

Steven A. Friedman, Esquire  
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850 West Chester Pike  
Havertown, PA 19083  
(610) 789-0568

*Attorney for defendant*

RECEIVED FOR REVIEW  
2003 DEC -4 PM 3:49  
PRO PROTHY

<b>Herbert J. Nevyas, M.D. et al.</b>	:	<b>PHILADELPHIA COUNTY</b>
<i>Plaintiffs</i>	:	<b>COURT OF COMMON PLEAS</b>
	:	<b>TRIAL DIVISION</b>
<b>vs.</b>	:	
<b>Dominic Morgan</b>	:	<b>November 2003 Term</b>
<i>Defendant</i>	:	<b>No. 000946</b>
	:	

**DEFENDANT DOMINIC MORGAN'S ANSWER TO COMPLAINT WITH NEW  
MATTER AND COUNTER-CLAIM**

1-3. Admitted in part and denied in part. The identity of the parties is admitted. It is denied that any of the three plaintiffs have suffered any harm.

4. Admitted.

5. Denied as stated. There were two LASIK operations performed by plaintiff Dr. Nevyas-Wallace on defendant, April 23 and 30, 1998.

6. Denied as stated. Dr. Nevyas-Wallace deceived Mr. Morgan, by telling him he was a "good candidate" for experimental LASIK when, in fact, he was not a proper candidate and LASIK was contraindicated.

7-8. Admitted.

9. Denied. Herbert Nevyas and Nevyas Eye Associates were not dismissed before proceeding to arbitration against Anita Nevyas-Wallace.

10-12. Admitted.

13. Admitted in part and denied in part. Mr. Morgan admits that he was and is disappointed with the result of the surgery. He denies that he wishes to cause harm to the defendants. To the

contrary, Mr. Morgan wants to exercise his free speech rights, under the Constitutions of the United States and Pennsylvania, to share his experiences, and warn prospective candidates for LASIK of the risks and dangers of LASIK surgery and the adverse consequences he believes exist.

14. Admitted in part and denied in part. It is admitted only that Mr. Morgan created a website, which was in existence for a period sometime prior to the arbitration.

15. Denied. Defendant is without information sufficient to form a belief as to the truth of this allegation and it is, accordingly, denied and strict proof, if relevant, is demanded at trial.

16. Denied. Defendant is without information sufficient to form a belief as to the truth of this allegation and it is, accordingly, denied and strict proof, if relevant, is demanded at trial.

17. Denied. Defendant is without information sufficient to form a belief as to the truth of this allegation and it is, accordingly, denied and strict proof, if relevant, is demanded at trial.

18. Denied. Defendant is without information sufficient to form a belief as to the truth of this allegation and it is, accordingly, denied and strict proof, if relevant, is demanded at trial.

19. Denied. It is admitted that Mr. Morgan changed the contents of his website, trying to accommodate plaintiffs. It is denied that there were defamatory statements.

20. Denied. There was no purported contract such as Group Nevyas claims. *See* Mr. Morgan's Exhibit 7 attached hereto and the August 4, 2003 letter to Group Nevyas' lawyers and the August 14, 2003 letter from Group Nevyas' lawyers, both attached to the Complaint.

21. Denied. Defendant is without information sufficient to form a belief as to the truth of this allegation and it is, accordingly, denied and strict proof, if relevant, is demanded at trial.

22. Denied. Mr. Morgan did not violate any contract and did not intend to defame the plaintiffs.

23. Denied. Defendant is without information sufficient to form a belief as to the truth of this

allegation and it is, accordingly, denied and strict proof, if relevant, is demanded at trial.

24. Denied. Defendant is without information sufficient to form a belief as to the truth of this allegation and it is, accordingly, denied and strict proof, if relevant, is demanded at trial.

25. Denied as stated. The alleged statements are taken out of context and must be read as a whole. In addition, defendant believes and avers that the statements are true.

26. Denied. Mr. Morgan believes the contents of his website were and are truthful.

27. Denied. Defendant is without information sufficient to form a belief as to the truth of this allegation and it is, accordingly, denied and strict proof, if relevant, is demanded at trial.

28. Denied. Defendant is without information sufficient to form a belief as to the truth of this allegation and it is, accordingly, denied and strict proof, if relevant, is demanded at trial.

29. Denied. Defendant believes the statements are true. The fact that the arbitrator ruled in favor of the plaintiffs is irrelevant, in part because the arbitrator may have been in error, or simply felt that the defendant had not meet his burden of proof . Furthermore many issues were not before the arbitrator, including Mr. Morgan's claim for improper advertising.

30. Denied. Defendant is without information sufficient to form a belief as to the truth of this allegation and it is, accordingly, denied and strict proof, if relevant, is demanded at trial.

31. Denied. Defendant is without information sufficient to form a belief as to the truth of this allegation and it is, accordingly, denied and strict proof, if relevant, is demanded at trial.

