion from her website, along with any other posted materials that Plaintiff or her counsel may have posted about this lawsuit on publicly accessible media.

26.) The relief that Defendants seek above is narrowly tailored and appropriate given the issues at bar and the potential prejudice resulting from further extrajudicial dissemination.

WHEREFORE, Defendants respectfully request that this Honorable Court enter a protective order in this case, and provide Defendants such other and further relief as this Court deems just.

Respectfully Submitted,

/s/ Chad M. Skarpiak

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STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DUPAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
LAW DIVISION

JANE DOE,

Plaintiff,

SAMUEL F. BOTROS, and MED SPA
WOMENS HEALTH CENTER, LTD.

Defendants.

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) Case No. 2019L000773
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Chris Kachiroubas
e-filed in the 18th Judicial Circuit Court
DuPage County
ENVELOPE: 5781797
2019L000773
FILEDATE: 7/16/2019 11:16 AM
Date Submitted: 7/16/2019 11:16 AM
Date Accepted: 7/16/2019 11:42 AM
SR

COMPLAINT

Now comes the plaintiff, JANE DOE, by and through her attorneys, The Law Firm of Tamara N. Holder, LLC, and Law Offices of Johanna J. Raimond Ltd., and complains of defendants Samuel F. Botros and Med Spa Womens Health Center, Ltd. as follows:

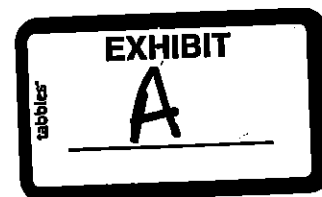
VENUE AND JURISDICTION

1. Venue is proper in the Circuit Court of DuPage County because the events giving rise to the instant claims occurred within DuPage County, in the State of Illinois, and at least one defendant resides in DuPage County, Illinois.

2. This case is being filed in the law division because the amount in controversy exceeds \$50,000.

PARTIES

3. Plaintiff is a resident of DuPage County in the State of Illinois.
4. Defendant Samuel F. Botros, M.D. is an obstetrics and gynecology doctor who received his license to practice medicine in the State of Illinois in 2007.



5. Defendant Med Spa Womens Health Center, Ltd. is an Illinois corporation located in Bloomingdale, Illinois, that is owned and operated by defendant Botros where he provides OB/GYN services, in addition to aesthetic "maintenance" treatments, such as laser hair removal, cellulite reduction and body sculpting.

INTRODUCTION

6. Samuel Fahmy Barak Botros, M.D. is yet another name on an increasingly long list of male doctors who gain the trust of, and access to, their female patients to then abuse and sexually assault them.

7. Jane Doe is a 30 year-old, single mother, who was born and raised in the Chicagoland area.

8. In late 2012, Ms. Doe became pregnant and her insurance company assigned her to Botros for her obstetric care.

9. On May 8, 2013, Botros delivered Ms. Doe's son at AMITA Health's Alexian Brothers Medical Center Elk Grove Village, where he is affiliated and holds privileges.

10. During the course of Ms. Doe's pregnancy, Botros earned the trust of Ms. Doe. As a result, she continued to see Botros at Med Spa for her subsequent gynecological examinations.

11. In May 2017, Ms. Doe saw Botros for her annual gynecological exam.

12. After the exam, the then-office manager approached Ms. Doe and told her that she and Botros wanted to speak to her in his office. When Ms. Doe entered the office, Botros and the then-office manager explained that she was leaving her job - as

both full-time manager and part-time laser tech – and asked Ms. Doe if she was interested in filling the part-time laser tech position.

13. Ms. Doe stated that she did not have any laser experience. The then-office manager and Botros told her that they would train and certify her on-site. They also said that she would be great for the job because Ms. Doe spoke fluent Polish and the clinic served many Polish-speaking women.

14. Botros promised to pay Ms. Doe, in addition to an hourly wage, a commission for every laser service she performed.

15. Ms. Doe accepted the employment offer and was excited about her new opportunity.

16. Botros set Ms. Doe's schedule for Tuesdays and Thursdays, as these were the days that the then-office manager/laser tech performed laser treatments.

17. Ms. Doe began training under the then-office manager/laser tech shortly thereafter.

18. On June 15, 2017, Botros performed a laser hair removal treatment on Ms. Doe's underarms and bikini area.

19. As is standard practice, Ms. Doe waited a month for her second treatment, in a series of treatments.

20. On July 18, 2017, Ms. Doe prepared for the second treatment by removing her clothing, covering her body with a paper gown and putting on protective goggles, as is standard practice.

21. Botros then entered the room, applied laser gel to her underarms, and performed the laser hair removal procedure on both of Ms. Doe's underarms without incident.

22. Then, Botros applied the gel on the frontal area of Ms. Doe's pubic region and performed the laser hair removal treatment on Ms. Doe's bikini area without incident. He then used her paper body cover to wipe off the gel from her pubic region.

23. As Ms. Doe waited for his instruction to turn onto her stomach so he could laser the backside of her pubic area, in an instant, Ms. Doe felt a bulge - that felt like an erection - press against right her arm and a hand grab her breast while simultaneously hearing his voice whisper in her ear, "I always wanted to taste you." Ms. Doe removed the goggles to see Botros' head between her legs while licking the inside of her vagina.

24. Ms. Doe immediately sat up on the table, pushed Botros' head away from her vagina and said something to the effect of, "What are you doing?!?"

25. Botros immediately apologized, said that he was having marital problems, then rushed out of the room.

26. Ms. Doe quickly dressed and left Med Spa. She convinced herself that she needed to forget about what Botros did to her.

27. When Ms. Doe reported for her next scheduled day of work, on Tuesday, July 25, 2017, the office manager told her that Botros changed her schedule to Wednesday and Fridays - days that Botros was either not in the office or had limited office hours.

28. The office manager commented to Ms. Doe that she thought it was strange that Botros had changed her schedule because she believed that, for liability purposes, he was supposed to be in the office when Ms. Doe was performing laser procedures.

29. Ms. Doe did not tell the office manager, or anyone else for that matter, that Botros sexually assaulted her and that she suspected Botros changed her schedule to avoid having contact with her. Ms. Doe was also afraid that if she told anyone what happened to her, she would lose her job.

30. Additionally, Ms. Doe did not make an issue of her new schedule because she was afraid, if she did, Botros would fire her. As a result, she proceeded to perform laser services on Wednesdays and Fridays. She continued to remain silent about her sexual assault because, again, she did not want Botros to fire her. She also attempted to avoid Botros if he was at Med Spa during the days that she was also working.

31. Med Spa did not pay Ms. Doe the commissions she was due. She was afraid to ask Botros why he was not paying her a commission on her services, as he promised.

32. Ms. Doe never received another laser hair treatment, or any other treatment for that matter, from Botros after he sexually assaulted her.

33. Approximately one year later, in June 2018, Ms. Doe requested to take time off to travel to Poland. Initially, Botros refused her request. Then, Botros told her that she could take time off work to go on vacation so long as she found someone who could fill in for her as a laser technician while she was gone. When Ms. Doe presented him with a replacement, he told her that he did not want someone who he did not know

to temporarily replace her. Botros then told Ms. Doe that he found another office staff member to perform the laser treatments in her temporary absence. As a result, Ms. Doe went to Poland.

34. When Ms. Doe returned a few weeks later, she called Med Spa to inquire about the time of her first appointment. She was told that Botros had replaced her and she no longer had a job.

35. Ms. Doe was devastated and immediately entered therapy. As a result, Ms. Doe gathered the courage to reach out to the former office manager who initially recruited her for the job and asked the woman if she would meet with her about a private matter.

36. Shortly thereafter, Ms. Doe met with the former office manager and told her that Botros sexually assaulted her. The former office manager, in response, told Ms. Doe that Botros had also sexually assaulted another former female employee. She then gave Ms. Doe the other woman's phone number.

37. Over text message, the former employee told Ms. Doe that Botros also sexually assaulted her.

38. Additionally, another former patient and employee told Ms. Doe over text message that she had an extramarital relationship with Botros and that he had impregnated her.

39. Ms. Doe remains in therapy, has been diagnosed with psychological conditions as a result of being sexually assaulted by Botros - a man who was both her

doctor and boss, and who she trusted implicitly. As a result, her life as she once knew it has been turned upside down.

40. Ms. Doe has since filed a report with the police and filed a timely charge with the Illinois Department of Human Rights. Both investigations remain open.

COUNT I
Violation of the Gender Violence Act
(against all defendants)

41. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

42. Botros violated the Gender Violence Act by sexually assaulting plaintiff.

43. Med Spa violated the Gender Violence Act by assisting Botros in sexually assaulting plaintiff.

44. Defendants' violations of the Gender Violence Act caused plaintiff harm, including but not limited to anxiety, humiliation and severe emotional distress.

COUNT II
Battery
(against all defendants)

45. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

46. The above-described sexual assault constitutes battery under Illinois law.

47. As a direct and proximate result of the above-described actions, plaintiff was harmed, including anxiety, humiliation and severe emotional distress.

48. Med Spa is responsible for the harm caused by Botros under principles of *respondeat superior* because it was in a master/servant relationship with Botros acting within the scope of his employment.

49. In the alternative, should the jury determine that Botros was acting outside the scope of his employment, Med Spa is liable based on § 317 of the Restatement of Torts, which has been adopted by the Illinois Supreme Court as a basis for vicarious liability.

COUNT III
Negligent Failure to Warn
(against all defendants)

50. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

51. Plaintiff was a female patient of defendant obstetrics and gynecological healthcare providers and thus shared a special relationship.

