

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

HERBERT J. NEVYAS, M.D.,	:	CIVIL ACTION
ANITA NEVYAS-WALLACE, M.D., and	:	NO.
NEVYAS EYE ASSOCIATES, P.C.	:	
	:	
Plaintiffs,	:	
v.	:	
	:	
DOMINIC MORGAN and	:	JURY TRIAL DEMANDED
STEVEN FRIEDMAN	:	
Defendants.	:	
	:	

COMPLAINT

PARTIES

1. Plaintiff Herbert Nevyas, M.D., a citizen of Pennsylvania, is medical doctor specializing in ophthalmology with an office located at 1528 Walnut Street, Philadelphia, PA. Plaintiff also has professional offices in New Jersey. Defendants' tortuous conduct is calculated to cause harm to Plaintiff in both Philadelphia and New Jersey, where the Plaintiff has professional offices.

2. Plaintiff Anita Nevyas-Wallace, M.D., a citizen of Pennsylvania, is a medical doctor specializing in ophthalmology with an office located at 1528 Walnut Street, Philadelphia, PA. Plaintiff also has professional offices in New Jersey. Defendants' tortious conduct is calculated to cause harm to Plaintiff in both Philadelphia and New Jersey, where the Plaintiff has professional offices.

3. Plaintiff Nevyas Eye Associates, P.C. (“NEA”) is a Pennsylvania corporation involved in providing ophthalmological services to patients across the Delaware Valley. NEA

has an office located at 1528 Walnut Street, Philadelphia, PA. Defendants' tortuous conduct is calculated to cause harm to Plaintiff in Philadelphia where the Plaintiff has professional offices.

4. Defendant Dominic Morgan ("Morgan"), a citizen of Pennsylvania, is an individual residing at 3360 Chichester Avenue, #M-11, Boothwyn, PA which is located in the Eastern District of Pennsylvania. Upon information and belief, Defendant's tortuous conduct originates in or around Boothwyn, PA.

5. Defendant Steven Friedman ("Friedman"), a citizen of Pennsylvania, is an individual and a practicing attorney and doctor, with his principal place of business at 850 West Chester Pike, Havertown, PA 19083, which is located in the Eastern District of Pennsylvania. Upon information and belief, Defendant's tortuous conduct originates in or around Havertown, PA.

JURISDICTION

6. Jurisdiction is premised on the violation of federal law. 28 U.S.C.A. §1331.

7. Plaintiffs claim damages, exclusive of interest and costs, in excess of \$75,000.

8. This court has jurisdiction over the state law claims under the principles of pendant and supplemental jurisdiction.

FACTS

9. Morgan had Lasik surgery performed by Dr. Nevyas-Wallace in April of 1998 and was unhappy with the result.

10. The Lasik surgery performed on Morgan was an elective procedure and Morgan chose to have such surgery. There was no medical reason compelling such a choice.

11. Lasik surgery is a process by which the cornea is reshaped in order to reduce or eliminate the need for corrective lenses.

12. On or about April 19, 2000, Morgan filed a complaint alleging medical negligence against the instant Plaintiffs, the other doctors in their medical practice and against the professional corporation.

13. Ultimately, all defendants were dismissed from the action except Dr. Nevyas-Wallace and case proceeded to binding arbitration.

14. At the conclusion of the arbitration proceeding, the arbitrator returned a defense verdict.

15. Due to a pre-arranged high-low agreement, Morgan received the “low” payment.

16. During the discussions concerning the terms of the arbitration which occurred in January and February, 2003, Morgan refused to agree to any confidentiality provisions.

17. Morgan was disappointed with the result of the Lasik surgery and wanted to cause substantial and grave harm to Dr. Nevyas and Dr. Nevyas-Wallace and their medical practice, NEA.

18. At least as early as the beginning of 2003, Morgan created a website which intentionally and maliciously defamed Dr. Nevyas and Dr. Nevyas-Wallace.

19. Upon information and belief, Morgan’s attorney in the malpractice action, Defendant Steven Friedman called the arbitrator, Thomas Rutter, Esq., and asked him if he would sue if his name appeared in the website Morgan was preparing. The arbitrator answered affirmatively and his name did not originally appear on the website.

20. On or about July 30, 2003, Dr. Nevyas received an anonymous telephone call directing him to the web address - www.lasiksucks4u.com. The website has multiple headings and categories within those headings.

