

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY,
FLORIDA

CASE NO: **11-05755 CA32**

Millin A. Nobregas,
PLAINTIFF,

vs.

Virginia Hadad Gonzalez
DEFENDANT.

SECOND AMENDED COMPLAINT

PLAINTIFF, MILLIN A. NOBREGAS (hereinafter "PLAINTIFF"), by and through the undersigned counsel, files this Second Amended Complaint against DEFENDANT, VIRGINIA HADAD GONZALEZ (hereinafter "DEFENDANT") and alleges:

JURISDICTION, VENUE AND PARTIES

1. This is an action for damages greater than \$15,000.00, exclusive of interest, attorney fees and costs, and equitable relief.
2. PLAINTIFF is an individual who resides in Miami-Dade County and is sui juris.
3. DEFENDANT is an individual who resides in Miami-Dade County and is sui juris.
4. Venue is proper in Miami-Dade County, Florida wherein the DEFENDANT conducts mental health counseling business and where the cause of action accrued.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

5. On or about 2007 Plaintiff was referred to DEFENDANT for mental health counseling services on the recommendation of a mutual friend and or his ex-girlfriend (the mother of Plaintiff's minor son).

6. From or about May 7, 2007 through or about June 7, 2008¹ Plaintiff met DEFENDANT for one hour mental health counseling sessions at her home and Plaintiff paid DEFENDANT \$60.00 for each session.
7. During Plaintiff's counseling sessions Plaintiff, under the belief DEFENDANT was a licensed mental health counselor and or doctor, would discuss personal and intimate details of his childhood, family, stressors, and issues he wished to sort through counseling.
8. At all times material to the referenced time period, DEFENDANT held herself out to be a licensed professional specializing in "psychotherapy and psychology" and boasted about having a Doctor of Medicine degree from the University Of Miami School Of Medicine. DEFENDANT also claimed to be a "Certified Mental Health Counselor" and a "Certified Addiction Professional."
9. DEFENDANT even signs her name on correspondence using the designation "MD" and "CAP" (A certification given by a private company, not a Florida agency) to add legitimacy to her claims of being a licensed professional.
10. In one instance, DEFENDANT offered her services at \$120.00 hour to lawyers representing the Plaintiff's ex-girlfriend in his paternity case.
11. At all times material to the referenced time period, Plaintiff believed DEFENDANT had a license and the educational credentials to treat Plaintiff.
12. At all times material to the referenced time period, DEFENDANT represented herself as a knowledgeable person by speaking in psychological lingo and conducting herself

¹ Plaintiff's counseling sessions were once a week with a brief break that lasted no more than 2 months before sessions resumed.

- in a manner that would not alert Plaintiff to question DEFENDANT's integrity or qualifications.
13. Because Plaintiff is a licensed attorney experienced with medical and psychology professionals, his interaction with DEFENDANT never aroused suspicion, which demonstrates the DEFENDANT's savvy and conceit.
 14. On or about August 2010, DEFENDANT was counseling Plaintiff's ex-girlfriend. During her counseling sessions, DEFENDANT unbelievably revealed some personal details of Plaintiff's life and added unqualified diagnosis and opinions about Plaintiff, which instigated a contentious paternity action. The content of DEFENDANT's words sought to cast aspersions on Plaintiff's reputation and his parental rights.
 15. Because of DEFENDANT's malicious, surreptitious, intentional, careless, or negligent actions, Plaintiff is still defending his parental rights in the paternity action.
 16. Because of DEFENDANT's breach of all conventions of decency and privacy, Plaintiff became, and is still, consumed with defending his parental rights and reputation as an attorney, leading to sleeplessness, anxiety, fatigue, and reduced time to perform his duties as an attorney. As a result, Plaintiff was prescribed medication in order to deal with his symptoms.
 17. To compound her outrageous actions, DEFENDANT also embarked on a nasty campaign to ruin PLAINTIFF both personally and professionally.
 18. For instance, on or about July, 2012, DEFENDANT surreptitiously and without any direct knowledge whatsoever filed a child abuse complaint against Plaintiff with the Florida Department of Children and Families ("DCF"), Child Protective Services Unit, which caused the Department to immediately visit the PLAINTIFF and demand

- a urine test all while threatening to take away PLAINTIFF'S parental rights to visit and care for his son.
19. To further disrupt Plaintiff's life, DEFENDANT on September 24, 2012 filed a Florida Bar Complaint that falsely alleged the PLAINTIFF assaulted her after her deposition.
 20. Both instances caused the PLAINTIFF alarm, substantial inconvenience, and stress as both complaints forced PLAINTIFF to immediately put all his energy into defending his reputation and fitness as a father and attorney.
 21. Both the DCF investigation and Florida Bar complaint were dismissed against Plaintiff.
 22. Besides the personal inconvenience DEFENDANT'S bad acts caused, PLAINTIFF'S anxiety was increased and his legal practice was disrupted, forcing him to spend substantial time writing motions, rebuttals and attending various court hearings in his defense. Today the family court case continues and is in a trial posture.
 23. As a direct and proximate cause of the DEFENDANT's intentional, reckless, or negligent misconduct and a total disregard for Plaintiff's well-being, livelihood or parental rights, Plaintiff was damaged.