32. Denied. Defendant is without information sufficient to form a belief as to the truth of this allegation and it is, accordingly, denied and strict proof, if relevant, is demanded at trial.

33. Denied. Plaintiffs told patients, "The Nevyas Excimer Laser is an investigational device which means that it hasn't been approved by the FDA."

34. Denied. Information was withheld from defendant.

35. Admitted in part and denied in part. Is admitted that parts of the informed consent form include certain warnings about adverse consequences of LASIK. It is denied that those warning were complete nor that the defendant was given complete and accurate information which would allow him to assess the actual risk warned of in those statements.

36. Denied. Dr. Nevyas-Wallace deceived Mr. Morgan, by telling him he was a "good candidate" for experimental LASIK when, in fact, he was not a proper candidate and LASIK was contraindicated. The "consent form" for experimental surgery did not warn of retinal damage from increased intraocular pressure during surgery, nor did it warn that patients with certain pre-existing eye conditions, such as Mr. Morgan, were not proper candidates for LASIK, and should not have LASIK performed.

37. Denied for the reasons stated in paragraphs 13 and 29 above.

38. Denied. Defendant is without information sufficient to form a belief as to the truth of this allegation and it is, accordingly, denied and strict proof, if relevant, is demanded at trial.

39. Denied. Defendant is without information sufficient to form a belief as to the truth of this allegation and it is, accordingly, denied and strict proof, if relevant, is demanded at trial.

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46. Denied. Defendant is without information sufficient to form a belief as to the truth of this allegation and it is, accordingly, denied and strict proof, if relevant, is demanded at trial.
47. Denied. Defendant is without information sufficient to form a belief as to the truth of this allegation and it is, accordingly, denied and strict proof, if relevant, is demanded at trial.
48. Denied as a conclusion of law. To the extent that this paragraph makes any allegations of fact they are denied as defendant is without information sufficient to form a belief as to the truth of this allegation and it is, accordingly, denied and strict proof, if relevant, is demanded at trial.
49. Denied as a conclusion of law. To the extent that this paragraph makes any allegations of fact they are denied as defendant is without information sufficient to form a belief as to the truth of this allegation and it is, accordingly, denied and strict proof, if relevant, is demanded at trial.
50. Denied. It is denied that the plaintiff have suffered any harm but, if they have, then they have a complete and adequate remedy at law.
51. Defendant incorporates herein each and every paragraph above as though fully set forth.
52. Denied as a conclusion of law and for the reasons set forth above.
53. Denied. Defendant is without information sufficient to form a belief as to the truth of this allegation and it is, accordingly, denied and strict proof, if relevant, is demanded at trial.
54. Denied for the reasons set forth in paragraph 13 above.
55. Denied that there is anything untrue or defamatory and denied that the plaintiffs have, or will, suffer any harm as a result of the defendant's website.

56. Denied as a conclusion of law.
57. Denied as a conclusion of law.
58. Defendant incorporates herein each and every paragraph above.
59. Admitted only that there were discussions about the web site. There are many meanings for the word "deal." If plaintiff intends that "deal" means "contract," it is denied there ever was any purported such contract.
60. Denied that there was any contract.
61. Denied that defendant breached any contract as there was no contract.
62. Denied that the plaintiffs have, or will, suffer any harm as a result of the defendant's website and denied that the plaintiff's have no adequate remedy at law.
63. Defendant incorporates herein, as though fully set forth, each and every paragraph above.
64. Admitted only that there were discussions about the web site. There are many meanings for the word "deal." If plaintiff intends that "deal" means "contract," it is denied there ever was any purported such contract.
65. Denied. Defendant denies any contract.
66. Denied. Defendant denies any contract.
67. Denied that the plaintiffs have, or will, suffer any harm as a result of the defendant's website and denied that the plaintiff's have no adequate remedy at law

**NEW MATTER**

- 68 Defendant incorporates by reference, as though fully set forth at length, each and every paragraph above.
69. Plaintiffs fail to set forth any claim upon which relief may be granted.
70. Plaintiffs are guilty of laches.

71. Plaintiff's have attempted to engage in an impermissible restraint of free speech as guaranteed under the Constitutions of the United States and this Commonwealth

72 Dr. Nevyas-Wallace deceived defendant , by telling him he was a "good candidate" for experimental LASIK when, in fact, he was not a proper candidate and LASIK was contraindicated. The "consent form" for experimental surgery did not warn of retinal damage from increased intraocular pressure during surgery, nor did it warn that patients with certain pre-existing eye conditions, such as Mr. Morgan, were not proper candidates for LASIK, and should not have LASIK performed.

72. The "consent form" for experimental surgery given to defendant by plaintiffs did not warn of retinal damage from increased intraocular pressure during surgery, nor did it warn that patients with certain pre-existing eye conditions, such as Mr. Morgan, were not proper candidates for LASIK, and should not have LASIK performed.