21. Dr. Nevyas went to the address and found that Mr. Morgan had created a website which contained numerous defamatory statements. Many of the statements contained in this initial version of the website were similar to statements that appeared on later iterations of the website.

22. Morgan made many of the same accusations that he makes in the current version of the website. He accuses the Plaintiffs of dishonesty, greed, corruption and states his motives clearly: "I carry much anger, depression, bitterness and hatred toward the Nevyas'...."

23. Attorneys for Dr. Nevyas contacted Friedman and working through Friedman, Morgan agreed to remove defamatory statements from the website.

24. Under the contract between the parties, Morgan was to remove all defamatory material and all references to the instant Plaintiffs. In response, the instant Plaintiffs agreed not to file a lawsuit. A true and correct copy of the letters documenting the contract are attached hereto as Exhibit 1.

25. On November 3, a patient informed Dr. Nevyas that he had performed an internet search using the search engine Google and the search term "Nevyas" and that the third entry in the search was a reconstructed website: www.lasiksucks4u.com. A true and correct copy of the printout of such a search is attached hereto as Exhibit 2. Morgan has spent a substantial amount of time to improve the search-result ranking of the website on various search engines. Searches performed January 21, 2004 show Morgan's site to have high rankings on many search engines:

Yahoo - the number two and four searches; Google - the number three, four and seven searches; Mamma Meta - the number two, three, six, eight and ten; Alta Vista - the number two, three and six searches; Dogpile - the number five, nine and nineteen searches; and on Search.com - the number three, four, five, six and eight searches. A true and correct copy of these search results is attached hereto as Exhibit 3.

26. The review of this site reveals that Morgan has violated his contract and has renewed his efforts to defame and cause substantial and grave harm to Dr. Nevyas, Dr. Nevyas-Wallace and NEA, to cast them in a false light and to damage their reputation.

27. Many of Plaintiffs' patients are referred to the Plaintiff from internet searches and other patients research the Plaintiffs on the web.

28. Morgan's defamatory website has had and continues to have a substantial negative impact on Plaintiffs' medical practice and their reputation.

29. Examples of the defamatory statements on the website include:¹

(a) "I went for my initial consultation at Nevyas Eye Associates in Bala Cynwyd, Pennsylvania. I thought they were reputable . . ." This statement has been changed and now reads: "I went for my initial consultation at Nevyas Eye Associates in Bala Cynwyd, Pennsylvania. They were advertising extensively (for Lasik . . . with a laser unapproved by the FDA for commercial use)."

¹ The section of the website entitled "My Experience" contains the statements set forth in 21a,b,h. The section of the website called "Home" contains the statements set forth in 21i-j. The section of the website entitled "Experiences" and the subcategory "Nevyas laser and the FDA." contains the statements set forth in 21k. The section of the website entitled "Experiences" and the subcategory "Are you a Candidate" contains the statements set forth in 21g,l. The "Home" section of the website under the link to "cover-up" contains the statements set forth in 21c-f,m-t.

(b) “With all the patients who have been damaged by lasik surgery losing their cases in court is it possible there is a cover-up?” This statement has since been removed.

(c) “The performing surgeons overlooked standards of care, their own, as well as federal guidelines, and have advertised extensively for a non-approved device (not allowed).” This statement has since been removed.

(d) “Their history to include their investigational device shows at least 11 cases of medical malpractice. From first hand experience with these people, they are not the people they represent themselves to be. They are ruthless, uncaring, and greedy.” This statement has since been removed.

(e) “They ruined my vision and they ruined my life. **They did this to me!** I was completely happy prior to and none of this was present **prior to the lasik** surgery. I **TRUSTED** these people. They made empty promises to fulfill a now empty life, and I can never forgive nor forget, not that I ever could.” Emphasis in original

(f) “So again key questions are...Why are the majority of Lasik lawsuits being lost? And, why is nothing done about it? Seems like a cover-up...YES, it really does!” Emphasis in original. This statement has since been removed.

(g) “If the procedure is going to be done "experimentally," more than likely the surgeon is using a device not yet approved by the Food and Drug Administration (FDA). Since other devices are already approved, this is rarely to your advantage.”

(h) “I was NOT told that a change in prescription gave me better than the 20/50 Best Corrected Visual Acuity (BCVA) I ever had, and that instead of Lasik, the new

prescription would have worked just as well if not better than what I was seeing (refracted to 20/40 -2 according to my records).”

