

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

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LAW OFFICES OF GARY J. VISCIO, PC., and
GARY J. VISCIO

Plaintiffs,

Index No:
Purchased 6/11/08

-against-

**AMENDED
COMPLAINT**

ERIC KLEIN, TIM ARMSTRONG, OBESITY HELP INC.,
TEAM SAPIENT INC., BARITATRICS
TODAY INC., JOHN DOE ONE THROUGH TEN AND
JANE DOE ONE THROUGH TEN (said names being
fictitious and presently unknown)

Defendants.

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Plaintiffs, pro se, as and for their complaint against the defendants herein, set forth
the following upon information and belief:

JURISDICTION AND VENUE

1. Jurisdiction is predicated on the case of wherein defendants, Corporate and Individuals having projected themselves into the jurisdiction of the Court pursuant to Deutsche Bank Securities Inc. V. Montana Board of Investments, decided June 6, 2006, Court of Appeals, wherein long arm jurisdiction was found based upon use of Instant Messaging.

2 At the time of the commencement of this action, plaintiff THE LAW OFFICES OF GARY J. VISCIO, PC, (hereinafter referred to as "LAW FIRM") is a professional corporations duly organized and existing under and by virtue of the laws of the State of New York.

3. At the time of the commencement of this action, plaintiff GARY VISCIO (Hereinafter referred to as "VISCIO") is a resident of the county of Nassau, State of New York.

4 At the time of the commencement of this action, defendants ERIC KLEN (hereinafter referred to as KLEIN) and TIM ARMSTRONG (hereinafter referred to as

ARMSTRONG) are residents of the State of California.

5. At the time of the commencement of this action, defendants OBESITTY HELP (hereinafter referred to as "OH") TEAM SAPIENT INC (hereinafter referred to as "SAPIENT") and BARIATRICS TODAY INC., (hereinafter referred to as "BT") are domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

6. At the time of the commencement of this action, defendants OBESITTY HELP (hereinafter referred to as "OH") TEAM SAPIENT INC (hereinafter referred to as "SAPIENT") and BARIATRICS TODAY INC., (hereinafter referred to as "BT") are foreign corporation doing business in the State of New York.

BACKGROUND

7. In or about July 2004 plaintiff was approached by Jenny Coulter, a co-CEO of defendant "OH", in which plaintiff was requested to assist OH in a consultant capacity. In return, plaintiffs's were given more visibility both on the OH Website and Magazines, a Banner Ad on the main message board and placement on the OH and BT Advisory Board.

8. In support of that agreement plaintiff's provided countless hours of bariatric consulting services, Such services consisted of consulting in the area of insurance coverage, answering insurance related questions and publishing insurance related articles.

9. In or about 2005 plaintiff was asked to fly to the headquarters of OH at his own expense, hotel being covered by OH to expand plaintiffs role in the Corporation.

10, Plaintiff began to perform legal services for the corporation such as trademark and patent research, bankruptcy consultations, drafting employment agreements, drafting Terms of Service Agreements for the OH Forum, advising and handling troubling situation that developed between members of the OH forum, Answering

general question from the OH staff.

11. During said time at least half of the consulting conversations took place on AOL instant messenger as this is a primary mode of conversation between members of the corporations many of who are home based workers.

12. Many of the conversations also took place via Email and telephone conversations including conference calls between plaintiff, defendants and members of the medical community.

13. Again, during the visit to Irvine, and conversations in writing with KLEIN and OH plaintiff was assured of a highly visible position with the company, both as compensation for services being rendered and to allow more patient access to the services provided by plaintiffs.

14. Most instances of consulting with members of the Staff went beyond the scope of insurance questions. Including ARMSTRONG requesting that VISCIO represent and negotiate a settlement for advertising costs with the WISH CENTER who was filing Chapter 11.