52. Defendants owed plaintiff a duty of care as their healthcare providers to warn plaintiff that Botros engaged in sexually perverted conduct against women over whom he exercised authority as a doctor and/or employer.

53. Defendants failed to warn plaintiff that Botros had, in fact, previously abused other patients and/or employees.

54. Med Spa is responsible for the harm caused by Botros under principles of *respondeat superior* because it was in a master/servant relationship with Botros acting within the scope of his employment.

55. In the alternative, should the jury determine that Botros was acting outside the scope of his employment, Med Spa is liable based on § 317 of the Restatement of Torts, which has been adopted by the Illinois Supreme Court as a basis for vicarious liability.

COUNT IV
Negligence
(against all defendants)

56. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

57. Plaintiff was a patient of defendants when she was receiving treatment.

58. Defendants owed plaintiff a duty of care as her healthcare provider.

59. Med Spa breached that duty of care by engaging in negligent conduct, including but not limited to engaging in sexually perverted and abusive conduct without the knowledge and consent of plaintiff.

60. Med Spa knew that Botros had sexually abused other patients and/or employees.

61. Med Spa breached its duty of care by allowing Botros to engage in sexually perverted and abusive conduct toward plaintiff, which was foreseeable given his past conduct.

62. As a direct and proximate result of the above-described acts and omissions, plaintiff was harmed, and suffered severe and permanent injuries of personal and pecuniary nature, including but not limited to anxiety, humiliation and severe emotional distress.

63. Med Spa is responsible for the harm caused by Botros under principles of *respondeat superior* because it was in a master/servant relationship with Botros acting within the scope of his employment.

64. In the alternative, should the jury determine that Botros was acting outside the scope of his employment, Med Spa is liable based on § 317 of the Restatement of Torts, which has been adopted by the Illinois Supreme Court as a basis for vicarious liability.

65. Med Spa also breached its duties, including but not limited to: failing to have policies and procedures in place to protect patients from sexual abuse; failing to have policies and procedures in place to allow patients to report questionable experiences with its doctors; failing to investigate allegations of sexual abuse; failing to provide female patients with a chaperone during exams with doctors who have engaged in prior sexual abuse; failing to train staff to recognize signs that patients were sexually abused; failing to adhere to proper standards of care; and failing to warn patients before appointments that their doctors have engaged in sexual abuse.

COUNT V
Negligent Infliction of Emotional Distress
(against all defendants)

66. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

67. The above described facts constitute negligent infliction of emotional distress.

68. As a direct and proximate result of the above-described actions, plaintiff was harmed, including anxiety, humiliation and severe emotional distress.

69. Botros is responsible for the harm he caused.

70. Med Spa is responsible for the harm caused by Botros under principles of *respondeat superior* because it was in a master/servant relationship with Botros acting within the scope of his employment.

71. In the alternative, should the jury determine that Botros was acting outside the scope of his employment, Med Spa is liable based on § 317 of the Restatement of Torts, which has been adopted by the Illinois Supreme Court as a basis for vicarious liability.

COUNT VI
Intentional Infliction of Emotional Distress
(against all defendants)

72. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

73. The above-described facts constitute intentional infliction of emotional distress.

74. As a direct and proximate result of the above-described actions, plaintiff was harmed, including anxiety, humiliation and severe emotional distress.

75. Botros is responsible for the harm he caused.

76. Med Spa is responsible for the harm caused by Botros under principles of *respondeat superior* because it was in a master/servant relationship with Botros acting within the scope of his employment.

77. In the alternative, should the jury determine that Botros was acting outside the scope of his employment, Med Spa is liable based on § 317 of the Restatement of Torts, which has been adopted by the Illinois Supreme Court as a basis for vicarious liability.

COUNT VII
Negligent Hiring, Supervision, Training and Retention
(against defendant Med Spa)

78. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

79. Med Spa had a duty not to hire and retain Botros given its knowledge of his history of sexually abusing patients and/or employees.

80. It was foreseeable that Botros would use his special relationship and position of trust to abuse plaintiff based on his past conduct.

81. Yet Med Spa failed to supervise Botros at any time in a manner such that it would have prevented him from sexually abusing other patients and/or employees.

82. Med Spa failed to train its staff to recognize signs of abusive doctor conduct, how to recognize signs of patient abuse at the hands of a doctor, and how to safely report suspected sexual abuse.

83. Med Spa failed create a system to investigate, supervise or monitor Botros at any time whatsoever and instead gave him unfettered access to its patients and/or employees.

84. As a result of these failures, Med Spa proximately caused plaintiff to be groomed, confused, and sexually assaulted by Botros.

85. Med Spa had actual or constructive notice, and knew or should have known, both prior to hiring Botros and throughout his employment, that Botros was a sexual predator yet it chose to allow him to examine patients without supervision.

86. As a result of the abovementioned conducts, plaintiff has, and will continue to suffer emotional distress, humiliation, and loss of enjoyment of life, loss of intimate relationships, and fear of medical professionals.

COUNT VIII
Violation of the Illinois Wage Payment and Collection Act
(against all defendants)

87. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

88. By failing to pay plaintiff the commissions owed her, defendants violated the Illinois Wage Payment and Collection Act.

COUNT IX
Breach of Contract
(against all defendants)

89. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

90. Defendants promised plaintiff (1) that she would be paid a commission; and (2) that she could take a vacation without forfeiting her job.

91. Defendants failed to (1) pay plaintiff the promised commission; and (2) fired plaintiff for taking a vacation she was promised she could take.

92. Plaintiff suffered damages as a result of defendants' breach.

COUNT X
Promissory Estoppel

(against all defendants)

93. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

94. Defendants made an unambiguous promise to plaintiff that she could take a vacation without forfeiting her job.

95. Plaintiff relied on that promise by taking the vacation.

96. Plaintiff's reliance was reasonable and foreseeable.

97. Plaintiff relied on defendants' promise to her detriment. Specifically, she was fired.

98. Plaintiff suffered damage as a result of defendants' actions.

WHEREFORE, plaintiff respectfully request this Court to grant judgment against defendants and award plaintiff all remedies provided by law including but not limited to out of pocket losses, expenses, compensatory damages, emotional distress damages, statutory damages, punitive damages, injunctive relief, payment of reasonable costs and attorneys' fees, including expert fees, and all other relief this Court deems fair and just.

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY.

Respectfully submitted,

JANE DOE

/s/ Tamara N. Holder
One of the Attorneys for Plaintiff

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STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DUPAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
LAW DIVISION

JANE DOE,

Plaintiff,

SAMUEL F. BOTROS, and MED SPA
WOMENS HEALTH CENTER, LTD.

Defendants.

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ORDER

This matter coming to be heard on Plaintiff's Petition to Proceed under a Fictitious Name, the Court being fully advised and having heard argument, the Court finds as follows:

Pursuant to *In re Marriage of Johnson*, 232 Ill. App. 3d 1068 (4th Dist. 1992), the Court has balanced Plaintiff's right to privacy against the public's right of access to open court proceedings. Plaintiff contends she has a compelling interest because she was a victims of sexual abuse, which is highly personal, private and sensitive.

The Court finds there is a compelling interest that favors Plaintiff's right to privacy in keeping her name from the public and such right is superior to the public's right of access to an open proceeding. *See Doe v. Doe*, 282 Ill App. 3d 1078, 1088 (1st Dist. 1996).

The Court further finds that the privacy issue involved shall be protected in the least restrictive way possible. The Court finds that the least restrictive way to protect the privacy of Plaintiff is allowing her to proceed under a fictitious name.

This order may be reconsidered if Plaintiff takes any steps to make her name known to the public and shall be reconsidered by the trial judge at the time of jury selection.

Plaintiff shall file a copy of the Complaint with her actual name under seal with the Clerk of the Court and to remain under seal until further order of the Court.

ENTERED: 

DATED: 7-16-19

Order Prepared by:

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STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DUPAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
LAW DIVISION

JANE DOE,

Plaintiff,

SAMUEL F. BOTROS, and MED SPA
WOMENS HEALTH CENTER, LTD.

Defendants.

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) Case No. 2019 L 000773
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) Judge Schwartz – Room 2010
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**PLAINTIFF'S 735 ILCS 5/2-615 MOTION TO DISMISS
DEFENDANTS' COUNTERCLAIMS**

Pursuant to 735 ILCS 5/2-615, plaintiff, by and through her attorneys, moves to dismiss defendants' counterclaims. In support of her motion she states:

INTRODUCTION

1. Dr. Samuel Botros abused his position as Jane Doe's doctor and employer by sexually assaulting her. Now that she has filed a lawsuit to hold him responsible for his actions, he has retaliated by filing legal claims against her in the form of counterclaims. (*See* Exhibit A, Defendants' Answer and Affirmative Defenses to Complaint and Counterclaim at 19-24).

2. Adopting the Bill Cosby strategy of attacking the victim, <https://www.nbcnews.com/storyline/bill-cosby-scandal/bill-cosby-sues-seven-sexual-assault-accusers-defamation-n479841>, Botros and Med Spa, the company he owns, claim that Ms. Doe's refusal to be a silent victim of Botros' sexual assault is actionable as defamation, false light and intentional infliction of emotional distress. Naturally, all three counterclaims are based on Botros' self-serving denial that he sexually assaulted Ms. Doe. Having already violated her sexually, Botros is now attempting to punish her for holding him accountable for his actions.