72. Plaintiffs have unclean hands.

73. Plaintiffs, having not done equity to the defendant, are not entitled to equitable relief.

74. Plaintiffs have a full and adequate remedy at law.

75. Defendant asserts that any statements of fact made on his web site where true, and that any opinion he stated on his web site was believed to be true and was clearly not set forth as fact but as his personal opinion.

76. Defendant states that any statements made on his web site are not actionable under the doctrine of fair comment.

77. Defendant was a patient of plaintiffs. Under the doctor-patient doctrine, patients are allowed to comment about their doctors without consent, but doctors need consent to talk about their patients.

78. Defendant believes and avers that the plaintiffs, having paid and extensively advertised their professional accomplishments and services, are public figures under the doctrine of New York Times v. Sullivan and not entitled to any relief.

79. Defendant denies that there was any contract governing his web site but, if one is found to have exist it is not enforceable as having been made under duress, without adequate consideration, and is illegal as an agreement to restrain free speech.

80. There was and is no confidentiality agreement with regard to the previous *Morgan v. Nevyas* medical malpractice, lack of informed consent, and unfair trade practices litigation. Dr. Nevyas-Wallace, her insurer, and her attorney agreed, and remain bound by that agreement. Dr. Nevyas-Wallace cannot now expect Mr. Morgan not to exercise free speech. The other two plaintiffs did not participate in any discussion regarding confidentiality, cannot have any expectation of confidentiality.

81. Defendant incorporates herein by reference, as though fully set forth at length, each and every paragraph below, including all documents.

### **COUNTERCLAIM**

82. Defendant incorporates herein, by reference, each and every paragraph above as though fully set forth at length. To avoid confusion, hereinafter defendant will be called Mr. Morgan, and plaintiffs as a group will be called Group Nevyas.

83. Sometime in or around August 2003, Group Nevyas intimidated Mr. Morgan's first internet carrier, Yahoo.com, by threatening to sue if they would not shut Mr. Morgan's website down.

84. Thereafter Yahoo.com shut down Mr. Morgan's website, Lasiksucks4u.com and told Mr. Morgan they could only continue Mr. Morgan's website if Mr. Morgan were to post money to



cover their legal costs in defending themselves against Group Nevyas.

85. About November 5, 2003, Group Nevyas intimidated Mr. Morgan's second internet carrier, Discount Domain Registry, Inc., by threatening to sue if they would not shut Mr. Morgan's website down. A copy of Group Nevyas' November 5, 2003 letter to DiscountDomainRegistry, Inc. is attached hereto as Exhibit 1.

86. Group Nevyas also tried to get a temporary restraining order or preliminary injunction against Mr. Morgan. The Motion Court control number for that action is **110609**, and Group Nevyas' motion came before the Honorable Esther R. Sylvester.

87. Judge Sylvester met with the parties off-the-record on November 10, 2003, and instructed them to try to resolve their differences, and gave them one week.

88. In good faith, Mr. Morgan changed the contents of his website, trying to accommodate Group Nevyas, even though he believed everything on his website to be truthful.

89. Mr. Morgan then asked Group Nevyas to state what, if anything, Group Nevyas still claimed to be legally objectionable

90. Copies of letters exchanged between attorneys for the parties dated November 9, 10, 11 (two), and 12, 2003 (two) are Exhibits 2, 3, 4, 5, 6, and 7.

91. Group Nevyas failed to state what, if anything, they still claimed to be legally objectionable, and would only say that mere mention of Nevyas' name was unsatisfactory.

92. On November 17, 2003 Judge Sylvester denied Group Nevyas' motion for a temporary restraining order or preliminary injunction. Exhibit 8.

93. Group Nevyas then misrepresented to, and again threatened Mr. Morgan's second web carrier, Discount Domain Registry, Inc. A copy of Group Nevyas' November 21, 2003 letter to

Discount Domain Registry, Inc. is Exhibit 9.

94. In good faith, Mr. Morgan offered to again change the contents of his website, again trying to accommodate Group Nevyas, even though he believed everything on his website to be truthful.

Mr. Morgan again asked Group Nevyas to state what, if anything, Group Nevyas still claimed to be legally objectionable. A copy of Mr. Morgan's November 25, 2003 letter to Group Nevyas is Exhibit 10.

95. Group Nevyas again failed to state what, if anything, they still found legally objectionable. Instead, Group Nevyas offered Mr. Morgan \$5000.00 to take Group Nevyas' name off Mr. Morgan's website, which Mr. Morgan refused. See Exhibit 10.

96. Discount Domain Registry, Inc. told Mr. Morgan they could only continue Mr. Morgan's website if Mr. Morgan were to post money to cover their legal costs for defending themselves against Group Nevyas, and did shut down Mr. Morgan's website about December 1, 2003.

