MTMIS

PHILADELPHIA COURT OF COMMON PLEAS
PETITION/MOTION COVER SHEET

FOR COURT USE ONLY	
ASSIGNED TO JUDGE:	ANSWER/RESPONSE DATE: 6/30
Do not send Judge courtesy copy of Petition/Motion/Answer/Response. Status may be obtained online at http://courts.phila.gov	

CONTROL NUMBER: **060766**

(RESPONDING PARTIES MUST INCLUDE THIS NUMBER ON ALL FILINGS)

November Term, 2003
Month *Year*

No. 946

Herbert J. Nevyas, M.D., et al

vs.

Dominic Morgan, Steven Friedman

Name of Filing Party:

Herbert J. Nevyas, M.D., et al

(Check one) ☑ Plaintiff ☐ Defendant
(Check one) ☐ Movant ☐ Respondent

INDICATE NATURE OF DOCUMENT FILED:

☐ Petition *(Attach Rule to Show Cause)* ☑ Motion
☐ Answer to Petition ☐ Response to Motion

Has another petition/motion been decided in this case? ☑ Yes ☐ No
Is another petition/motion pending? ☐ Yes ☑ No
If the answer to either question is yes, you must identify the judge(s):
Honorable Eugene Edward Maier

TYPE OF PETITION/MOTION *(see list on reverse side)*	PETITION/MOTION CODE *(see list on reverse side)*
Motion for an Evidentiary Hearing on Remand in accord with the order of the Superior Court	

ANSWER/RESPONSE FILED TO *(Please insert the title of the corresponding petition/motion to which you are responding):*

I. CASE PROGRAM

Is this case in the *(answer all questions)*:

A. COMMERCE PROGRAM

Name of Judicial Team Leader: _____

Applicable Petition/Motion Deadline: _____

Has deadline been previously extended by the Court?
☐ Yes ☐ No

B. DAY FORWARD/MAJOR JURY PROGRAM — Year _____

Name of Judicial Team Leader: _____

Applicable Petition/Motion Deadline: _____

Has deadline been previously extended by the Court?
☐ Yes ☐ No

C. NON JURY PROGRAM

Date Listed: _____

D. ARBITRATION PROGRAM

Arbitration Date: _____

E. ARBITRATION APPEAL PROGRAM

Date Listed: _____

F. OTHER PROGRAM: _____

Date Listed: _____

II. PARTIES *(required for proof of service)*
(Name, address and ***telephone number*** of all counsel of record and unrepresented parties. Attach a stamped addressed envelope for each attorney of record and unrepresented party.)

Steven A. Friedman
Law Offices of Steven Friedman
850 West Chester Pike
Havertown, PA 19083

Maureen Fitzgerald, Esquire
McKissock & Hoffman, P.C.
1818 Market Street, Suite 13th floor
Philadelphia, PA 19103

III. OTHER

Nevyas Etal Vs Morgan-MTMIS

03110094600245

DATE: 06/09/08 TIME: 12:41
TICKET NO: 279332
CASE NO: 031100946 80
TOTAL AMT: $
REGISTER: Register 82 CH
CASHIER: BP
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CUSTOMER

VALIDATION

By filing this document and signing below, the moving party certifies that this motion, petition, answer or response along with all documents filed, will be served upon all counsel and unrepresented parties as required by rules of Court (see PA. R.C.P. 206.6, Note to 208.2(a), and 440). Furthermore, moving party verifies that the answers made herein are true and correct and understands that sanctions may be imposed for inaccurate or incomplete answers.

(Attorney Signature/Unrepresented Party)	6-9-08 *(Date)*	Leon W. Silverman *(Print Name)*	04244 *(Attorney I.D. No.)*

The Petition, Motion and Answer or Response, if any, will be forwarded to the Court after the Answer/Response Date.
No extension of the Answer/Response Date will be granted even if the parties so stipulate.