3. The three counterclaims are not only baseless, but they fail to meet Illinois' strict fact pleading standards, which are even more rigorous in the pleading of defamation claims. Indeed, as



shown in Section I below, defendants failed to plead the alleged defamatory statements with “sufficient precision and particularity so as to permit initial judicial review of its defamatory content.” *Green v. Rogers*, 234 Ill. 2d 478, 495 (2009). In fact, defendants provide *no* detail: they fail to provide factual allegations identifying who spoke to whom, when the statement was made or even what, precisely, was said. Defamation claims may not be based on such speculative pleadings and thus must be dismissed.

4. In Section II below, plaintiff demonstrates that defendants similarly failed to plead facts to support their false light claim. Indeed, the false light claim is based on the very same deficiently pled, alleged defamatory statements and thus must also be dismissed for failing to state a claim. Defendants’ false light claim fails for the additional reason that they failed to plead special damages or facts showing a general publication or a limited publication to those with whom they are in a special relationship.

5. In Section III below, plaintiff shows that defendant Botros failed to allege facts to support his intentional infliction of emotional distress claim. His allegations fail to meet the high bar of “extreme and outrageous” conduct and provide no factual allegations to support his claim that he suffered severe emotional distress.

6. Finally, in Section IV below, plaintiff demonstrates that she had an absolute privilege in reporting Botros’ criminal conduct to the police. All defendants’ claims based on that reporting thus must be dismissed for this additional reason.

LEGAL STANDARD

7. Illinois is a fact pleading jurisdiction. *Marshall v. Burger King Corp.*, 222 Ill.2d 422, 430 (2006). A pleading may not rest on vague allegations. *Calhoun v. Rane*, 234 Ill.App.3d 90, 95 (1st Dist. 1992). It fails to state a cause of action when it omits facts, the existence of which is necessary for the party to recover. *Doyle v. Shlensky*, 120 Ill.App.3d 807, 811 (1st Dist. 1983). A pleading fails to

FILED DATE: 1/17/2020 3:22 PM 2020CH00678

satisfy Illinois' fact pleading requirements when it relies merely on conclusions of law or fact unsupported by specific factual allegations, regardless of the number of conclusions set forth and regardless of whether the conclusions generally inform the other party in a general way of the nature of the claims. *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill.2d 351, 368-369 (2004); *Weidner v. Midcon Corp.*, 328 Ill.App.3d 1056, 1059 (5th Dist. 2002).

8. Defamation *per se* claims are held to an even higher standard. The Illinois Supreme Court has ruled these "must be pled with a heightened level of precision and particularity. This higher standard is premised upon an important policy consideration, namely, that a properly pled defamation *per se* claim relieves the plaintiff of proving actual damages." *Green*, 234 Ill. 2d at 492.

ARGUMENT

I. Count I must be dismissed because defendants failed to plead adequate facts to support their defamation *per se* claim

9. To state a cause of action for defamation *per se*, defendants must allege facts with precision and particularity showing (a) plaintiff made false statements about defendants; (b) publicized these statements to a third party without privilege; and (c) that this publication caused damages. *Green*, 234 Ill. 2d at 491.

10. "It is obvious that elements of a cause of action for libel are not factually set forth unless the defamatory words of the defendant are included. Thus, it has long been the rule that in an action for libel, the words alleged to be defamatory must be set forth clearly and with particularity." *O'Donnell v. Field Enters., Inc.*, 145 Ill.App.3d 1032, 1042 (1st Dist. 1986); *see also Green*, 234 Ill. 2d at 492 (holding "the substance of the statement must be pled with sufficient precision and particularity so as to permit initial judicial review of its defamatory content").

11. Defendants failed to meet this heightened pleading standard. They describe the alleged defamatory statements only in the most general and summary terms. The entirety of defendants' pleading on plaintiff's allegedly defamatory statements are that Ms. Doe has:

- a. Individually, or through one of her agents, contacted a hospital where Dr. Botros has clinical privileges and, through written and/or oral means, asserted that Dr. Botros sexually assaulted her.
- b. Individually, or through one of her agents, contacted one or more law enforcement officials in DuPage County and, through written and/or oral means, advised them that Dr. Botros sexually assaulted her.
- c. Individually, or through one of her agents, contacted other prior employees and patients of Counter-Defendants [sic] and, through written and/or oral means, advised them that Dr. Botros sexually assaulted her.
- d. Upon information and belief, Ms. Doe has individually, or through one of her agents, may have made statements to other third-party individuals through written and/or oral means that Dr. Botros sexually assaulted her.

(Ex. A at 21-22, ¶22).

12. None of these allegations are pled with the particularity required of a defamation *per se* claim. Indeed, although defendants pled statements (a) through (c) on direct knowledge rather than information and belief, they have failed to describe these statements with the “precision and particularity” the Illinois Supreme Court requires. Defendants do not provide factual allegations identifying the person who made the statements, the identity of the persons to whom these allegedly defamatory statements were publicized, whether the statements were written or verbal, or even the exact words that were supposedly uttered.

13. Defendants instead plead everything vaguely and generally, and in some cases in the alternative or hypothetically:

- the allegedly defamatory statements were made by plaintiff “or through one of her agents” (Ex. A at 21-22, ¶22 (a-d)).
- the allegedly defamatory statements were made to unnamed “prior employees and patients,” unnamed “law enforcement officials” and an unnamed hospital (Ex. A at 21-22, ¶22 (a-c)).
- the allegedly defamatory statements were made through written and/or oral means. (Ex. A at 21-22, ¶22(a-d)).
- defendants seek to recover for allegedly defamatory statements plaintiff or her agents

“may have made.” (Ex. A at 22, ¶22(d)).

Such pleadings fail the normal fact pleading standards required in Illinois courts, let alone the heightened pleading standards required of defamation *per se* claims.

14. Also improper is defendants’ use of the same words to describe what plaintiff or her agents supposedly said, at different times, to different persons: that “Dr. Botros sexually assaulted her.” (Ex. A at 21-22, ¶22 a-d). In *Green*, this summarizing of the allegedly defamatory statements, supposedly made at different times to different audiences, yet in word-for-word format, doomed the complaint. The Illinois Supreme Court ruled that the fact that the plaintiff is “unable to differentiate or distinguish in any way” between the alleged statements, made at different times, “is just further confirmation that plaintiff is not pleading precise and particular facts but rather only conclusions, inferences, and assumptions.” *Green*, 234 Ill. 2d at 498. So too here.

15. More evidence of this is defendants’ paragraph 22(d), which is on its face hypothetical and speculative; it cites to statements that “may” have been made. (Ex. A at 22, ¶22(d)). Such speculative pleading violates the regular fact pleading rules that apply in Illinois and certainly fall far short of the heightened pleadings standards of “precision and particularity” that apply to defamation *per se* claims so that courts may apply “meaningful judicial scrutiny” at the motion to dismiss stage. *Green*, 234 Ill. 2d at 492, 498-499. Due to defendants’ failure to meet these pleadings standards plaintiff respectfully requests that the Court dismiss Court I.

II. Count II must be dismissed because defendants failed to plead adequate facts to support their false light claim

16. To plead a cause of action for false light Botros must allege facts to establish that (1) Botros was placed in a false light before the public as a result of plaintiff’s actions; (2) the false light would be highly offensive to a reasonable person; and (3) that plaintiff acted with actual malice. *See Chang Hyun Moon v. Kang Jun Lin*, 2015 IL App (1st) 143606, ¶ 17. “Additionally, if a false light invasion of privacy claim is based on statements that are not defamatory *per se*, a plaintiff must allege

that he suffered special damages.” *Id.*

17. Defendants’ false light claim rests on the same non-specific statements made by plaintiff “or through one of her agents” to unnamed persons at unidentified dates that underpinned their defamation claim. Just as these vague, summary statements failed to satisfy the pleading requirements of a defamation claim, so too do they fail to satisfy the fact pleading requirements required of a false light claim. *See, e.g., Kapotas v. Better Gov’t Ass’n*, 2015 IL App (1st) 140534, ¶ 78 (holding false light claim was properly dismissed because it was predicated on the same deficient pleadings that doomed the defamation claim). Having failed to plead this element of the tort, defendants’ false light claim should be dismissed.

18. Defendants also failed to allege facts to support two other necessary elements of false light. First, they failed to allege facts showing a general publication or a limited publication to those with which they were in a special relationship. *See Poulos v. Lutheran Soc. Servs. of Ill., Inc.*, 312 Ill. App. 3d 731, 740 (1st Dist. 2000) (holding that the publicity element of a false light claim may be satisfied if “false and highly offensive information was disclosed to a person or persons with whom a plaintiff has a special relationship”). An example of special relationship is the employer/employee relationship, which was at issue in *Poulas* when a social worker made a false statement about an employee to a high ranking official at his place of employment. *Id.*

19. Here, defendants pled that statements were made to unnamed persons at a hospital, to the police, and also to unnamed former employees and patients. Defendants are not in any special relationship with the police and they failed to allege sufficient facts to evaluate whether they had a special relationship with the remaining unidentified persons. This failure to plead sufficient facts from which a special relationship can be inferred is additional grounds for dismissing their false light counterclaim.