97. As a basis for his belief that the contents of his website are and have been truthful, Mr. Morgan cites various documents, which include the following. Some of these documents were discovered in his suit against Group Nevyas, *Dominic Morgan v. Herbert Nevyas et al*, and would inevitably be discovered in the instant action. Many, if not all, are already public record.

- (a) Mr. Morgan's deposition when he was grilled for over eight hours by Group Nevyas' lawyers. Exhibit 11 is excerpt.
- (b) Mr. Morgan's medical record at Nevyas eye Associates. Exhibit 12 is excerpt.
- (c) Complex care report by H. Nevyas. to Dr. Machat 4/26/99. Exhibit 13.
- (d) reports and declarations of James J. Salz, M.D. Exhibit 14.
- (e) reports and declarations of Terrence O'Brien, M.D. Exhibit 15.
- (f) deposition of Dr. Herbert Nevyas in *Morgan v. Nevyas et al*. Exhibit 16 is excerpt.
- (g) deposition of Dr. Herbert Nevyas in a suit by another patient claiming damage by Group Nevyas. Exhibit 17 is excerpt.
- (h) deposition of Dr. Anita Nevyas-Wallace in *Morgan v. Nevyas et al*. Exhibit 18 is excerpt.
- (i) deposition of Dr. Anita Nevyas-Wallace in a suit by another patient claiming damage by Group Nevyas. Exhibit 19 is excerpt.

(j) declaration of Mr. Roy Shapiro, General Manager of KYW-AM with supporting documents. Exhibit 20 is excerpt.

(k) letters sent to the Federal Food and Drug Administration (FDA) by Mr. Morgan's attorney with supporting documentation. This includes: copy of 21 C.F.R. section 812.7; Inclusion and Exclusion Criteria for Nevyas Excimer Laser; FDA question and response of Herbert Nevyas; Complications and Adverse Events; Progress toward FDA approval; Protocol deviations; Prior Clinical Studies; Study Procedures; Protocol; Annual Report; Table 1.1.E-4; Table 1.1.E.1-9; Table 4.1; Table 1.1.E.1-1; Table 1.1.G-1; Table 1.1.G-2; Investigator agreements (two); FDA form 463a prepared by FDA investigator which Herbert Nevyas did not sign; Bilateral simultaneous LASIK consent form; letter from FDA 1/20/99; FDA form 483; Fixation system for optical centration; five pages from Group Nevyas website. Exhibit 21.

(l) Group Nevyas' Informational LASIK video (MDTV) transcript. Exhibit 22 is excerpt.

(m) Dr. Stephen Orlin's Informational brochure for LASIK. Exhibit 23.

(n) Dr. Stephen Orlin's affidavit. Exhibit 24.

(o) Federal Trade Commission letter 5/14/96. Exhibit 25.

(p) FDA Letter to Manufacturers and Users of Laser for Refractive Surgery 10/10/96. Exhibit 26.

98. Plaintiffs have, through efforts at intimidation, duress, and interference, deliberately attempted to obtain prior restraint of defendant's rights to exercise his free speech rights, under the Constitutions of the United States and Pennsylvania, to share his experiences and provide information to persons who may not be proper candidates for LASIK, caused injury and damages to the plaintiff.

WHEREFORE, defendant Dominic Morgan prays this Honorable Court dismiss the plaintiffs' Complaint, certify his counterclaim to the law side of the Court, and enter judgment against Herbert Nevyas, Anita Nevyas-Wallace, and Nevyas Eye Associates, individually and collectively, in a sum in excess of \$50,000 together with interest and the costs of this action.

**A Jury Trial is demanded on the Counterclaim.**

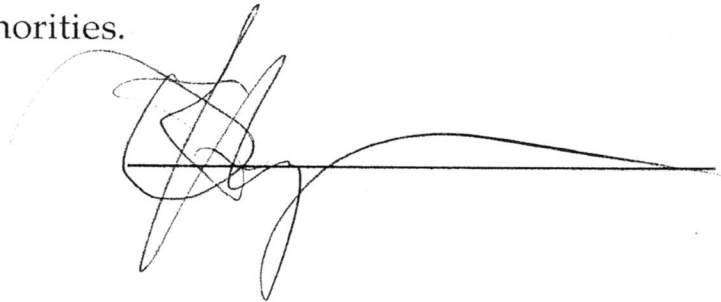


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Steven A. Friedman  
*Attorney for Dominic Morgan*

## VERIFICATION

I, Dominic Morgan, verify that I am the defendant in this action and that, on information received as to some of the facts and on personal knowledge as to the remaining facts, I believe the facts set forth in the attached pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. Sec. 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to be "DM", with a long horizontal line extending to the right.

Steven A. Friedman, Esquire  
Attorney I.D. No. 76402  
850 West Chester Pike  
Havertown, PA 19083  
(610) 789-0568

*Attorney for Dominic Morgan*

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

vs.