(i) “Although the marketing of LASIK focuses on quality of life, informed consent does not. Instead, the real risks are hidden in medical jargon that never mentions their true effects. . .”

(j) “Is the use of FDA non-approved lasers such as **this one** an even greater risk to Lasik patients?” Emphasis in original.

(k) “The following are reports submitted to the FDA by the Nevvyas' regarding their "**black box**" (laser used for investigational surgery). This is information they **DO NOT** want the public to know...” Emphasis in original. This statement has been changed and now reads: “Some of the following reports are submitted to the FDA in 1997 regarding their ‘**black box** . . . Federal law also states:’ A sponsor, investigator or any other person . . . shall not promote or test market an investigational device until FDA has approved the device for commercial distribution.’ I could not even begin to tell you how many times I’ve heard their ADVERTISEMENTS on radio stations for Lasik surgery without mention of their laser being part of an investigational study.” Emphasis in original.

(l) “Federal Law requires that every patient who is about to undergo a refractive surgery be given a Patient Information Booklet, published by the manufacturer of the laser used in their surgery. If your surgeon does not give you the patient information booklet, this is a violation of federal law, and your surgeon can be charged with not providing you with full informed consent. Abuse of this FDA mandate is widespread. Most patients have never seen a

Patient Information Booklet, because it contains warnings that your surgeon does not want you to see.”

(m) “Again, the Nevyas’ and their lawyers walk all over the legal system, and seem to be able to do whatever they want, and get away with it.” This statement has since been removed.

(n) “I do not understand any of this. I’m the one who has been hurt, and this is for the rest of my life. How is it they walk away only to hurt somebody else?” This statement has since been removed.

(o) “I have since been told the end result of the arbitration agreement will not be released (what gives them the right not to abide by arbitration agreement — 10 days) until I sign a release stating the Nevyas’ were not at fault. There is NO WAY I will sign that. They took my sight. They will not take the truth!” This statement has since been removed.

(p) “I thought the legal system would see through the tactics these people used, and I see now I was grossly mistaken. There is no justice for the average person, so now I have to make do for myself what the legal system could **not** do. People need to be informed about these doctors, and I damn well will be telling them.” Emphasis in original. This statement has since been removed.

(q) “It never really was about the money, it’s about how they ruined our lives, and how they walk all over the system, just as they did you.” This statement has since been removed.

(r) “So, my question is, who’s covering up for whom, and why? Why was my case ripped apart so badly in the Philadelphia Court System . . . (Judge Papalini threw out

EVERYTHING that had to do with the device being investigational, and anything to do with the FDA)), then I was told arbitration was the more feasible route to go?” Emphasis in original.

This statement has since been removed.

(s) “Their track record is scary in that I found all of this out **after** my surgeries.” Emphasis in original. This statement has since been removed.

(t) “Stupidity or greed on the doctor’s part and ignorance on everyone else’s, why should I have to suffer living like this?” This statement has since been removed.

A true and correct copy of a printout of the described portions of the website is attached hereto as Exhibit 4.

30. Each of the statements listed above is untrue, casts the Plaintiffs in a negative light and is intended to cause substantial harm to Plaintiffs.

31. The statements in ¶29(a) are false because they state that the Plaintiffs were not reputable. The Plaintiffs are highly reputable and well-respected ophthalmologists. The revised statements are equally false because they suggest and are intended to suggest that Nevyas’ advertising was inappropriate and the laser being used for Lasik was substandard.

32. The statements in ¶29(b) are false because they suggest that a cover-up exists and that Plaintiffs are participating in it and more importantly that Plaintiffs are tampering with the legal system in violation of the law. No such cover-up exists nor would Plaintiffs be participants if it did.

33. The statements in ¶29(c) are false because they state that Plaintiffs committed malpractice and violated their own as well as Federal standards of care. None of these allegations are true. The arbitrator found no liability in Morgan’s lawsuit. Further it states that

Plaintiffs illegally advertised the laser. This is also not true and these claims were dismissed from Morgan's lawsuit in a final, binding judgment.

34. The statements in ¶29(d) are false because they suggest and are intended to suggest that the Nevys' are corrupt. The allegation is incorrect as to the number of malpractice lawsuits and how each of them was resolved. The allegation that eleven malpractice lawsuits were filed does not reflect that not a single court found any of these cases to be meritorious.