20. Finally, because defendants have failed to plead a defamation *per se* claim, as shown

in Section I above, they were required to plead that they each suffered special damages. *Chang Hyun Moon*, 2015 IL App (1st) 143606 at ¶ 17. They have not. Instead, defendants generally state they have suffered “damages, including economic damages, reputational damages, emotional damages, and damages to current and prospective business relations.” This falls far short of the fact pleading required under Illinois law. *See, e.g., Taradash v. Adelet/Scott-Fetzer Co.*, 260 Ill. App. 3d 313, 318 (1st Dist. 1993) (holding that “customers refused to deal with him, that he was hindered from selling his product lines, and that he suffered lost commissions and income” was insufficient pleading on special damages); *Kapotas v. Better Gov't Ass'n*, 2015 IL App (1st) 140534, ¶ 72 (holding that “can no longer expect valid business relationships to form with patients and potential employers” was insufficient pleading on special damages); *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 416-17 (1996) (holding that “has been damaged monetarily by losing gainful employment and wages” along with suffering “great mental pain and anguish and incurred great expense for the treatment thereof” was insufficient pleading on special damages). For this additional and third reason, defendants’ false light claim should be dismissed.

III. Count III must be dismissed because defendant Botros failed to plead adequate facts to support his intentional infliction of emotional distress claim

21. To plead a cause of action for intentional infliction of emotional distress (“IIED”), Botros must allege facts to establish that: (a) plaintiff’s conduct was extreme and outrageous; (b) Botros suffered severe emotional distress; and (c) plaintiff knew that severe emotional distress was certain or substantially certain to result from such conduct. *Layne v. Builders Plumbing Supply Co.*, 210 Ill. App. 3d 966, 972-973 (2d District 1991). “Moreover, because claims alleging intentional infliction of emotional distress can be easily made, this court has indicated that such claims must be ‘specific, and detailed beyond what is normally considered permissible in pleading a tort action.’” *Chang Hyun Moon*, 2015 IL App (1st) 143606, ¶ 24 (citing *McCaskill v. Barr*, 92 Ill. App. 3d 157, 158, 414 N.E.2d 1327, 47 Ill. Dec. 211 (1980)). Botros failed to allege facts to support the first two elements of the

tort, let alone in the specific and detailed manner required of IIED claims.

22. First, Botros does not allege plaintiff engaged in extreme and outrageous conduct. The Illinois Supreme Court established a high standard for this element of the tort in *Pub. Fin. Corp. v. Davis*, 66 Ill. 2d 85 (1976). The court ruled that there is no cause of action even when intentional conduct is “tortious, criminal or even conduct so egregious that it would entitle the plaintiff to punitive damages for another tort.” *Id.* at 89-90. Rather, the conduct must be “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency.” *Id.* at 90.

23. Typically, extreme and outrageous conduct arises from the abuse of a position of power or authority. *Id.* at 91. For example, the Illinois Supreme Court has ruled that the conduct was extreme and abusive conduct when the defendant exercised great economic leverage over a plaintiff and attempted to defraud him out of millions of dollars, see *McGrath v. Fahey*, 126 Ill. 2d 78 (1988), and when a police officer abused his office by berating a sexual assault victim and refusing to save her children from attack. See *Doe v. Calumet City*, 161 Ill. 2d 374 (1994).

24. In contrast, courts have ruled that the “extreme and outrageous conduct” standard has not been met even in such egregious situations as when a school district failed to investigate allegations of sexual abuse, leading to the sexual assault of a young boy. *Giraldi v. Lamson*, 205 Ill. App. 3d 1025, 1028 (1st Dist. 1990). The Court held that the lack of any “power, authority or control” by the school district over the family was a factor in its decision. *Id.* The Second District has held it was not extreme and outrageous to accuse plaintiff of threatening, harassing and assaulting a co-worker and then reporting her to the police for it. *Layne*, 210 Ill. App. 3d at 968.

25. Here, the basis of Botros’ IIED claim is plaintiff’s alleged statements to third parties and the police that Botros sexually assaulted her. However, as Botros concedes, plaintiff is not in any position of authority over him. He is an OB/GYN who owns his own health center while she was a part-time laser technician who worked for him. (Ex. A at 2, ¶¶4-5; at 20, ¶4). Thus, it was he

who held economic power and authority over her. This factor weights against a finding of extreme and outrageous conduct.

26. Furthermore, however upsetting Botros claims to be over being (he claims) falsely accused of a crime, that is not “extreme and outrageous” behavior. It is a relatively mundane occurrence in society, not an incident that qualifies for those few instances in which courts have found extreme and outrageous conduct. Indeed, the Second District held in *Layne* that despite the plaintiff being humiliated before her friends and colleagues and forced to endure the indignities of a police investigation, it did not rise to the level of “extreme and outrageous conduct.”

27. Moreover, if accusing someone of a crime could be the basis of an actionable IIED claim, it would mean that anyone with the financial means of punishing their accuser would file such claims. This would fly in the face of the Illinois Supreme Court’s admonishment that only those few cases “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency” may be the basis of an IIED claim. *Pub. Fin. Corp.*, 66 Ill. 2d at 90. Indeed, it was based on this line of precedent that the Second District found it was not “extreme and outrageous” conduct to accuse a father of sexually assaulting his sons. *Hoffman v. Hoffman*, 2011 IL App (2d) 101005-U, ¶ 18. Nor would it be extreme and outrageous conduct here. Botros’ IIED claim should be dismissed.

28. Botros IIED claim should be dismissed for the additional reason that he has not pled any facts to support the second element of the tort, that he suffered severe emotional distress. Botros was required to plead facts showing the distress was “so severe that no reasonable man could be expected to endure it.” *Layne*, 210 Ill. App. 3d at 973. However, the entirety of Botros’ pleadings on this element is conclusory, that he “has been placed in severe emotional distress.” (Ex. A at 24, ¶39). This fails to meet fact pleading standards. Botros’ IIED claim should thus be dismissed.

IV. All claims based on plaintiff’s alleged statements to the police must be dismissed for the additional reason that these statements were absolutely privileged

29. Defendants allege that plaintiff’s report to the police that Botros sexually assaulted

her is actionable as defamation and placing him in a false light. (Ex. A at 21-22, ¶22(b-c)).

30. Defamatory statements are not actionable if they are protected by an absolute or conditional privilege. *Anderson v. Beach*, 386 Ill. App. 3d 246, 249 (1st Dist. 2008). “[T]he defense of absolute privilege rests on the idea that conduct, which otherwise would be actionable, must escape liability because the defendant is acting in furtherance of some socially important interest, like the investigation of an alleged crime, that is entitled to protection even at the expense of uncompensated harm to the plaintiff’s reputation.” *Razavi v. Sch. of the Art Inst. of Chi.*, 2018 IL App (1st) 171409, ¶ 20. “Absolute privilege cannot be defeated by showing the communication was improperly motivated or known to be false.” *Anderson*, 386 Ill. App. 3d at 249. “Privilege is an affirmative defense that may be raised in a motion for the involuntary dismissal of a defamation action.” *Id.* at 248.

31. Reporting a crime to law enforcement is absolutely privileged and cannot be the basis for civil liability. *Razavi*, 2018 IL App (1st) 171409 at ¶ 22. In *Razavi*, the issue was whether a woman’s report that she was sexually assaulted could be actionable as defamation. *Id.* at ¶¶ 3-4, 12. The First District held that the “privilege embraces actions required or permitted by law in the course of judicial or quasi-judicial proceedings, as well as actions ‘necessarily preliminary’ to judicial or quasi-judicial proceedings.” *Id.* at ¶ 22. The woman’s report that she had been sexually assaulted to law enforcement, therefore, was found to be absolutely privileged.

32. This has long been the law. Indeed, the Second District has long held that statements made to the police pertaining to alleged criminal activities are absolutely privileged. *Layne*, 210 Ill. App. 3d at 971-972 (dismissing defamation and false light claims based on plaintiff’s statements to law enforcement). Just as in *Layne*, defendants’ defamation and false light claims based on allegations that plaintiff reported Botros to law enforcement should be dismissed as absolutely privileged.

WHEREFORE, plaintiff respectfully requests that defendants’ counterclaims be dismissed.

Respectfully submitted,

JANE DOE

/s/ Johanna J. Raimond
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CERTIFICATE OF SERVICE

On December 12, 2019, undersigned Counsel certifies that the was served by Odyssey, a registered Illinois e-filing provider, on the following:

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Exhibit A to Plaintiff's Motion to Dismiss the Counterclaims

Chris Kachiroubas
e-filed in the 18th Judicial Circuit Court
DuPage County
ENVELOPE: 7206347
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FILEDATE: 11/1/2019 2:50 PM
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9409 MRS/CMS

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

Date Accepted: 11/1/2019 4:05 PM
NK

JANE DOE,

Plaintiff,

v.

SAMUEL F. BOTROS and MED SPA WOMENS
HEALTH CENTER, LTD.,

Defendants,

SAMUEL F. BOTROS and MED SPA
WOMENS HEALTH CENTER, LTD.,

Counter-Plaintiffs,

v.

JANE DOE,

Counter-Defendant.

19 L 773

Jury Trial Demanded

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES
TO COMPLAINT AND COUNTERCLAIM**

Defendants, Samuel F. Botros and Med Spa Women's Health Center, Ltd., by their undersigned counsel, Answer Plaintiff's Complaint as follows.

Venue and Jurisdiction

1. Venue is proper in the Circuit Court of DuPage County because the events giving rise to the instant claims occurred within DuPage County, in the State of Illinois, and at least one defendant resides in DuPage County, Illinois.

ANSWER: Defendants admit that venue is proper but deny the veracity of Plaintiff's claims and deny that they are in any way liable to Plaintiff.

2. This case is being filed in the law division because the amount in controversy exceeds \$50,000.

ANSWER: Defendants that Plaintiff has alleged as such but deny the veracity of Plaintiff's claims and deny any lability to Plaintiff whatsoever.