Dominic Morgan  
*Defendant*

:PHILADELPHIA COUNTY  
:COURT OF COMMON PLEAS  
:TRIAL DIVISION  
:November 2003 Term  
:No. 000946

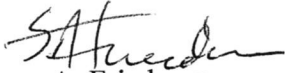
**:JURY TRIAL DEMANDED**

**CERTIFICATE OF SERVICE**

I CERTIFY THAT A TRUE AND CORRECT COPY OF THE ATTACHED DOCUMENT  
WAS SERVED BY PREPAID FIRST CLASS MAIL UPON COUNSEL BELOW ON THE  
DATE BELOW.

Andrew Lapat, Esquire  
Leon Silverman, Esquire  
STEIN & SILVERMAN, P.C.  
230 South Broad Street, 18<sup>TH</sup> Floor  
Philadelphia, PA. 19102

DATE: 12/4/03

  
Steven A. Friedman  
*Attorney for Dominic Morgan*

LAW OFFICES

*Stein & Silverman, P.C.*230 SO. BROAD STREET  
PHILADELPHIA, PA. 19102ELIAS H. STEIN  
LEON W. SILVERMAN  
ALLISON S. LAPAT  
ANDREW J. LAPAT(AREA CODE 215)  
985-0255  
TELECOPIER (215) 985-0342

November 5, 2003

**VIA FAX and CERTIFIED MAIL**DiscountDomainRegistry Inc.  
3006 Avenue M  
Brooklyn, NY 11210

Re: Harassment Constituting Defamation

To the Company:

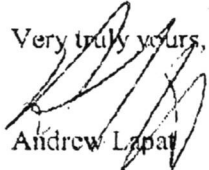
I represent two doctors, Dr. Herbert Nevyas and Dr. Anita Nevyas-Wallace. These individuals and their practice is being defamed by a former patient, Dominic Morgan on a website he has created: [www.lasiksucks4u.com](http://www.lasiksucks4u.com). My research indicates that the website is hosted by your company, as this is a service you provide. The site is replete with defamatory material

Mr. Morgan brought a medical negligence case against Herbert J. Nevyas M.D., Anita Nevyas Wallace M.D. and the doctors in their practice. The lawsuit resulted in a defense verdict against Mr. Morgan. Shortly after the defense verdict in favor of the doctors and against Mr. Morgan, Mr. Morgan created the offending web site. I immediately wrote to Mr. Morgan's counsel, Stephen Friedman Esq., complaining of the false statements contained in that web site and promising legal action if the complaints set out in my letter were not immediately addressed. As the result of my letter Mr. Morgan through his counsel agreed to remove the defamatory portions of the web site which was done immediately.

It appears, however, that in violation of the agreement made by Mr. Morgan, he has revised the Web site to again include false and defamatory statements concerning Dr. Herbert Nevyas, Dr. Anita Nevyas Wallace and the entire Nevyas practice. It is Mr. Morgan's intention to cause substantial harm to Drs. Nevyas-Wallace and Nevyas and their medical practice. Mr. Morgan is using his website to defame Drs. Nevyas-Wallace and Nevyas and their practice and as such it should be shut down.

*Stein & Silverman, P.C.*

You are now formally on notice as to the content of the website [www.lasiksucks4u.com](http://www.lasiksucks4u.com). This site must be shut down immediately. Any failure to act by DiscountDomainRegistry will be considered an act of complicity in this ongoing tort and we will consider you a joint tort-feasor for the purposes of any legal action.

Very truly yours,  
  
Andrew Lapat

cc: Herbert J. Nevyas M.D.,  
Anita Nevyas Wallace M.D.

850 WEST CHESTER PIKE, 1<sup>ST</sup> FLOOR  
HAVERTOWN, PA 19083

TEL: 610.789.0568  
E-MAIL: md-jd@mindspring.com

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**Steven A. Friedman, M.D., J.D., LL.M.**  
*Physician and Attorney at Law*

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INTERNAL MEDICINE AND CHEST DISEASE ☼ HEALTH AND CORPORATE MEDICAL LAW

**BY FAX** November 9, 2003

Andrew Lapat, Esquire  
STEIN & SILVERMAN, P.C.  
Attorney Identification No. 55673  
230 South Broad Street, 18<sup>TH</sup> Floor  
Philadelphia, PA. 19102  
FAX 215/ 985-0342

Re: Neveys et al. v. Morgan

Dear Mr. Lapat:

From what I can understand you have brought an equity action against Dominic Morgan and are seeking a special injunction or "temporary restraining order" without proper prior service on Mr. Morgan, of the complaint, motion, and supporting documents. I gather you forwarded certain documents by e-mail to Mr. Morgan, which he was not able to read, and then forwarded papers by Federal Express, which were delivered Saturday. The information which I have is that you have scheduled an emergency hearing for tomorrow at 9:30 am, although I cannot tell in what courtroom..