35. The statements in ¶29(e) are false because they state that Plaintiffs lied to Morgan, are responsible for his alleged loss of sight, and are unconcerned about their patients welfare.

36. The statements in ¶29(f) are false because they suggest and are intended to suggest that Plaintiffs are corrupt and have violated the law to pervert the legal system.

37. The statements in ¶29(g) are false because they suggest that the use of this investigational laser by Plaintiffs was detrimental to the Plaintiffs' patients. Plaintiffs' laser did have FDA approval. The use of Plaintiffs' laser on patients was not detrimental to the patients in any way. This was another claim brought by Morgan that was dismissed in his lawsuit against Plaintiffs and it is a final binding judgment.

38. The statements in ¶29(h) are false because these statements are simply untrue; no information was withheld from Morgan. Morgan wanted Lasik surgery.

39. The statements in ¶29(i) are false because the informed consent signed by Morgan is replete with warnings about the possible negative consequences of Lasik. The first listing under of possible complications is "It is possible that there could be a loss of some or all useful vision."

40. Morgan read and signed a detail informed consent form for each eye. The informed consent was twelve pages long and was so comprehensive that it included a written true/false test concerning the content of the disclosures. Additionally, Morgan's claims concerning lack of informed consent were dismissed in his lawsuit against Plaintiffs, another final, binding judgment. A true and correct copy of the informed consent signed by Morgan is attached hereto as Exhibit 5.

41. The statements in ¶29(j) are false because they suggest and are intended to suggest that Plaintiffs were unconcerned with the well-being of their patients and that the use of the laser was detrimental to their patients. All of Morgan's claims relating to the laser were dismissed from his lawsuit in a final, binding judgment.

42. The statements in ¶29(k) are false because they state that the Plaintiffs have something to hide from their patients are withholding such information from their patients. There is nothing for Plaintiffs to withhold from their patients and Plaintiffs are completely candid with their patients. The revised statements are equally false because they suggest and are intended to suggest that Plaintiffs' radio advertisements were in violation of federal law when they were not.

43. The statements in ¶29(l) are false because they suggest that Plaintiffs did not comply with Federal law and provide Morgan with this booklet. Such an allegation is completely without basis and was not even made in his action against Plaintiffs.

44. The statements in ¶29(m) are false because they suggest and are intended to suggest that Plaintiffs are corrupt and have violated the law to pervert the legal system.

45. The statements in ¶29(n) are false because they suggest and are intended to suggest that the Nevyas' are responsible for Morgan's alleged vision loss, that it may have been done intentionally and that they are corrupt in attempting to pervert the truth. The arbitrator found no liability on Morgan's lawsuit.

46. The statements in ¶29(o) are false because they state that Nevyas' are responsible for Morgan's alleged vision loss, that it may have been done intentionally and that they are corrupt in attempting to pervert the truth. The arbitrator found no liability on Morgan's lawsuit.

47. The statements in ¶29(p) are false because they suggest and are intended to suggest that the Nevyas' are corrupt and have perverted the legal system to fit their own ends. This allegation of the perversion of the legal system is also an allegation that Plaintiffs have violated the law. They also evidence Morgan's intention to damage the Plaintiffs.

48. The statements in ¶29(q) are false because they suggest and are intended to suggest the Plaintiffs are corrupt, uncaring and incapable surgeons.

49. The statements in ¶29(r) are false because they suggest and are intended to suggest that Plaintiffs are corrupt and violated the law to pervert the legal system.

50. The statements in ¶29(s) are false because they suggest and are intended to suggest that Plaintiffs are incompetent in their field of ophthalmological surgery and are unconcerned about the welfare of their patients. The exact opposite is true.

51. The statements in ¶29(t) are false because they suggest and are intended to suggest that Plaintiffs are greedy, stupid and did not disclose information to Morgan. The Plaintiffs are highly committed ophthalmological surgeons. All of Morgan's claims concerning lack of informed consent are false and were dismissed by the court in a final, binding judgment.

52. Morgan uses the website to make allegations that are defamatory, untrue and many of which have been thoroughly considered by a court of law and rejected.

53. Morgan's acts are deliberate, outrageous and made with malicious intent to cause harm to Plaintiffs.

54. Plaintiffs brought an action in Common Pleas Court, Philadelphia County, entitled: Nevyas v. Morgan, November 2003, No. 946, and applied for a Temporary Restraining Order compelling Morgan to cease his defamatory conduct adhere to the contract reached in August.