**COUNT I – ACTION FOR SEVERE INFLECTION OF EMOTIONAL
DISTRESS**

24. PLAINTIFF re-alleges paragraphs 1 through 23.
25. Under the guise of being a legitimate mental health professional or doctor DEFENDANT acquired privileged and confidential information from Plaintiff that is normally revealed through a patient-doctor relationship/patient-counselor relationship

with the understanding such information will be preserved by the doctor as secret to the end of time.

26. Under the same guise DEFENDANT later counseled Plaintiff's ex-girlfriend and disclosed confidential information and asserted unqualified diagnosis and opinions of PLAINTIFF'S mental state, and instigated a paternity action against PLAINTIFF.
27. DEFENDANT'S conduct was intentional or reckless, that is, she intended her behavior when she knew or should have known that emotional distress would likely result in PLAINTIFF.
28. DEFENDANT'S conduct was outrageous, as to go beyond all bounds of decency, and to be regarded as odious and utterly intolerable in a civilized community.
29. DEFENDANT'S actions led to the disclosure of personal information that was meant to be preserved in the strictest of confidences and only to be used in an effort to help PLAINTIFF in his efforts to find solace through mental health counseling. Instead, the disclosure caused severe emotional distress in PLAINTIFF, which led to months of increased anxiety, severe stress, and sleeplessness, which also affected his responsibilities as a licensed attorney. Consequently, PLAINTIFF is now on medication to treat his symptoms.
30. As a direct and proximate result of Defendant's actions, Plaintiff has been forced to hire the service of an attorney and has incurred legal fees and costs for which Plaintiff seeks to recover from Defendant.

WHEREFORE, Plaintiff damages judgment for compensatory and punitive damages against DEFENDANT.

**COUNT II- ACTION FOR FRAUD OR FRAUDULENT
MISREPRESENTATION**

31. PLAINTIFF re-alleges paragraphs 1 through 23.
32. PLAINTIFF attended counseling sessions with DEFENDANT for a period of almost 2 years.
33. Based upon the recommendation of third parties, who knew the DEFENDANT as a mental health professional, PLAINTIFF sought her services for counseling.
34. At all relevant times, DEFENDANT represented to PLAINTIFF she was a mental health counselor and or doctor with various specialties.
35. At all relevant times, PLAINTIFF believed DEFENDANT was a licensed counselor because she provided mental health counseling services to Plaintiff, which by their very nature are specialized and require a license in the State of Florida.
36. The representation was made for the purpose of inducing PLAINTIFF to engage DEFENDANT'S purported services for \$60.00 a session.
37. The representation was false and DEFENDANT should have known describing herself as a counselor would be interpreted by PLAINTIFF to mean she was licensed to provide the mental health counseling.
38. The representation induced PLAINTIFF to engage and pay DEFENDANT for counseling services.
39. As a result of PLAINTIFF attending counseling sessions with DEFENDANT, PLAINTIFF received unqualified and bogus services with the added consequence of having his privacy invaded by DEFENDANT.
40. As a direct and proximate result of Defendant's fraud or fraudulent misrepresentation, Plaintiff has been forced to hire the service of an attorney and has incurred legal fees and costs for which Plaintiff seeks to recover from Defendant.

WHEREFORE, PLAINTIFF demands judgment for compensatory and punitive damages against DEFENDANT.

**COUNT III- ACTION FOR CONSTRUCTIVE FRAUD OR FRAUD IN
THE CONCEALMENT**

41. PLAINTIFF re-alleges paragraphs 1 through 23.
42. PLAINTIFF attended counseling sessions with DEFENDANT for a period of almost two years.
43. Based upon the recommendation of third parties, who knew the DEFENDANT as a mental health professional, PLAINTIFF sought her services for counseling.
44. At all relevant times, DEFENDANT represented through her actions she was a licensed mental health counselor and or doctor with various specialties.
45. At all relevant times, a fiduciary relationship existed between PLAINTIFF and DEFENDANT.
46. The representation was made for the purpose of inducing PLAINTIFF to engage DEFENDANT'S purported counseling services for \$60.00 a session.
47. The representation was false and known by DEFENDANT to be false at the time it was made because she wanted to profit from PLAINTIFF and ensure he would have ongoing counseling sessions with her.
48. The representation induced PLAINTIFF to engage and pay DEFENDANT for counseling services.
49. As a result of PLAINTIFF attending counseling sessions with DEFENDANT she profited while PLAINTIFF received unqualified and bogus services and had his privacy invaded by DEFENDANT.