If Mr. Morgan has acted in a defamatory manner, as you claim, your clients certainly would have a remedy in damages. It is less clear, however, that they have any right to equitable relief, and certainly even more dubious that your clients have any right to emergency relief. Your actions, and those of your client, appear to potentially violate Mr. Morgan's rights of expression. As this is a hearing involving freedom of expression, an emergency hearing without adequate notice is highly improper. Special injunctions are intended only to preserve the *status quo* during litigation, and not to obtain instant relief, especially in matters of freedom of expression.

It is by no means certain that I will representing Mr. Morgan in this action, as it is not an area in which I have particular expertise but, as I did represent him in the medical malpractice case, I feel it necessary to point out to you that your seeking relief in the manner you do may violate Mr. Morgan's rights. It seems to me that your application for emergency relief or a temporary restraining order should, at the very least, be withdrawn without prejudice in favor of a more appropriate action, such as an ordinary preliminary injunction.

Sincerely yours,



Steven A. Friedman



LAW OFFICES

*Stein & Silverman, P.C.*

230 SO. BROAD STREET  
PHILADELPHIA, PA. 19102

ELIAS H. STEIN  
LEON W. SILVERMAN  
ALLISON S. LAPAT  
ANDREW J LAPAT

(AREA CODE 215)  
985-0255  
TELECOPIER (215) 985-0342

November 10, 2003

Steven A. Friedman, Esquire  
850 West Chester Pike  
Havertown, PA 19083

**RE:      Nevyas v. Morgan,  
          Philadelphia County CCP, November Term 2003; No.: 946**

Dear Steven:

Enclosed please find a copy of the website as agreed on August 1, 2003. The enclosed copy of the website was what the parties contracted for in August. This website was without any reference to Nevyas Eye Associates or any of the doctors at the practice. We want the website returned to this condition. Any deletions, additions or other changes need to be consistent in that they do not refer to Nevyas Eye Associates or any of the doctors at the practice. Please contact me concerning your client's response.

Very truly yours,

  
ANDREW LAPAT

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## LAW OFFICES

*Stein & Silverman, P.C.*230 So. Broad Street, 18<sup>th</sup> Floor  
Philadelphia, PA 19102ELIAS H. STEIN  
LEON W. SILVERMAN  
ALLISON LAPAT  
ANDREW LAPATTelephone: (215) 985-0255  
Telecopier: (215) 985-0342

November 11, 2003

**VIA FACSIMILE**Steven A. Friedman, Esquire  
850 West Chester Pike  
Havertown, PA 19083**RE: Nevyas v. Morgan,  
Philadelphia County CCP, November Term 2003; No.: 946**

Dear Steven:

I received a phone call yesterday afternoon from Dominic Morgan directing me to review the "cleaned up" website. The website I reviewed is not cleaned up. Changes have been made from the site as it existed on November 3, but it is still replete with defamatory material. Additionally, the site does not comply with the contract made in August. I sent you a copy of the website that was agreed to in the August contract. We want the website returned to this condition. Any deletions, additions or other changes need to be consistent in that they do not refer to Nevyas Eye Associates or any of the doctors at the practice.

Very truly yours,

  
ANDREW LAPAT

850 WEST CHESTER PIKE, 1<sup>ST</sup> FLOOR  
HAVERTOWN, PA 19083

TEL: 610.789.0568  
E-MAIL: md-jd@mindspring.com

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**Steven A. Friedman, M.D., J.D., LL.M.**  
*Physician and Attorney at Law*

INTERNAL MEDICINE AND CHEST DISEASE ☼ HEALTH AND CORPORATE MEDICAL LAW

**BY FAX** November 11, 2003

Andrew Lapat, Esquire  
STEIN & SILVERMAN, P.C.  
230 South Broad Street, 18<sup>TH</sup> Floor  
Philadelphia, PA. 19102  
FAX 215/ 985-0342

Re: Neveys et al. v. Morgan

Dear Andrew:

I read your November 5, 2003 letter to DiscountDomainRegistry, Inc., wherein you threaten them with lawsuit unless they immediately shut down Mr. Morgan's website, lasiksucks4u.com.. I write to again state that you and your clients are again interfering with Mr. Morgan's First Amendment rights, and I hope that you and I can work together to reconcile the parties.

In August 2003, after I discussed this matter with your senior partner, Mr. Leon Silverman, Mr. Silverman promised to withdraw the threatening letter your firm had sent to Mr. Morgan's previous internet carrier, Yahoo.com. That promise was not kept and Yahoo.com shut down Mr. Morgan's previous internet site, also known as lasiksucks4u.com..

You are fully aware that there was and is no confidentiality agreement with regard to the previous *Morgan v. Nevyas* medical malpractice, lack of informed consent, and unfair trade practices litigation. Your clients agreed to that, and are bound by that agreement. Neither they nor you can now expect Mr. Morgan not to exercise his First Amendment rights.

As of tonight Mr. Morgan's website is still operational. I ask that you act immediately to withdraw your threat to DiscountDomainRegistry, Inc., and prevent any further interference with Mr. Morgan's First Amendment rights, while we try to reconcile our differences.