Presentations given in Irvine and by AOL and email and telephone by VISCIO including information on created internet forums, avoiding liability for forum mis-use,

When VISCIO was asked by other companies to consult it was always cleared, in writing (emails in my possession) with KLEIN as not being a conflict of interest. In fact after permission KLEIN would ask VISCIO to spy on these corporations and report back to him in regard to any areas that may converge with OH. In fact as late as last month, a saved AIM conversation,

took place with VISCIO and KLEIN where KLEIN assured VISCIO he was part of the corporation, and a request was made to attempt to discover whether other companies were creating their own internet forums to compete with OH.

15. KLEIN requested VISCIO in writing on numerous occasions to remain loyal to and a part of the OH community stating that VISCIO's value is incalculable to the defendants, and

16 It was during 2006 when KLEIN and defendants asked plaintiff to build and create and insurance help forum on the site, that VISCIO would "Maintain and control" In return Viscio continued consulting, writing articles and providing free advice on the workings of the forum and OH.

Other work included creating a non compete employment contract for the corporation, being involved and giving input into marketing aspects including but not limited to being including in KLEINS "OH Marketing Summary" as part of Team 1 and/or 2.

Accepting calls emails and instant messages at any hour in regard to trouble situations on the forum.

Rendering free legal advice to assist those in need.

Emails and messaging as recent as last month will show KLEINS promises towards VISCIO and acknowledgment of his work for the company.

PIERCING THE CORPORATE VEIL

17. It is well settled that *orris*, 603 N.Y.S.2d at 807. A court will consider the following factors in ascertaining complete control:

(1) disregard of the corporate formalities; (2) inadequate capitalization; (3) intermingling of funds; (4) overlap in ownership, officers, directors, and personnel; (5) common office space, address and telephone numbers of corporate entities; (6) the degree of discretion shown by the allegedly dominated corporation; (7) whether the dealings between the entities are at arms length; (7) whether the corporations are treated as independent profit centers; (9) payment or guarantee of the corporation debts by the dominating entity; and (10) intermingling of property between the entities.

18. This allegation will be proven to hold KLEIN and ARMSTRONG personally liable as well as JOHN DOE ONE THROUGH TEN AND JANE DOE ONE THROUGH TEN, as the Corporations are run together, inermingling, and it will be alleged have defrauded the public on at least two occaisions.

1. VISCIO was advised that OH was passing Monica Ganz as a certified PHD when in fact they learned that her degree was allegedly earned online from a non-accredited university. It turned out that OH embarked on an alleged slander campaign against GANZ and fabricated the information for their own benefit.

2. VISCIO learned at the same time, that an employee of OH was allowed to collect unemployment and/or workers compensation and/or disability benefits

while placing the spouse on the books and paying that spouse the salary of the employee collecting State and/or Federal Funds.

3. Conversations and emails from Jennie Coulter co-owner of OH showing that KLEIN exercised control over all that was said and done in OH including editing her email to the staff advising that she was taking time off for health reasons. Ms. Coulter's emails to VISCIO warn him of protecting himself, how she was being pushed aside, and to document every email and instant message for safety. When Ms. Coulter became sick last year, OH lost its patient support ethics and sought only to raise advertising dollars.

4. At the American Society of Metabolic and Bariatric Surgeons convention during June 17, 2008, KLEIN approached VISCIO and advised that Ms. Coulter leaving was a plus for the corporation because she was so controlling. VISCIO advised he would not discuss the case and KLEIN continued speaking about Coulter's controlling personality and how OH was better off without her. Coulter brought the patient caring to OH, which attracted VISCIO to OH. When Coulter became sick, OH lost that caring and sought only advertising revenue.

5. When a member of the forum posts a post that OH disagrees with they are under strict orders by KLEIN and ARMSTRONG and JEREMY GENTLES, and employee of OH to discredit that poster and ban them from the forum using any means necessary to discredit them.

**AS AND FOR A FIRST CAUSE OF ACTION
FOR FRAUD IN THE INDUCEMENT**

19. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "18" as though set forth herein at length.

20. Relying upon the guarantees and promises of defendants that plaintiff was part of a permanent team, would share in the revenue, building of the corporations, the plaintiffs were induced into working providing services for defendant waiting for the remunerations promised in writing to the plaintiffs..

21. Plaintiff's relied to their detriment on the false, misleading, inaccurate and untrue statements and assurances of defendants.