50. The DEFENDANT at all material times failed to disclose the material fact that she was unlicensed and had no intention of preserving Plaintiff's secrets.
51. The DEFENDANT knew or should have known her lack of licensure should be disclosed or not concealed.
52. DEFENDANT also acted in bad faith when she disclosed Plaintiff's secrets with his ex-girlfriend (mother of Plaintiff's son).
53. DEFENDANT knew that by concealing or failing to disclose she was unlicensed, Plaintiff would seek her services.
54. As a consequence of such concealment or failure to disclose, Plaintiff suffered damages and has been forced to hire the service of an attorney and has incurred legal fees and costs for which Plaintiff seeks to recover from Defendant.

WHEREFORE, PLAINTIFF demands judgment for compensatory and punitive damages against DEFENDANT.

**COUNT IV-ACTION FOR VIOLATION OF THE FLA. DECEPTIVE AND
UNFAIR TRADE PRACTICES ACT, SECTION 501.204**

55. PLAINTIFF re-alleges paragraphs 1 through 23.
56. The Florida Deceptive and Unfair Trade Practices Act (referred to as "FDUTPA" or "Statute") renders unlawful unfair methods of competition, *unconscionable acts or practices*, and unfair or deceptive acts or practices in the conduct of any trade or commerce. F.S. Section 501.204
57. The Statute defines "Consumer" as an *individual*; child, by and through its parent or legal guardian; business; firm; association; joint venture; partnership; estate; trust; business trust; syndicate; fiduciary; corporation; any commercial entity, however denominated; or any other group or combination.

58. The Statute defines “*Trade or commerce*” as the advertising, soliciting, *providing*, offering, or distributing, whether by sale, rental, or otherwise, of any good or *service*, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. “Trade or commerce” shall include the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity.
59. At all relevant times, DEFENDANT deceptively, unfairly, and unconscionably held herself out to be a licensed mental health professional and doctor, provided counseling sessions to PLAINTIFF out of her home for money, and was engaged in trade or commerce as defined in Section 501.203, Fla. Stat.
60. At all relevant times, PLAINTIFF was a consumer as defined by F.S. Section 501.203.
61. DEFENDANT’S unlicensed practice of mental health counseling, as described in the general allegations, is unfair, unconscionable and a deceptive act.
62. As a result of DEFENDANT’S unlawful practice of mental health counseling, PLAINTIFF not only lost the monies paid to DEFENDANT, but his privacy was compromised and damaged by such breach.
63. As a direct and proximate result of Defendant’s violation of FDUTPA through the aforementioned deceptive and unfair acts and practices, Plaintiff was required to hire an attorney and is obligated to pay legal fees and costs for which he seeks to recover from Defendant under the Florida Deceptive and Unfair Trade Practices Act.
- WHEREFORE, PLAINTIFF demands a declaratory judgment that DEFENDANT violated the FDUTPA statute and an injunction enjoining future violations of the

Statute, actual damages for violation of the Statute, monetary damages, an award of attorneys' fees and costs pursuant to F.S. 501.211(2) and 501.2105, and such other relief that the Court deems just and proper.

COUNT V – ACTION FOR INVASION OF PRIVACY

64. PLAINTIFF re-alleges paragraphs 1 through 23.
65. At all times material to this action PLAINTIFF lived a quiet and private life, free from the curiosity that accompanies fame or notoriety and from the interest of the great mass of people in those whose conduct or behavior attracts general public interest. PLAINTIFF shunned notoriety and publicity, held and holds as precious the privacy of his personal life and of plaintiff's acts and speech in all social relations. PLAINTIFF never exhibited or sought to exploit his name or personality for money, profit or commercial gain.
66. On or about August, 2010 DEFENDANT disclosed to PLAINTIFF'S ex-girlfriend details of his personal history with her "expert" opinions or "diagnosis" of PLAINTIFF'S psychological condition. Plaintiff's history was meant to be held in the strictest confidence under a patient and therapist relationship.
67. At all times material to this action, PLAINTIFF had a reasonable expectation of privacy and at no time consented to DEFENDANT'S disclosure.
68. Because of DEFENDANT'S disclosure of private information to PLAINTIFF'S ex-girlfriend, DEFENDANT was also the direct cause of instigating allegations used in a paternity action, which sought to limit Plaintiff's visitation with his son. The allegations about PLAINTIFF are now part of a public court file, which remains open.