Parties

3. Plaintiff is a resident of DuPage County in the State of Illinois.

ANSWER: Defendants do not have sufficient information to either admit or deny the allegation in paragraph 3 and demand strict proof thereof.

4. Defendant Samuel F. Botros, M.D., is an obstetrics and gynecology doctor who received his license to practice medicine in the State of Illinois in 2007.

ANSWER: Defendants admit the allegations in paragraph 4.

5. Defendant Med Spa Women's Health Center, Ltd. is an Illinois corporation located in Bloomingdale, Illinois, that is owned and operated by defendant Botros where he provides OB/GYN services, in addition to aesthetic "maintenance" treatments, such as laser hair removal, cellulite reduction and body sculpting.

ANSWER: Defendants admit that Med Spa Women's Health Center, Ltd. is an Illinois corporation located in Bloomingdale, Illinois and owned and operated by Dr. Botros. Defendants deny that Plaintiff has completely and accurately characterized Med Spa.

Introduction

6. Samuel Fahmy Barak Botros, M.D. is yet another name on an increasingly long list of male doctors who gain the trust of, and access to, their female patients to then abuse and sexually assault them.

ANSWER: Defendants deny the allegations in paragraph 6.

7. Jane Doe is a 30 year-old, single mother, who was born and raised in the Chicagoland area.

ANSWER: Defendants do not have sufficient information to either admit or deny the allegations in paragraph 7 and require strict proof thereof.

8. In late 2012, Ms. Doe became pregnant and her insurance company assigned her to Botros for her obstetric care.

ANSWER: Defendants do not have sufficient information to either admit or deny Plaintiff's characterization that she was "assigned" to Dr. Botros and require strict proof thereof.

9. On May 8, 2013, Botros delivered Ms. Doe's son at AMITA Health's Alexian Brothers Medical Center Elk Grove Village, where he is affiliated and holds privileges.

ANSWER: Defendants deny the allegations contained in paragraph 9 to the extent that they are inconsistent with medical records.

10. During the course of Ms. Doe's pregnancy, Botros earned the trust of Ms. Doe. As a result, she continued to see Botros at Med Spa for her subsequent gynecological examinations.

ANSWER: Defendants deny the allegations contained in paragraph 10 to the extent that they are inconsistent with medical records.

11. In May 2017, Ms. Doe saw Botros for her annual gynecological exam.

ANSWER: Defendants deny the allegations contained in paragraph 11 to the extent that they are inconsistent with medical records.

12. After the exam, the then-office manager approached Ms. Doe and told her that she and Botros wanted to speak to her in his office. When Ms. Doe entered the office, Botros and the then-office manager explained that she was leaving her job – as both full-time manager and part-time laser tech- and asked Ms. Doe if she was interested in filling he part-time laser tech position.

ANSWER: Defendants admit that Plaintiff was hired as a laser technician at Med Spa but deny that Plaintiff has completely and accurately characterized her hiring process.

13. Ms. Doe stated that she did not have any laser experience. The then-office manager and Botros told her that they would train and certify her on-site. They also said that she would be great for the job because Ms. Doe spoke fluent Polish and the clinic served many Polish-speaking women.

ANSWER: Defendants admit that Plaintiff was hired as a laser technician at Med Spa but deny that Plaintiff has completely and accurately characterized her hiring process.

14. Botros promised to pay Ms. Doe, in addition to an hourly wage, a commission for every laser service she performed.

ANSWER: Defendants admit only that Ms. Doe was paid hourly. Defendants deny all remaining allegations.

15. Ms. Doe accepted the employment offer and was excited about her new opportunity.

ANSWER: Defendants admit that Ms. Doe accepted employment as a part-time hourly laser technician. Defendants do not have sufficient information to either admit or deny any remaining allegations and require strict proof thereof.

16. Botros set Ms. Doe's schedule for Tuesdays and Thursdays, as these were the days that the then-office manager/laser tech performed laser treatments.

ANSWER: Defendants deny the allegations in paragraph 16.

17. Ms. Doe began training under the then-office manager/laser tech shortly thereafter.

ANSWER: Defendants admit that Ms. Doe was trained after her hiring by the then-office manager/laser technician. Defendants deny any remaining allegations.

18. On June 15, 2017, Botros performed a laser hair removal treatment on Ms. Doe's underarms and bikini area.

ANSWER: Defendants deny all allegations and predicate allegations in paragraph 18.

19. As is standard practice, Ms. Doe waited a month for her second treatment, in a series of treatments.

ANSWER: Defendants deny all allegations and predicate allegations in paragraph 19.

20. On July 18, 2017, Ms. Doe prepared for the second treatment by removing her clothing, covering her body with a paper gown and putting on protective goggles, as is standard practice.

ANSWER: Defendants deny all allegations and predicate allegations in paragraph 20.

21. Botros then entered the room, applied laser gel to her underarms, and performed the laser hair removal procedure on both of Ms. Doe's underarms without incident.

ANSWER: Defendants deny all allegations and predicate allegations in paragraph 21.

22. Then, Botros applied the gel on the frontal area of Ms. Doe's pubic region and performed the laser hair removal treatment on Ms. Doe's bikini area without incident. He then used her paper body cover to wipe off the gel from her pubic region.

ANSWER: Defendants deny all allegations and predicate allegations in paragraph 22.

23. As Ms. Doe waited for instructions to turn onto her stomach so he could laser the backside of her public area, in an instant, Ms. Doe felt a bulge – that felt like an erection – press against her right arm and a hand grab her breast while simultaneously hearing his voice whisper in her ear, “I always wanted to taste you.” Ms. Doe removed the goggles to see Botros' head between her legs while licking the inside of her vagina.

ANSWER: Defendants deny all allegations and predicate allegations in paragraph 23.

24. Ms. Doe immediately sat up on the table, pushed Botros' head away from her vagina and said something to the effect of, “What are you doing?!”

ANSWER: Defendants deny all allegations and predicate allegations in paragraph 24.

25. Botros immediately apologized, said that he was having marital problems, then rushed out of the room.

ANSWER: Defendants deny all allegations and predicate allegations in paragraph 25.

26. Ms. Doe quickly dressed and left Med Spa. She convinced herself that she needed to forget about what Botros did to her.

ANSWER: Defendants deny all allegations and predicate allegations in paragraph 26.

27. When Ms. Doe reported for her next scheduled day of work on Tuesday, July 25, 2017, the office manager told her that Botros changed her schedule to Wednesday and Fridays – days that Botros was either not in the office or had limited office hours.

ANSWER: Defendants deny all allegations and predicate allegations in paragraph 27.

28. The office manager commented to Ms. Doe that she thought it was strange that Botros had changed her schedule because she believed that for liability purposes he was supposed to be in the office when Ms. Doe was performing laser procedures.

ANSWER: Defendants deny all allegations and predicate allegations in paragraph 28.

29. Ms. Doe did not tell the office manager, or anyone else for that matter, that Botros sexually assaulted her and that she suspected Botros changed her schedule to avoid having contact with her. Ms. Doe was also afraid that if she told anyone what happened to her, she would lose her job.

ANSWER: Defendants admit only that “Ms. Doe did not tell the office manager” that Dr. Botros sexually assaulted her. Defendants do not have sufficient information to either admit or deny whether Ms. Doe did not tell “anyone else for that matter,” and require strict proof thereof. Defendants affirmatively deny that the alleged sexual assault occurred and deny all remaining allegations and predicate allegations in paragraph 29.

30. Additionally, Ms. Doe did not make an issue of her new schedule because she was afraid, if she did, Botros would fire her. As a result, she proceeded to perform laser services on

Wednesdays and Fridays. She continued to remain silent about her sexual assault because, again, she did not want Botros to fire her. She also attempted to avoid Botros if he was at Med Spa during the days that she was also working.

ANSWER: Defendants admit only that Ms. Doe did not tell anyone at Med Spa that Dr. Botros sexually assaulted her but do not have sufficient information to either admit or deny whether Plaintiff “continued to remain silent” otherwise and require strict proof thereof. Defendants affirmatively deny that the alleged sexual assault occurred, and deny all remaining allegations and predicate allegations in paragraph 30.

31. Med Spa did not pay Ms. Doe the commission she was due. She was afraid to ask Botros why he was not paying her a commission on her services, as he promised.

ANSWER: Defendants deny all allegations and predicate allegations in paragraph 31.

32. Ms. Doe never received another laser hair treatment, or any other treatment for that matter, from Botros after he sexually assaulted her.

ANSWER: Defendants deny that Ms. Doe ever received laser treatments from Dr. Botros and deny that the alleged sexual assault occurred.

33. Approximately one year later, in June 2018, Ms. Doe requested to take time off to travel to Poland. Initially, Botros refused her request. Then, Botros told her that she could take time off work to go on vacation so long as she found someone who could fill in for her as a laser technician while she was gone. When Ms. Doe presented him with a replacement, he told her that he did not want someone who he did not know to temporarily replace her. Botros then told Ms. Doe that she found another office staff member to perform the laser treatments in her temporary absence. As a result, Ms. Doe went to Poland.

ANSWER: Defendants admit only that Ms. Doe requested time off to travel to Poland, and that Dr. Botros advised her during an office meeting that she could take time off if she found a suitable replacement to cover for her. Defendants deny all remaining allegations.

34. When Ms. Doe returned a few weeks later, she called Med Spa to inquire about the time of her first appointment. She was told that Botros had replaced her and she no longer had a job.

ANSWER: Defendants admit that Plaintiff no longer had a job at Med Spa upon her return from Poland and affirmatively state that Plaintiff resigned her position prior to taking that trip. Defendants do not have sufficient information to either admit or deny the remaining allegations in paragraph 34 and require strict proof thereof.