22. As a result of defendants fraudulently inducing plaintiffs into entering the lease, plaintiffs have been damaged in the amount of TWO HUNDRED FIFTY THOUSAND (\$250,000.00) DOLLARS.

**AS AND FOR A SECOND CAUSE OF ACTION
FOR BREACH OF CONTRACT**

23. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "22" as though set forth herein at length.

24. Pursuant to the written promises of defendants, plaintiff was to be on the advisory board of OH, OH MAGAZINE and BARIATRIC TIMES, create and run and insurance forum, and assist in the formation of ad leads, assist forum moderators with trouble on the forum such as member issues, create and work on the OH Terms of Service Agreement, OH Employment Agreement, the creation of a Banner Ad on the main message Board.

In fact as late as February 2008 VISCIO was promised ad space in return for his past services and more visibility in the forum and magazine, in writing by an agent of the defendant and defendant KLEIN both in writing and to date, neither have transpired

25. After all services were rendered even up to present, VISCIO learned that he was taken off the advisory panel without his knowledge or reason. Years ago the banner

ad was taken down without reason. The forum he created was locked so he was no longer moderator and recently he was taken off as forum creator yet the forum contained materials he created for that forum, proprietary information.

26. As a result of defendants breach, plaintiffs have been damaged in the amount of TWO HUNDRED FIFTY THOUSAND (\$250,000.00) DOLLARS.

**AS AND FOR A THIRD CAUSE OF ACTION
FOR BREACH OF FRAUD**

27. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "26" as though set forth herein at length.

28. Defendants conduct all along has been to use the services of plaintiff for free and slowly remove him from the company as they have done with several employees who will be called as witnesses.

29. As a result of defendants fraud TWO HUNDRED FIFTY THOUSAND (\$250,000.00) DOLLARS

**AS AND FOR A FOURTH CAUSE OF ACTION
FOR PUNITIVE DAMAGES**

30. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "29" as though set forth herein at length

31. As a result of defendants' fraud plaintiffs claim punitive damages and treble damages in the amount of ONE MILLION (\$1,000,000.00) DOLLARS.

**AS AND FOR A FIFTH CAUSE OF ACTION
FOR DEFAMATION DAMAGES**

32. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "29" as though set forth herein at length

33. Defendants have embarked on a self protection mechanism by removing posts about plaintiff on the forum, posting about other lawyers, removing him as Advisory Panel and other acts amounting to slander and libel, and as a result of defendants'

defamation plaintiffs's claim damages in the amount of TEN MILLION (\$10,000,000.00) DOLLARS

**AS AND FOR A SIXTH CAUSE OF ACTION
FOR DEFAMATION DAMAGES**

34. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "33" as though set forth herein at length

35. Plaintiff demands defendant pay the sum of ONE MILLION DOLLARS to The OBESITY ACTION COALLITION to go towards education and

WHEREFORE plaintiffs demand judgment against the defendants as follows:

(a) On the FIRST CAUSE OF ACTION, the sum of TWO HUNDRED FIFTY THOUSAND (\$250,000.00) DOLLARS; and

(b) On the SECOND CAUSE OF ACTION, the sum of TWO HUNDRED FIFTY THOUSAND (\$250,000.00) DOLLARS; and

(c) On the THIRD CAUSE OF ACTION, the sum of TWO HUNDRED FIFTY THOUSAND (\$250,000.00) DOLLARS; and

(d) On the FOURTH CAUSE OF ACTION, the sum of ONE MILLION (\$1,000,000.00) DOLLARS;

(e) On the FIFTH CAUSE OF ACTION, the sum of TEN MILLION (\$10,000,000.00) DOLLARS;

(f) On the SIXTH CAUSE OF ACTION, the sum of ONE MILLION (\$1,000,000.00) DOLLARS; together with costs and the disbursements of this action.
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Dated: Oceanside, New York

June 11, 2008

Yours, etc.

GARY J VISCIO, PC.
Plaintiff pro se
Office & P. O. Address
544 Derby Drive East
Oceanside, New York 11572
516-766-2900