30-1061B

HERBERT J. NEVYAS, M.D. ANITA NEVYAS-WALLACE, M.D., and NEVYAS EYE ASSOCIATES, P.C., Plaintiffs	:	COURT OF COMMON PLEAS Philadelphia County
vs.	:	NOVEMBER TERM, 2003 NO.: 946
DOMINIC MORGAN, STEVEN FRIEDMAN Defendants.	:	060766

ORDER

AND NOW this day of , 2008, it is hereby ORDERED that Plaintiffs Motion is GRANTED and an evidentiary hearing on this matter is set for _____ _____, 2008.

BY THE COURT:

_____
J.

STEIN & SILVERMAN, P.C.
BY: Leon W. Silverman, Esquire
Identification No. 04244
230 South Broad Street, 17TH Floor
Philadelphia, PA. 19102
(215) 985-0255

Attorney for Plaintiffs Dr. Herbert Nevyas and Dr. Anita Nevyas-Wallace

HERBERT J. NEVYAS, M.D. ANITA NEVYAS-WALLACE, M.D., and NEVYAS EYE ASSOCIATES, P.C., Plaintiffs vs. DOMINIC MORGAN, STEVEN FRIEDMAN Defendants.	COURT OF COMMON PLEAS Philadelphia County NOVEMBER TERM, 2003 NO.: 946

MOTION FOR AN EVIDENTIARY HEARING ON REMAND IN ACCORD WITH THE ORDER OF THE SUPERIOR COURT

Plaintiffs Herbert J. Nevyas, M.D., Anita Nevyas-Wallace, M.D. and Nevyas Eye Associates, P.C., by and through their undersigned counsel, hereby Motion this Honorable Court to order an evidentiary hearing to determine whether Morgan's website postings violate his contractual agreement with Plaintiffs and whether any new postings are false and defamatory. In support of their Petition, Plaintiffs aver as follows:

1. On November 7, 2003 Plaintiffs (collectively "Nevyas") instituted a civil action against Defendant Dominic Morgan ("Morgan") and Defendant Stephen Friedman ("Friedman") bringing a count for defamation against both Defendants and counts for breach of contract and specific performance against Morgan.

2. On July 26, 2005, by agreement of all parties, the case proceeded to a non-jury trial limited to Count III of the Second Amended Complaint – Specific Performance Against Defendant Morgan. The parties further agreed to await trial on the remaining counts until

after Count III was finally resolved.

3. The Honorable Eugene Maier found that Morgan and Nevyas is entered into an agreement in that "the parties had agreed that in exchange for the Nevyas's agreement to refrain from filing a lawsuit against Morgan for defamation, Morgan would remove all defamatory statements from his website, Lasiksucks4u.com and to refrain from doing so in the future." A true and correct copy of the Trial Court Opinion is attached hereto as Exhibit 1 (hereinafter cited as Trial Op. at ___) Trial Op. at 3.

4. The Trial Court also issued an Order forbidding Morgan from making any mention at all of Nevyas at on his website. A true and correct copy of the Order of October 19, 2005 is attached as Exhibit 2.

5. Morgan appealed to the Superior Court.

6. The Superior Court held that Judge Maier was correct that Morgan agreed to remove from his website the libelous postings that were the same as or substantially similar to those posted on his website on July 30, 2003 and further agreed those statements, as well as any defamatory statements were prohibited thereafter. Morgan was, however, permitted, "if he so chooses, and at his own risk [to make], libelous statements in the future, **unrelated to the statements on his website as of July 30, 2003**." Emphasis added. A true and correct copy of the Superior Court Opinion (hereinafter Sup. Ct. at ___) is attached as Exhibit 3, Sup. Ct. at 14.

7. The Superior Court remanded the case to Judge Maier in order to determine whether or not "the statements that appeared on the website that are the subject of this action are the same as the prohibited postings of July 30, 2003, and, of course, if not, whether they are

in fact defamatory." Sup. Ct. at 14.

8. This Court must also determine whether or not additional false and defamatory statements are published by Mr. Morgan on his website. Sup. Ct. at 14.

WHEREFORE Petitioners respectfully request that this Court order an evidentiary hearing to determine whether Morgan's website postings violate his contractual agreement with Nevyas and whether any new postings are false and defamatory.

Respectfully submitted,

STEIN & SILVERMAN, P.C.