35. Ms. Doe was devastated and immediately entered therapy. As a result, Ms. Doe gathered the courage to reach out to the former office manager who initially recruited her for the job and asked the woman if she would meet with her about a private matter.

ANSWER: Defendants affirmatively deny any wrongdoing and deny that Ms. Doe was “devastated and immediately entered therapy” as a result of any wrongdoing by these Defendants. Defendants do not have sufficient information to either admit or deny the remaining allegations in paragraph 35 concerning alleged discussions with third parties and therefore demand strict proof thereof.

36. Shortly thereafter, Ms. Doe met with the former office manager and told her that Botros sexually assaulted her. The former manager, in response, told Ms. Doe that Botros had also sexually assaulted another former female employee. She then gave Ms. Doe the other woman’s phone number.

ANSWER: Defendants deny that Dr. Botros sexually assaulted Ms. Doe. Defendants do not have sufficient information to either admit or deny the remaining allegations in paragraph 36 concerning alleged discussions with third parties and therefore demand strict proof thereof.

37. Over text message, the former employee told Ms. Doe that Botros also sexually assaulted her.

ANSWER: Defendants deny that Dr. Botros sexually assaulted Ms. Doe. Defendants do not have sufficient information to either admit or deny the remaining allegations in paragraph 37 concerning purported discussions with third parties and therefore demand strict proof thereof.

38. Additionally, another former patient and employee told Ms. Doe over text message that she had an extramarital relationship with Botros and that he had impregnated her.

ANSWER: Defendants deny that Dr. Botros sexually assaulted Ms. Doe. Defendants do not have sufficient information to either admit or deny the remaining allegations in paragraph 38 concerning purported discussions with third parties and therefore demand strict proof thereof.

39. Ms. Doe remains in therapy, has been diagnosed with psychological conditions as a result of being sexually assaulted by Botros – a man who was both her doctor and boss, and who she trusted implicitly. As a result, her life as she once knew it has been turned upside down.

ANSWER: Defendants deny all allegations and predicate allegations contained in paragraph 39.

40. Ms. Doe has since filed a report with the police and filed a timely charge with the Illinois Department of Human Rights. Both investigations remain open.

ANSWER: Defendants admit that Ms. Doe filed a police report and a charge with the IDHR, but deny Ms. Doe's characterization as to the timing of the same and the stage of both investigations. Further answering, Defendants deny any wrongdoing and state that Ms. Doe's police report resulted in no charges after thorough investigation.

COUNT I
Violatio of the Gender Violence Act
 (against all defendants)

41. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

ANSWER: Defendants incorporate their answers to paragraphs 1–40 as if fully stated herein.

42. Botros violated the Gender Violence Act by sexually assaulting plaintiff.

ANSWER: Defendants deny all allegations and predicate allegations.

43. Med Spa violated the Gender Violence Act by assisting Botros in sexually assaulting plaintiff.

ANSWER: Defendants deny all allegations and predicate allegations.

44. Defendants' violations of the Gender Violence Act caused plaintiff harm, including but not limited to anxiety, humiliation and severe emotional distress.

ANSWER: Defendants deny all allegations and predicate allegations.

COUNT II
Battery
(against all defendants)

45. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

ANSWER: Defendants incorporate their answers paragraphs 1–44 as if fully stated herein.

46. The above described sexual assault constitutes battery under Illinois law.

ANSWER: Defendants deny all allegations and predicate allegations.

47. As a direct and proximate result of the above described actions, plaintiff was harmed, including anxiety, humiliation and severe emotional distress.

ANSWER: Defendants deny all allegations and predicate allegations.

48. Med Spa is responsible for the harm caused by Botros under principles of *respondeat superior* because it was in a master/servant relationship with Botros acting within the scope of his employment.

ANSWER: Defendants deny all allegations and predicate allegations.

49. In the alternative, should the jury determine that Botros was acting outside the scope of his employment, Med Spa is liable based on § 317 of the Restatement of Torts, which has been adopted by the Illinois Supreme Court as a basis for vicarious liability.

ANSWER: Defendants deny all allegations and predicate allegations.

COUNT III
Negligent Failure to Warn
(against all defendants)

50. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

ANSWER: Defendants incorporate their answers to paragraphs 1–49 as if fully stated herein.

51. Plaintiff was a female patient of defendant obstetrics and gynecological healthcare providers and thus shared a special relationship.

ANSWER: Defendants admit only those duties and responsibilities attributed to them under applicable law. Defendants do not have sufficient information to either admit or deny the remaining general allegations concerning Ms. Doe being “a female patient of defendant obstetrics and gynecological providers” and therefore require strict proof thereof.

52. Defendants owed plaintiff a duty of care as their healthcare providers to warn plaintiff that Botros engaged in sexually perverted conduct against women over whom he exercised authority as a doctor and/or employer.

ANSWER: Defendants deny all allegations and predicate allegations.

53. Defendants failed to warn plaintiff that Botros had, in fact, previously abused other patients and/or employees.

ANSWER: Defendants deny all allegations and predicate allegations.

54. Med Spa is responsible for the harm caused by Botros under principles of *respondeat superior* because it was in a master/servant relationship with Botros acting within the scope of his employment.

ANSWER: Defendants deny all allegations and predicate allegations.

55. In the alternative, should the jury determine that Botros was acting outside the scope of his employment, Med Spa is liable based on § 317 of the Restatement of Torts, which as been adopted by the Illinois Supreme Court as a basis for vicarious liability.

ANSWER: Defendants deny all allegations and predicate allegations.

COUNT IV
Negligence
 (against all defendants)

56. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

ANSWER: Defendants incorporate their answers to paragraphs 1–55 as if fully stated herein.

57. Plaintiff was a patient of defendants when she was receiving treatment.

ANSWER: Defendants do not have sufficient information to either admit or deny the general allegations of “was receiving treatment” and require strict proof thereof. Further answering, Defendants incorporate by reference any denials they have made to specific allegations of treatment forwarded by Plaintiff in preceding paragraphs.

58. Defendants owed plaintiff a duty of care as her healthcare provider.

ANSWER: Defendants admit only those duties attributed to them under applicable law and deny any other allegations.

59. Med Spa breached that duty of care by engaging in negligent conduct, including but not limited to engaging in sexually perverted and abusive conduct without the knowledge and consent of plaintiff.

ANSWER: Defendants deny all allegations and predicate allegations.

60. Med Spa knew that Botros had sexually assaulted other patients and/or employees.

ANSWER: Defendants deny all allegations and predicate allegations.

61. Med Spa breached its duty of care by allowing Botros to engage in sexually perverted and abusive conduct toward plaintiff, which was foreseeable given his past conduct.

ANSWER: Defendants deny all allegations and predicate allegations.

62. As a direct and proximate result of the above described acts and omissions, plaintiff was harmed, and suffered severe and permanent injuries of personal and pecuniary nature, including but not limited to anxiety, humiliation and severe emotional distress.

ANSWER: Defendants deny all allegations and predicate allegations.

63. Med Spa is responsible for the harm caused by Botros under principles of *respondeat superior* because it was in a master/servant relationship with Botros acting within the scope of her employment.

ANSWER: Defendants deny all allegations and predicate allegations.

64. In the alternative, should the jury determine that Botros was acting outside the scope of his employment, Med Spa is liable based on § 317 of the Restatement of Torts, which has been adopted by the Illinois Supreme Court as a basis for vicarious liability.

ANSWER: Defendants deny all allegations and predicate allegations.

65. Med Spa also breached its duties, including but not limited to failing to have policies and procedures in place to protect patients from sexual abuse; failing to have policies and procedures in place to allow patients to report questionable experiences with its doctors, failing to investigate allegations of sexual abuse; failing to provide female patients with a chaperone during exams with doctors who have engaged in prior sexual abuse; failing to train staff to recognize signs that patients were sexually abused; failing to adhere to proper standards of care; and failing to warn patients before appointment that their doctors have engaged in sexual abuse.

ANSWER: Defendants deny all allegations and predicate allegations.

COUNT V
Negligent Infliction of Emotional Distress
(against all defendants)

66. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

ANSWER: Defendants incorporate their answers to paragraph 1-65 as if fully stated herein.

67. The above described facts constituted negligent infliction of emotional distress.

ANSWER: Defendants deny all allegations and predicate allegations.

68. As a direct and proximate result of the above described actions, plaintiff was harmed, including anxiety, humiliation and severe emotional distress.

ANSWER: Defendants deny all allegations and predicate allegations.

69. Botros is responsible for the harm he caused.

ANSWER: Defendants deny all allegations and predicate allegations.

70. Med Spa is responsible for the harm caused by Botros under principles of *respondeat superior* because it was in a master/servant relationship with Botros acting within the scope of his employment.

ANSWER: Defendants deny all allegations and predicate allegations.

71. In the alternative, should the jury determine that Botros was acting outside the scope of this employment, Med Spa is liable based on § 317 of the Restatement of Torts, which has been adopted by the Illinois Supreme Court as a basis for vicarious liability.

ANSWER: Defendants deny all allegations and predicate allegations.

COUNT VI
Intentional Infliction of Emotional Distress
(against all defendants)

72. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

ANSWER: Defendants incorporate their answers to paragraphs 1-71 as if fully set forth herein.

73. The above described facts constitute intentional infliction of emotional distress.

ANSWER: Defendants deny all allegations and predicate allegations.

74. As a direct and proximate result of the above described actions, plaintiff was harmed, including anxiety, humiliation and severe emotional distress.