55. Morgan and Friedman, who was again representing Morgan as he did in the medical malpractice action, assured the Court that Morgan had no intention of defaming the Plaintiffs and that he simply wanted to tell his story with respect to Lasik surgery.

56. Morgan and Friedman assured the Court that changes would be made to the website and that Morgan was willing to consider the deletion of material Plaintiffs identified as defamatory.

57. Plaintiffs were well aware of the hatred and bitterness that Morgan admittedly had for them, and insisted that the only way they could be protected from Morgan's malicious attacks, was through adherence to the August contract. Morgan refused to comply.

58. On November 17, 2003, Judge Sylvester denied Plaintiffs motion for Temporary Restraining Order.

59. Later that week, Morgan made further modifications to the website. These modifications, along with future modifications belie Morgan's representations to Judge Sylvester that he simply wanted to tell his story.

60. Morgan added three letters written by Friedman and sent to the Food and Drug Administration (“FDA”). A true and correct copy is attached hereto as Exhibit 6. Upon information and belief Friedman agreed to have the letters included in the website.

61. Friedman’s letters to the FDA are defamatory and accused Plaintiffs of committing federal crimes, violating FDA regulations and violating the Pennsylvania Consumer Protection Act.

62. Friedman’s first letter to the FDA is dated December 28, 2001. It accuses the Plaintiffs of violating 18 U.S.C. §1001, making false statements to the government, of violations of 21 CFR §812, improper promotion of an investigational device, of violating 21 CFR §54, failure to disclose the financial interest of clinical investigators, and violation of 73 Pa.CSA §201, Pennsylvania Unfair Trade and Consumer Protection Law.

63. The letter further states specifically that Plaintiffs were broadcasting misleading radio advertisements: “The radio advertisement was misleading in that it: (a) sought to promote the Nevyas Excimer Laser in violation of FDA regulations, (b) did not mention that an experimental device and an experimental protocol were involved, (c) implied that only standard therapy was involved, (d) did not state that visual acuity could not be achieved beyond what spectacles or contacts could provide, (e) implied that Nevyas was part of a regional laser surgery institute specializing in laser surgery, and thus more authoritative and experienced, when the Institute was a fictitious name for Nevyas, and (f) implied that Nevyas was part of regional Refractive Surgery Partnership devoted to refractive eye surgery, when such partnership was largely fictitious.”

64. The December 28 letter also states: “The mere existence of promotional advertisements in violation of FDA regulations, and the failure of Nevyas to correct misrepresentations upon being asked specific questions by Mr. Morgan, constitute violations of 73 P.S. §201 (Pennsylvania Unfair trade and Consumer Protection Law).”

65. The letter also further asserts that Plaintiffs violated FDA regulations by making false representations to the FDA by failing to report adverse events. Friedman later refers to the Nevyas Excimer Laser as a “rogue device.”

66. One week later, January 4, 2002, Friedman wrote another letter to the FDA. This letter is also published on Morgan’s website and upon information and belief was published with the approval and encouragement of Friedman. In this letter Friedman repeats his earlier claims but adds a new allegation: “I believe Nevyas may have been violating the federal Anti-kickback and False Claims Acts.”

67. Friedman wrote another letter to the FDA on August 10, 2002 and upon information and belief was published with the approval and encouragement of Friedman. He again repeats and refers to his earlier claims and now accuses the Plaintiffs of engaging in “a ‘bait and switch’ tactic.”

68. In response to Friedman’s letters, the FDA sent an investigator to the Nevyas offices to assess the allegations against them.

69. The FDA did investigate these allegations and took no action against the Nevyas’ or their medical practice.

70. Morgan and Friedman remain embittered by the defense verdict entered against them in the malpractice action against the Plaintiffs.

71. Friedman and Morgan took further action to violate the August contract and to defame Plaintiffs.

72. Despite repeated statements that Morgan did not intend to defame Plaintiffs or to cause them harm, Morgan has posted another letter written by Friedman to the FDA on his website.

73. On December 4, 2003, three weeks after personally assuring Judge Sylvester that Morgan did not want to defame Plaintiffs but only wanted to tell his story, Friedman wrote a letter to the FDA accusing Plaintiffs of criminal activity and requesting criminal sanctions. A true and correct copy is attached hereto as Exhibit 7.