69. The nature of the factual allegations mentioned in the court filings sought to impair the PLAINTIFF from having shared custody and meaningful visitation with his newborn son and placed a false light on PLAINTIFF'S character and fitness to be a father to his son.
70. Consequently, PLAINTIFF has been injured because his personality has been violated by being exposed in a public court file, his reputation as a lawyer in his community has been cheapened and made notorious, PLAINTIFF has been subjected to contempt, ridicule, and inquisitive notice by the general public to the injury of PLAINTIFF'S personality and self-respect, the disturbance of PLAINTIFF'S peace of mind and privacy and PLAINTIFF has been made conspicuous and identified to the public and has suffered great mental pain.
71. As a consequence of Defendant's invasion of privacy, Plaintiff suffered damages and has been forced to hire the service of an attorney and has incurred legal fees and costs for which Plaintiff seeks to recover from Defendant.

WHEREFORE, PLAINTIFF demands judgment in his favor and against DEFENDANT for damages, punitive damages, attorneys' fees, costs, and all other relief that the Court deems proper.

COUNT VI – ACTION FOR NEGLIGENCE

72. Plaintiff re-alleges paragraphs 1 through 23.
73. DEFENDANT had a duty to investigate, inquire, and learn what the requirements are to practice medicine, mental health and or a substance abuse counseling profession in the State of Florida.

74. DEFENDANT had a further duty, as a certified member of the Florida Certification Board, a quasi and private company unaffiliated to the State of Florida or any Florida agency, to follow its internal rules and regulations as it pertains to practicing a profession in the State of Florida.
75. DEFENDANT had also a fiduciary duty to preserve Plaintiff's confidential information from accidental or inadvertent dissemination.
76. Since 2005 DEFENDANT has a "counseling" relationship with a non-party to this action, who happens to be Plaintiff's ex-girlfriend and mother of Plaintiff's son.
77. DEFENDANT breached the foregoing duties when she carelessly practiced a profession from her home without a license in violation of State law, the rules and regulations of the aforementioned company, and proceeded to declare unauthorized opinions, exaggerations, and outright lies about Plaintiff to his ex-girlfriend, which helped form the basis of her current sole custody action against Plaintiff.
78. As a direct and proximate result of DEFENDANT's actions, PLAINTIFF has been damaged because he has to defend himself in an ongoing paternity action that was instigated by DEFENDANT, wherein the distorted disclosures made by her are now the center of attention in Plaintiff's legal battle for custody of his son. In addition, the Plaintiff is ultimately damaged in that his symptoms of pre-existing anxiety have increased; he has suffered mental anguish, and pain and suffering.
79. As a further direct and proximate result of DEFENDANT'S actions, PLAINTIFF has been forced to hire an attorney and is obligated to pay attorney fees and costs for which Plaintiff seeks to collect from DEFENDANT.

WHEREFORE, Plaintiff demands judgment in his favor for damages, punitive damages, attorney's fees, costs, and all other relief that the Court deems proper.

COUNT VII – ACTION FOR BREACH OF FIDUCIARY DUTY

80. Plaintiff re-alleges paragraphs 1 through 23.

81. Plaintiff and DEFENDANT shared a relationship whereby Plaintiff reposes trust and confidence in DEFENDANT as a counselor and DEFENDANT undertakes such trust and assumes a duty to advise, counsel and or protect Plaintiff.

82. DEFENDANT breached her duty to PLAINTIFF when she failed to preserve Plaintiff's confidences and recklessly, carelessly, or intentionally revealed them to Plaintiff's ex-girlfriend with unqualified opinions, exaggerations, and lies.

83. DEFENDANT's breach caused Plaintiff to suffer damages.

84. As a further direct and proximate result of DEFENDANT'S actions, PLAINTIFF has been forced to hire an attorney and is obligated to pay attorney fees and costs for which Plaintiff seeks to collect from DEFENDANT.

WHEREFORE, Plaintiff demands judgment in his favor for compensatory damages, punitive damages, attorney's fees, costs, and all other relief that the Court deems proper.

The Plaintiff demands trial by jury on all issues and counts triable by Jury as a matter of right.

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was filed and sent to Ms. Jane Muir by electronic mail: jane @gerstenmuir.com on December 16, 2016.

Respectfully submitted,

KEVIN GUANAGA, P.A.
PO BOX 160665
Miami, Florida 33116-0665
305-860-9550

By: /s/ Kevin C. Guanaga
Kevin C. Guanaga, Esq.
FBN 0078883