ANSWER: Defendants deny all allegations and predicate allegations.

75. Botros is responsible for the harm he caused.

ANSWER: Defendants deny all allegations and predicate allegations.

76. Med Spa is responsible for the harm caused by Botros under principles of *respondeat superior* because it was in a master/servant relationship with Botros acting within the scope of his employment.

ANSWER: Defendants deny all allegations and predicate allegations.

77. In the alternative, should the jury determine that Botros was acting outside the scope of his employment, Med Spa is liable based on a § 317 of the Restatement of Torts, which has been adopted by the Illinois Supreme Court as a basis for vicarious liability.

ANSWER: Defendants deny all allegations and predicate allegations.

COUNT VII
Negligent Hiring, Supervision, Training and Retention
(against all defendants)

78. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

ANSWER: Defendants incorporate their answers to paragraphs 1-77 as if fully set forth herein.

79. Med Spa had a duty not to hire and retain Botros given its knowledge of his history of sexually abusing patients and/or employees.

ANSWER: Defendants deny all allegations and predicate allegations.

80. It was foreseeable that Botros would use his special relationship and position of trust to abuse plaintiff based on his past conduct.

ANSWER: Defendants deny all allegations and predicate allegations.

81. Yet Med Spa failed to supervise Botros at any time in a manner such that it would have prevented him from sexually abusing other patients and/or employees.

ANSWER: Defendants deny all allegations and predicate allegations.

82. Med Spa failed to train its staff to recognize signs of abusive doctor conduct, how to recognize signs of patient abuse at the hands of a doctor, and how to safely report suspected sexual abuse.

ANSWER: Defendants deny all allegations and predicate allegations.

83. Med Spa failed to create a system to investigate, supervise or monitor Botros at any time whatsoever and instead gave him unfettered access to its patients and/or employees.

ANSWER: Defendants deny all allegations and predicate allegations.

84. As a result of these failures, Med Spa proximately caused plaintiff to be groomed, confused, and sexually assaulted by Botros.

ANSWER: Defendants deny all allegations and predicate allegations.

85. Med Spa had actual or constructive notice, and knew or should have known, both prior to hiring Botros and throughout his employment, that Botros was a sexual predatory yet it chose to allow him to examine patients without supervision.

ANSWER: Defendants deny all allegations and predicate allegations.

86. As a result of the above mentioned conducts, plaintiff has, and will continue to suffer emotional distress, humiliation and loss of enjoyment of life, loss of intimate relationships, and fear of medical professionals.

ANSWER: Defendants deny all allegations and predicate allegations.

COUNT VIII
Violation of the Illinois Wage Payment and Collection Act
(against all defendants)

87. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

ANSWER: Defendants incorporate their answers to paragraphs 1-86 as if fully set forth herein.

88. By failing to pay plaintiff the commissions owed her, defendants violated the Illinois Wage Payment and Collection Act.

ANSWER: Defendants deny all allegations and predicate allegations.

COUNT IX
Breach of Contract
(against all defendants)

89. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

ANSWER: Defendants incorporate their answers to paragraphs 1-88 as if fully set forth herein.

90. Defendants promised plaintiff (1) that she would be paid a commission and (2) that she could take a vacation without forfeiting her job.

ANSWER: Defendants deny that Plaintiff was promised or was entitled to a commission; Defendants do not have sufficient information to admit or deny Plaintiff's general allegation that she could take a vacation without forfeiting her job and require strict proof thereof. Further answering, Defendants affirmatively deny that Plaintiff could take her trip to Poland without forfeiting her job.

91. Defendants failed to (1) pay plaintiff the promised commission; and (2) fired plaintiff for taking a vacation she was promised she could take.

ANSWER: Defendants deny all allegations and predicate allegations.

92. Plaintiff suffered damages as a result of defendants' breach.

ANSWER: Defendants deny all allegations and predicate allegations.

COUNT X
Promissory Estoppel
(against all defendants)

93. Plaintiff incorporates all paragraphs of this complaint as if fully set forth under this count.

ANSWER: Defendants incorporate their answers to paragraphs 1-92 as if fully set forth herein.

94. Defendants made an unambiguous promise to plaintiff that she could take a vacation without forfeiting her job.

ANSWER: Defendants deny all allegations and predicate allegations.

95. Plaintiff relied on that promise by taking the vacation.

ANSWER: Defendants deny all allegations and predicate allegations.

96. Plaintiff's reliance was reasonable and foreseeable.

ANSWER: Defendants deny all allegations and predicate allegations.

97. Plaintiff relied on defendants' promise to her detriment. Specifically, she was fired.

ANSWER: Defendants deny all allegations and predicate allegations.

98. Plaintiff suffered damage as a result of defendants' actions.

ANSWER: Defendants deny all allegations and predicate allegations.

WHEREFORE, Defendants respectfully request that this Court grant judgment in their favor and against Plaintiff, and award them their costs and such other and further relief as this Court deems just.

DEFENDANTS' COUNTERCLAIM AGAINST PLAINTIFF

Counter-Plaintiffs, Samuel F. Botros and Med Spa Womens Health Center LTD. ("Med Spa"), by their counsel, complain of Counter-Defendant, Jane Doe, as follows:

INTRODUCTION

1. Ms. Doe resigned from Med Spa's employment after she was unable to take a month off from work for an overseas vacation. Afterwards, Ms. Doe began a campaign of asserting false and salacious allegations against Dr. Botros and Med Spa. Specifically, Ms. Doe has asserted, or caused to be asserted, allegations that Counter-Plaintiff, Samuel F. Botros, sexually assaulted her. Ms. Doe did so knowing that this was false. Ms. Doe's accusations have caused Counter-Plaintiffs significant, and likely irreparable, financial, emotional, and reputational damage.

2. Venue for Counter-Plaintiffs claim is proper in the Circuit Court of DuPage County because the events giving rise to Defendants' claims occurred within DuPage County and because upon information and belief Counter-Defendant resides in DuPage County, Illinois.

3. The amount in controversy exceeds \$50,000 due to the severity of the false statements made by the Counter-Defendant against the Counter-Plaintiffs.

FACTUAL ALLEGATIONS

4. Beginning on or about May 30, 2017, Ms. Doe was employed at Med Spa Womens Health Center (Med Spa) as an hourly part-time laser technician.

5. As a laser technician, Ms. Doe would perform laser hair removal for various female clients of Med Spa.

6. From approximately May 30, 2017 to July 11, 2018, Ms. Doe generally worked two days a week, for a total of 16 hours a week. Ms. Doe was paid on an hourly basis.

7. As a part-time employee of Med Spa, Ms. Doe was aware that while she could request time off from her employment, it required prior approval as well as availability of coverage by co-workers.

8. As a part-time employee of Med Spa, Ms. Doe was also aware that time off requests were first-come, first-served, and subject to prior requests made by other employees.

9. On or about May 30, 2018, Ms. Doe requested a 1-month period off from Med Spa, from approximately July 12, 2018 to August 13, 2018, for an overseas trip to Poland.

10. Prior to seeking Med Spa's approval for time off, Ms. Doe had purchased plane tickets for her trip to Poland.

11. On or about May 30, 2018, Ms. Doe was advised that Med Spa could not accommodate her 1-month time off request, as other employees had requested time off for the same period and Med Spa would not have sufficient coverage.

12. Med Spa offered Ms. Doe the opportunity to find suitable coverage, and Ms. Doe was unable to provide such coverage.

13. On or about June 27, 2018, Ms. Doe was again advised that she could not take the requested 1-month period off due to coverage issues. Ms. Doe advised Counter-Plaintiffs that if she could not take the time off she was resigning from her position and giving Med Spa two weeks' notice.

14. Ms. Doe subsequently explained to one of her co-workers that she was quitting because her vacation did not get approved.

15. Ms. Doe left for her vacation on or about June 12, 2018.

16. Ms. Doe was aware that Med Spa would be required to hire a new laser technician due to her resignation.

17. Ms. Doe voluntarily resigned her position at Med Spa as of June 11, 2018.

18. Prior to her last day at Med Spa, Ms. Doe did not advise any Med Spa employee that Dr. Botros had sexually assaulted her.

19. Prior to her last day at Med Spa, Ms. Doe did not advise any Med Spa client that Dr. Botros had sexually assaulted her.

20. Prior to her last day at Med Spa, Ms. Doe did not advise any law enforcement official that Dr. Botros had sexually assaulted her.

21. After leaving Med Spa's employment, Ms. Doe began a campaign to falsely impugn Counter-Defendants.

22. Specifically, Ms. Doe has:

- a. Individually, or through one of her agents, contacted a hospital where Dr. Botros has clinical privileges and, through written and/or oral means, asserted that Dr. Botros sexually assaulted her.
- b. Individually, or through one of her agents, contacted one or more law enforcement officials in DuPage County and, through written and/or oral means, advised them that Dr. Botros sexually assaulted her.

- c. Individually, or through one of her agents, contacted other prior employees and patients of Counter-Defendants and, through written and/or oral means, advised them that Dr. Botros sexually assaulted her.
- d. Upon information and belief, Ms. Doe has individually, or through one of her agents, may have made statements to other third-party individuals through written and/or oral means that Dr. Botros sexually assaulted her.

23. Ms. Doe's accusation that Dr. Botros sexually assaulted her is false. Ms. Doe intentionally made, or caused to be made, these statements to third parties with the knowledge of their falsity and with the intent to injure Counter-Defendants.