I hope you are not too busy to attend to this matter immediately. I understand that you will be leaving for Boston tomorrow for a family wedding, but you assured me that you will have internet access.

NOV 13

Sincerely yours,



Steven A. Friedman

LAW OFFICES

*Stein & Silverman, P.C.*

230 So. Broad Street, 18<sup>th</sup> Floor  
Philadelphia, PA 19102

ELIAS H. STEIN  
LEON W. SILVERMAN  
ALLISON LAPAT  
ANDREW LAPAT

Telephone: (215) 985-0255  
Telecopier: (215) 985-0342

November 12, 2003

**VIA FACSIMILE**

Steven A. Friedman, Esquire  
850 West Chester Pike  
Havertown, PA 19083

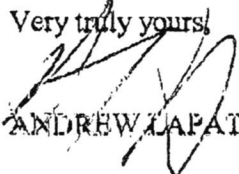
**RE: Nevyas v. Morgan,**  
**Philadelphia County CCP, November Term 2003; No.: 946**

Dear Steven:

No one is interfering with Mr. Morgan's First Amendment rights. Mr. Morgan is engaged in defaming the Nevyas' and their medical practice. More importantly, we have abided by all our agreements with Mr. Morgan, while Mr. Morgan is currently in substantial breach of contract. Mr. Morgan made a contract with the Nevyas' that he would remove from his website any reference to Nevyas Eye Associates or any of the doctors at the practice.

I have sent you a copy of the website that was agreed to in the August contract. We want the website returned to this condition. Any deletions, additions or other changes need to be consistent in that they do not refer to Nevyas Eye Associates or any of the doctors at the practice. I checked the website again prior to sending this letter. It appears to be virtually identical to yesterday. The current condition is unacceptable as it is replete with defamatory statements and references to the Nevyas' and their medical practice. If Mr. Morgan is serious about his desire to engage in defamation he will honor the contract he entered in August.

Very truly yours,

  
ANDREW LAPAT

**Steven A. Friedman, M.D., J.D., LL.M.**  
*Physician and Attorney at Law*

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INTERNAL MEDICINE AND CHEST DISEASE ☼ HEALTH AND CORPORATE MEDICAL LAW

**BY FAX** November 12, 2003

Andrew Lapat, Esquire  
STEIN & SILVERMAN, P.C.  
230 South Broad Street, 18<sup>TH</sup> Floor  
Philadelphia, PA. 19102  
FAX 215/ 985-0342

Re: Neveys et al. v. Morgan  
Your FAX to me dated Nov. 12, 2003

Dear Andrew:

I write to repeat what I have already told you: there was no contract such as the one you purport was made in August 2003, between your clients and Mr. Morgan.

1. I was not authorized to make the purported contract, as I made clear in my August 4, 2003 letter to your senior partner, Mr. Leon Silverman, and you. Mr. Morgan did not speak to you or Mr. Silverman or anyone at Nevyas Eye Associates.
2. If there had been such a contract, then Mr. Silverman would have asked that it be recorded in writing and signed by the parties.
3. If there had been such a contract, then Mr. Silverman breached when he did not withdraw the letter threatening to sue Mr. Morgan's previous internet carrier, Yahoo.com, if they did not shut down Mr. Morgan's website, lasiksucks4u.com.

I also write to clarify some of what I wrote to you November 11, 2003. After Mr. Morgan agreed to binding arbitration for his prior lawsuit against your three clients, your firm, Dr. Herbert Nevyas, and Nevyas Eye Associates ceased to be involved in any further negotiation or litigation. Only Dr. Nevyas-Wallace, represented entirely by another law firm., remained involved. Mr. Morgan would never have considered binding arbitration if there had been any confidentiality requirement. When, belatedly, Dr. Nevyas-Wallace asked to add confidentiality, it was rejected. When Dr. Nevyas-Wallace persisted asking for confidentiality, the agreement to arbitrate was almost scrapped.

There was and is no confidentiality agreement with regard to the previous *Morgan v. Nevyas* medical malpractice, lack of informed consent, and unfair trade practices litigation. Dr. Nevyas-Wallace, her insurer, and her attorney agreed, and remain bound by that agreement. Dr. Nevyas-Wallace cannot now expect Mr. Morgan not to exercise his First Amendment rights.

Neither you nor your other clients participated in any of this, and cannot have any expectation of confidentiality.

As I asked you when we talked Monday after Court , please now list with **specificity** whatever you still claim to be slanderous or libelous in Mr. Morgan's website, in order that such may be evaluated. Sufficient time is necessary to make more changes, should any more be needed, before we return to Court on November 17, 2003.

I will telephone your offices tomorrow to be sure there is no problem with this message reaching you.