74. Some examples of the defamatory statements in the December 4 letter include:

(a) “I believe however, that emphasis need be placed upon investigation of possible outright *criminal* activity.” Emphasis in original.

(b) “I now call for an investigation by the Office of Criminal Investigation, for action which would: 1. Terminate all IDEs and stop Nevyas from performing LASIK. 2. Fine and otherwise sanction Nevyas for past improprieties.”

(c) “The Nevyas’ attorney told me that they intend to confiscate the social security disability checks Mr. Morgan gets for his legal blindness.”

(d) “The public needs protection. The FDA can give that protection, through criminal investigation and regulation.”

75. Friedman gave the December 4 letter to Morgan for inclusion on the website.

76. Friedman knew the statements contained in the December 4 letter were not true but sent the letter to the FDA and gave it to Morgan as part of his continuing effort to cause as much harm as possible to Nevyas.

77. Morgan quickly posted the December 4 letter on the website.

78. The allegations contained in the December 4 letter allege criminal activity. Such statements are defamation per se.

79. Each of the statements listed in ¶74 above is untrue, casts the Plaintiffs in a negative light, accuses Plaintiffs of criminal conduct and is intended to cause substantial harm to Plaintiffs.

80. The statements set forth in ¶74(a) are false because they state that the Plaintiffs were involved in criminal activity. The Plaintiffs are not engaged in and have never been engaged in criminal activity. The Plaintiffs are highly reputable and well-respected ophthalmologists.

81. The statements set forth in ¶74(b) are false because they state that the Plaintiffs were involved in criminal activity. Further, the statement suggests that Plaintiffs use a laser subject to an IDE to perform Lasik surgery. Plaintiffs have not used such a laser in approximately two years. The Plaintiffs are not engaged in and have never been engaged in criminal activity. The Plaintiffs are highly reputable and well-respected ophthalmologists.

82. The statements set forth in ¶74(c) are false because they state that the Plaintiffs' attorney threatened to confiscate Morgan's social security payments. Such threats were never made.

83. The statements set forth in ¶74(d) are false because they state that the Plaintiffs were involved in criminal activity. The Plaintiffs are not engaged in and have never been engaged in criminal activity. The Plaintiffs are highly reputable and well-respected ophthalmologists.

84. The addition of these four letters to the FDA, each authored by Friedman, demonstrates that Morgan and Friedman are conspiring to cause as much harm as possible to Plaintiffs.

85. Friedman had no purpose in writing the December 4 letter other than to try and cause as much harm as possible to the Plaintiffs. Friedman knew that the FDA had already investigated his claims against Plaintiffs and found them baseless, but he also gave the letter to Morgan for posting on the website, knowing it would be read by colleagues, current and potential patients of Plaintiffs. Friedman wrote the letter simply to cause harm to the Plaintiffs' reputations and medical practice.

86. Plaintiffs' harm is in the form of damage to their practice and damage to their reputation. Plaintiffs have no adequate remedy at law as money cannot remedy the damage to Plaintiffs' reputation.

COUNT I - VIOLATION OF 15 U.S.C.A. §1125

87. Plaintiff hereby incorporates paragraph 1-86 as if fully set forth herein.

88. As part of their scheme to damage and harm Plaintiffs, Defendants have made false or misleading statements about Plaintiffs. To wit defendants have accused the Plaintiffs of participating in criminal activity.

89. The false and misleading statements made by Defendants about the Plaintiffs are intended to deceive potential and current patients of the Plaintiffs so that they will not use Plaintiffs for medical care. The letters appear on the Friedman's stationary which indicates that he is both an attorney and medical doctor. This is intended to convey legitimacy and have the imprimatur of respectability and veracity which Plaintiffs believe and therefore aver are causing continuous harm th Plaintiffs.

90. The false and misleading statements made Defendants are material to the purchasing decisions of Plaintiffs' current and potential patients. Upon information and belief, a patient will not commence or continue medical treatment with a doctor they believe is engaged in criminal activity.

91. Plaintiffs have offices in Pennsylvania and New Jersey and their patients come to them from a number of different states including Pennsylvania, New Jersey and Delaware. For example, Defendant Morgan was treated in both Pennsylvania and New Jersey.

92. Plaintiffs have been injured and will continue to be injured by Defendants' actions. Plaintiffs are accomplished and well-respected ophthalmologists. Defendants are tryiong to destroy a medical practice that has been built over a lifetime. Defendants' actions have caused and will continue to cause substantial harm to Plaintiffs and their business.