COUNT I
DEFAMATION *PER SE*

24. Counter-Defendants incorporate paragraphs 1–23 of their Counterclaim in this paragraph as if fully stated forth herein.

25. Ms. Doe's statements, in falsely stating that Dr. Botros sexually assaulted her, falsely accused Dr. Botros of the commission of a crime.

26. Ms. Doe's statements, in falsely stating that Dr. Botros sexually assaulted her, falsely asserted that Counter-Defendants lacked integrity in performing clinical and spa services for women.

27. Ms. Doe's statements, in falsely stating that Dr. Botros sexually assaulted her, falsely accused Dr. Botros of engaging in adultery or fornication.

28. Ms. Doe's statements, in falsely stating that Dr. Botros sexually assaulted her, directly harmed and continues to harm Dr. Botros in his profession as an obstetrician and harms Med Spa's reputation as a clinic and spa center.

29. The above statements, which Ms. Doe made or caused to be made through one or more of her agents, constitute defamation *per se* under the common law of Illinois.

30. Because of Ms. Doe's defamatory statements, Counter-Plaintiffs have and will continue to suffer damages, including economic damages, reputational damages, emotional damages, and damages to current and prospective business relations.

COUNT II
FALSE LIGHT

31. Counter-Defendants incorporate paragraphs 1-30 of their Counterclaim in this paragraph as if fully stated forth herein.

32. In making or causing to be made false statements to multiple individuals that Dr. Botros sexually assaulted her, Ms. Doe has publicly placed Counter-Plaintiffs in a false light that would b highly offensive to the reasonable person.

33. Ms. Doe acted maliciously in placing Counter-Plaintiffs in this false light.

34. Because of Ms. Doe's malicious conduct, Counter-Plaintiffs have and will continue to suffer damages, including economic damages, reputational damages, emotional damages, and damages to current and prospective business relations.

COUNT III
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

35. Counter-Defendant, Samuel F. Botros, incorporates paragraph 1-34 of his Counterclaim in this paragraph.

36. Dr. Botros has practiced medicine for over 11 years, and has conducted over 2,000 infant deliveries and over 1,000 surgeries. Dr. Botros built his practice upon word of mouth referral and delivery of compassionate care to his patients.

37. Ms. Doe's decision to tell third parties that Dr. Botros sexually assaulted her, while knowing that such accusation was false, was extreme and outrageous conduct.

38. In knowingly and falsely accusing Dr. Botros of sexually assaulting her, Ms. Doe intended to inflict severe emotional distress on Dr. Botros or knew that there was a high probability that such salacious accusations would inflict such emotional distress.

39. Because of Ms. Doe's false accusations, Dr. Botros has been placed in severe distress over the reputational loss associated with such accusations, both personal and professional, the resulting impact on his livelihood, and the ability to provide for his family.

WHEREFORE, Counter-Defendants, Samuel F. Botros and Med Spa Womens Health Center Ltd., respectfully request that this Honorable Court grant him judgment in their favor and against Counter-Plaintiff, and award them all remedies available under applicable law, his costs, and such other and further relief as this Court deems just.

**DEFENDANTS DEMAND TRIAL BY JURY
ON ALL ISSUES SO TRIABLE.**

Respectfully Submitted,

CUNNINGHAM, MEYER & VEDRINE, P.C.

By: /s/ Michael R. Slovis
One of Defendants' attorneys

Michael R. Slovis
Chad M. Skarpiak
CUNNINGHAM MEYER & VEDRINE, P.C.
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IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

JANE DOE,

Plaintiff,

v.

SAMUEL F. BOTROS and MED SPA WOMENS
HEALTH CENTER, LTD.,

Defendants,

SAMUEL F. BOTROS and MED SPA
WOMENS HEALTH CENTER, LTD.,

Counter-Plaintiffs,

v.

JANE DOE,

Counter-Defendant.

No. 19 L 773

Jury Trial Demanded

Supreme Court Rule 222(b) Certification – Counterclaim

Pursuant to Supreme Court Rule 222(b), counsel for the Counter-Defendants certifies that the Counter-Defendants seek total money damages in excess of \$50,000.00.

Under penalties provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Michael R. Slovis

Michael R. Slovis
Chad M. Skarpiak
CUNNINGHAM MEYER & VEDRINE, P.C.
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EXHIBIT C

STATE OF ILLINOIS

UNITED STATES OF AMERICA

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

Doe

VS

Botros

2019 L 773

CASE NUMBER

File Stamp Here

ORDER

This cause coming before the Court; the Court being fully advised in the premises, and having jurisdiction of the subject matter, **IT IS HEREBY ORDERED:**

- ① Both parties to respond to written discovery by 2/7/20.
- ② Responses to Π 's motion to dismiss counterclaim and Δ 's motion to strike Π 's motion to dismiss counterclaims due by 1/31/2020; replies due 2/7.
- ③ Π 's response to Δ 's motion re extrajudicial statements due on 1/20; reply due 1/27. Courtesy copies due on 1/27. Hearing ~~due~~ on motion 2/5 @ 9:30. Δ to file supplemental affidavit by 1/13 regarding Π 10.
- ④ Π ~~advised~~ granted leave to amend complaint after IDHR release, draft complaint to Δ by 3/10/20.
- ⑤ For reasons stated on record and over Π 's objection, the Court grants temporarily, and without prejudice, the relief granted in Π 24(a) + (b) of Δ 's motion for protective order re judicial statements pending

Name: CSKarpak / cmu ☐ PRO SE

ENTER: hearing + ruling on same at 2/5 @ 9:30 a.m.

DuPage Attorney Number: 172107Attorney for: Δ sAddress: 15 Wacker #2200City/State/Zip: Chicago IL 60601Telephone Number: 312 578 0085Email: cskarpak@cmu.com

Judge

Date: 1-9-2020

EXHIBIT D

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS, LAW DIVISION

JANE DOE,

Plaintiff,

v.

No. 19 L 773

SAMUEL F. BOTROS and MED SPA WOMENS
HEALTH CENTER, LTD.,

Defendants,

**AFFIDAVIT OF MICHAEL R. SLOVIS IN SUPPORT OF
DEFENDANTS' MOTION FOR PROTECTIVE ORDER
TO LIMIT PUBLIC EXTRAJUDICIAL STATEMENTS**

Michael R. Slovis, being duly sworn, do hereby depose and say:

1. I am an attorney licensed in the State of Illinois. I represent the Defendants in this matter.

2. The Defendants deny the allegations raised in this case and the matter may need to be ultimately resolved before a jury. On December 27, 2019, a mediation was held in this matter to see if the parties could resolve the case short of further litigation. Judge [REDACTED] (Ret.) was the mediator.

3. I was present for the mediation. A time-limit demand was made by Plaintiff. Judge [REDACTED] advised the defense that Plaintiff stated that if the case was not resolved by the time limit, she would go to the press and use social media to raise the case's profile. Judge [REDACTED] indicated that Plaintiff's counsels are skilled in this respect, and referenced prior litigation.

4. I am aware that Plaintiff's counsel, Ms. Holder, has been a host and commentator on national television. I am also aware that Ms. Holder has tweeted, blogged, and been quoted in

news articles pertaining to an active case against Northshore University Health System and Dr. Ortega.

5. Though Plaintiff has decided to proceed anonymously in this case, I am aware that Ms. Holder has published a blog post about this case on her firm's website, which is accessible and searchable by the public. Defendants have already been and continue to be reputationally harmed by the allegations asserted in the blog post.

6. This case is contested. No factfinder has made any determination as to the alleged facts at bar. Further dissemination by Plaintiff or her counsel of this case through media will prejudice potential jurors and cause further reputational damage to Defendants.

Verification

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: January 13, 2020

/s/ Michael R. Slovis

EXHIBIT E



January 16, 2020

Michael Slovis, Esq.
Cunningham Meyer & Vedrine, P.C.
1 East Wacker Drive
Suite 2200
Chicago, IL 60601

RE: Mediation Between Jane Doe and Dr. Samuel Botros, et al., ADR No. 19 L 773 (the "Mediation")

Dear Michael:

On December 27, 2019, the above-referenced Mediation took place at ADR Systems with the Honorable [REDACTED] (ret) serving as mediator.

If you need a copy of the Mediation Agreement that you executed, please let me know.

It has been brought to our attention recently, that in connection with the underlying lawsuit pending in DuPage County (*Doe v. Botros, et. al*, Case No. 19 L 773) (the "Lawsuit"), you, on Dr. Botros' behalf, filed a motion, which included an affidavit from you. In both the motion and the Affidavit, you expressly refer to a statement allegedly made by Judge [REDACTED] during the course of the Mediation as a basis for the Court granting the motion.

As you know, the reputation of ADR Systems and the success of alternative dispute resolution in general depends in significant part on the parties' compliance with the Mediation Agreement, especially as it relates to those provisions concerning the confidentiality of statements made in a mediation.

ADR Systems considers the purported statement of Judge [REDACTED] to be confidential under the Mediation Agreement and your introduction of that statement in the Lawsuit to be in breach of the Mediation Agreement. We are unaware of any exception to the Mediation Agreement or the Illinois Uniform Mediation Act that allowed for your use of that statement in the Lawsuit. In addition, in no way should this letter suggest that Judge [REDACTED] admits making the statement.

We respectfully request that you, your law firm, and Dr. Boutros agree to: (i) cease and desist from using any confidential statement made during the course of the Mediation in connection with the Lawsuit; (ii) amend your motion to strike any reference to the Mediation; and (iii) amend your affidavit so that it makes no reference to the Mediation.

Very truly yours,

Marc Becker
President ADR Systems