Sincerely yours,



Steven A. Friedman

STEIN & SILVERMAN, P.C.  
BY: Andrew Lapat, Esquire  
Attorney Identification No. 55673  
230 South Broad Street, 18<sup>TH</sup> 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  
Defendant.

COURT OF COMMON PLEAS  
Philadelphia County

NOVEMBER TERM, 2003  
NO.: NOVEMBER 2003

000946

110609

TEMPORARY RESTRAINING ORDER

AND NOW, this 17 th day of November, 2003, upon consideration of Plaintiffs'

Verified Complaint, Plaintiffs' Petition for Temporary Restraining Order and for Preliminary Injunction, ~~and~~ <sup>defendants</sup> response thereto ~~it is ORDERED + DECREED that~~

~~these petitions for T. R. O and for Prelim. Injunction are~~

1. Plaintiffs will suffer irreparable harm and loss if Defendant is permitted to continue to post and maintain a website, "lasiksucks4u.com" that contains substantial defamatory material; and
2. Plaintiffs do not have an adequate remedy at law.; and
3. Greater injury will be inflicted upon Plaintiffs by the denial of the temporary injunctive relief than would be inflicted upon Defendant by the granting of such relief, it is hereby **ORDERED** that Plaintiffs' Motion is **GRANTED**. It is further ordered as follows:

- (a) Defendant will immediately remove any reference to Plaintiffs or their medical practice from the website "lasiksucks4u.com"; and

**DENIED**

*Ch. Nevyas*

LAW OFFICES

*Stein & Silverman, P.C.*

230 So. Broad Street, 18<sup>th</sup> Floor  
Philadelphia, PA 19102

ELLAS H. STEIN  
LEON W. SILVERMAN  
ALLISON LAPAT  
ANDREW LAPAT

Telephone: (215) 985-0255  
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November 21, 2003

VIA FAX 718-258-3419  
Alex Brecher  
DiscountDomainRegistry Inc.  
3006 Avenue M  
Brooklyn, NY 11210

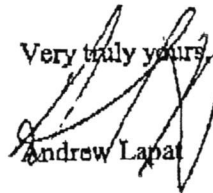
Re: Harassment Constituting Defamation

Dear Alex:

I have not been able to reach you on the phone this week. In our discussion last week concerning the website "lasiksucks4u.com", you told me that unless the judge gave approval to the content of the website you would remove the website. The judge did not approve the website. The website is still filled with defamatory material.

As I have previously stated, It is Mr. Morgan's intention to cause substantial harm to Drs. Nevyas-Wallace and Nevyas and their medical practice. Mr. Morgan is using his website to defame Drs. Nevyas-Wallace and Nevyas and their practice and as such it should be shut down.

Very truly yours,



Andrew Lapat

cc: Herbert J. Nevyas, M.D.  
Anita Nevyas-Wallace, M.D.



850 WEST CHESTER PIKE, 1<sup>ST</sup> FLOOR  
HAVERTOWN, PA 19083

10  
TEL: 610.789.0568  
E-MAIL: md-jd@mindspring.com

## Steven A. Friedman, M.D., J.D., LL.M.

*Physician and Attorney at Law*

INTERNAL MEDICINE AND CHEST DISEASE ☼ HEALTH AND CORPORATE MEDICAL LAW

**BY FAX** November 25, 2003

Leon Silverman, Esquire  
STEIN & SILVERMAN, P.C.  
230 South Broad Street, 18<sup>TH</sup> Floor  
Philadelphia, PA. 19102  
FAX 215/ 985-0342

Re: Neveys et al. v. Morgan

Dear Mr. Silverman:

Mr. Morgan is visiting friends for the Thanksgiving holiday, out-of-state, and is not expected home until Monday, December 1, 2003. I was able to reach him with your offer for \$5000.00 to remove mention of Nevyas from his website, and he refused. He considers this a matter of telling the truth, and not about seeking money.

Mr. Morgan cannot change his website while he is away. There are technical problems, and his friends do not have the necessary software.

As you know, Mr. Morgan in good faith made changes to his website, after Mr. Lapat and I met off the record with Judge Sylvester on November 10, 2003. After Mr. Morgan made those good faith changes, he relied upon you making a good faith inspection of his website prior to November 17, 2003, as I repeatedly asked you to do, and as Judge Sylvester had expected, in order to see if there were any specific remaining items you found legally objectionable. You failed to specify what items, if any, you found legally objectionable, and insisted that any mention whatsoever of Nevyas' name should be removed.

I repeat now what I previously asked for, expected, and Judge Sylvester expected: please list with **specificity** whatever you still claim to be legally objectionable in Mr. Morgan's website, including parts of letters written by me, in order that such may be evaluated.

I do not appreciate you threatening me personally with lawsuit, nor your threats about suing Yahoo.com and DiscountDomainRegistry, Inc. Instead, I ask you to consider what you want Mr. Morgan to correct, that is legally objectionable to you, in order to withdraw your lawsuit.

Sincerely yours,



Steven A. Friedman