COUNT II - DEFAMATION (Plaintiff v. All Defendants)

93. Plaintiffs hereby incorporate paragraph 1-92 as if fully set forth herein.

94. Morgan and Friedman made false and defamatory statements about Plaintiffs as set forth in detail above.

95. The false and defamatory statements were published on Morgan's website: www.lasiksucks4u.com and are available through internet search engines. Morgan's website is the third entry in a Google search of "Nevyas". Defendants did not have Plaintiffs' permission to disseminate this false information nor did Defendants have a privilege which allowed them to publish the defamatory material.

96. Defendants intended to publish these false and defamatory statements about Plaintiffs so as to create harm to Plaintiffs' reputation and business and were at least negligent in doing so.

97. Plaintiffs have suffered irreparable harm to their reputations due to the publication of the defamatory material. Plaintiffs continue to suffer harm while the defamatory material is on the website. Morgan and Friedman have violated a previous agreement to remove all mention of Dr. Nevyas, Dr. Nevyas-Wallace and their medical practice from the website.

98. Defendants have committed defamation per se.

99. There is no adequate remedy at law.

COUNT III - BREACH OF CONTRACT(Plaintiffs v. Morgan)

100. Plaintiffs hereby incorporate paragraph 1-99 as if fully set forth herein.

101. In late July and early August, counsel for Plaintiffs and Morgan discussed an agreement between the parties concerning the website to prevent litigation.

102. Plaintiffs and Morgan entered a contract whereby Morgan agreed to remove any and all references to Plaintiffs and their medical practice from the website and Plaintiff agreed not to file a defamation lawsuit against Morgan. A true and correct copy of the letters constituting the contract are attached hereto as Exhibit 1.

103. Morgan has willfully breached the contract by reconstructing the “lasiksucks4u” website replete with references to Plaintiffs and their medical practice.

104. Plaintiffs have suffered and continue to suffer damages due to Morgan’s breach of contract, and has no adequate remedy at law.

COUNT IV - SPECIFIC PERFORMANCE (Plaintiffs v. Morgan)

105. Plaintiffs hereby incorporate paragraph 1-104 as if fully set forth herein.

106. Plaintiffs and Morgan entered a contract whereby Defendant agreed to remove any and all references to Plaintiffs and their medical practice from the website and Plaintiff agreed not to file a defamation lawsuit against Morgan.

107. Defendant has willfully breached the contract by reconstructing the “lasiksucks4u” website replete with references to Plaintiffs and their medical practice.

108. Plaintiff has suffered and continues to suffer damages due to Defendant’s breach of contract, and has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, respectfully demands the following judgment:

1. Equitable relief including temporary restraining order and permanent injunctive relief enjoining Defendants Morgan and Friedman from further violations of 15 U.S.C. §1125(a), Plaintiffs’ have no adequate remedy at law;

2. Equitable relief including temporary and permanent injunctive relief in their favor and against Morgan, compelling Morgan’s specific performance of the existing contract including the removal of any and all references to the Plaintiffs and their medical practice, Plaintiffs’ have no adequate remedy at law;

3. Equitable relief ordering Defendants Morgan and Friedman to desist from defaming the Plaintiffs and compelling the Defendants to remove the defamatory material from the www.lasiksucks4u.com website, Plaintiffs have no adequate remedy at law;

4. Defendants Morgan and Friedman pay to Plaintiffs such damages as Plaintiffs have sustained in consequence of the unfair competition by Defendants, jointly and/or severally, plus interest and costs;

5. Defendants Morgan and Friedman pay to Plaintiffs such damages as Plaintiffs have sustained in consequence of the defamation, jointly and/or severally, plus interest and costs;

6. Defendant Morgan pay to Plaintiffs such damages as Plaintiffs have sustained in consequence of the breach of contract, plus interest and costs;

7. Demand that the Defendants Morgan and Friedman pay to Plaintiffs three times damages, together with the prejudgment interest, as a consequence of the willful nature of defendant's unlawful conduct and breach of 15 U.S.C. §1125(a) and 15 U.S.C. §1117;

8. Defendants pay to Plaintiffs its reasonable attorney's fees and full costs of this action pursuant to 15 U.S.C. §1117; and

9. Any further remedy which this Court deems fair and adequate.

Dated: January 29, 2004

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