Leon W. Silverman
Attorney for Plaintiffs Dr. Herbert Nevyas and Dr. Anita Nevyas-Wallace

Dated: 6-9-08

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HERBERT J. NEVYAS, M.D. ANITA NEVYAS-WALLACE, M.D., and NEVYAS EYE ASSOCIATES, P.C., Plaintiffs vs. DOMINIC MORGAN, STEVEN FRIEDMAN Defendants.	COURT OF COMMON PLEAS Philadelphia County NOVEMBER TERM, 2003 NO.: 946

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTIONFOR AN EVIDENTIARY HEARING ON REMAND IN ACCORD WITH THE ORDER OF THE SUPERIOR COURT

Morgan is a former patient of Nevyas Eye Associates, P.C. who was dissatisfied with the results of the LASIK surgery he elected to have performed. Morgan brought suit against Nevyas, claiming, *inter alia*, that Nevyas committed medical malpractice, that Nevyas failed to obtain his informed consent (despite a multiple page informed consent form followed by a written test to ensure that Morgan understood the risks), and that Nevyas violated federal law. All counts except for the count for medical malpractice were dismissed before trial. The parties agreed to a binding high-low arbitration on the medical malpractice claim. The arbitrator, Thomas Rutter, Esquire entered a defense verdict, and as a result of the parties' arbitration agreement, Nevyas paid Morgan $100,000.

Morgan was still dissatisfied and began a website called Lasiksucks4u.com. He began posting many false and defamatory statements about Nevyas on that website, including, *inter alia*, accusing Nevyas of tampering with the court system as part of an illegal "cover-up," of

violating federal law, of being "ruthless, uncaring and greedy," of misrepresenting themselves to patients, of ruining his vision and his life, of failing to inform patients of the risks of LASIK Surgery, of concealing information from the FDA, of "walk[ing] all over the legal system", of going on "to hurt somebody else," of taking his sight and trying to take the truth, of having a "scary track record," and of "stupidity or greed."

Nevyas and Morgan eventually entered into an agreement which, as the Superior Court held, was that Morgan would remove and not re-post the specific libelous statements that were on his website on July 30, 2003, and any related statements. "Morgan did not agree to waive his right to make, if he so chooses and at his own risk, libelous statements in the future, **unrelated to the statements on his website as of July 30, 2003.**" Sup. Ct. at 13, 14 (emphasis added.)

Both Nevyas and Morgan filed motions for summary judgment with the Court on the outstanding issue on remand of "whether the statements that appeared on the website that are the subject of this action are the same as the prohibited postings of July 30, 2003, and, of course, if not, whether they are in fact defamatory." The Court denied both motions, apparently deciding that further evidence was needed to decide this issue.

The parties, with the aid of the Court, entered into extensive settlement negotiations. Everytime Nevyas believed they had reached an agreement, however, Morgan changed his mind and refused to agree. No settlement appears possible at this time.

Nevyas now petitions this Honorable Court to schedule this evidentiary hearing. Every day that Morgan continues to post defamatory statements about Nevyas on his website Nevyas is suffering irreparable harm to reputation. Moreover, pursuant to the agreement between the

parties, no progress can be made on resolving the remaining counts of the Amended Complaint until Count III is finally resolved. Nevyas asks the Court to schedule an evidentiary hearing to stop the prejudice to Nevyas that is occurring with every day this matter remains unresolved. Nevyas further requests that this hearing be scheduled any time other than the last two weeks of August or the first week of September due to scheduling conflicts during this time.

Respectfully submitted,

STEIN & SILVERMAN, P.C.

Leon W. Silverman
Attorney for Plaintiffs Dr. Herbert Nevyas and Dr. Anita Nevyas-Wallace

Dated: 6-9-08

CERTIFICATE OF SERVICE

I, Florence R. Falance, hereby certify that on June 9, 2008, I have caused a true and correct copy of Plaintiffs Motion for an Evidentiary Hearing on Remand in Accord with the Order of the Superior Court and Memorandum in support thereof to be served via first class mail postage prepaid to the following individual listed below:

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