

**IN THE CIRCUIT COURT OF THE THIRTEEN JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIVIL DIVISION**

**FLORIDA SOCIETY OF ADDICTION  
MEDICINE, INC.,**

**Plaintiff / Counterclaim Defendant,**

**v.**

**Case No. 17-CA-003272**

**Division: G**

**JOHN HARDEN,**

**Defendant / Counterclaim Plaintiff /  
Third Party Plaintiff.**

**v.**

**SCOTT TEITELBAUM,**

**Third Party Defendant.**

\_\_\_\_\_ /

**ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

**AND**

**MOTION TO STRIKE CLAIM FOR TREBLE DAMAGES**

**AND**

**DEMAND FOR ATTORNEYS' FEES**

**AND**

**HARDEN'S CONTERCLAIM AND HARDEN'S THIRD PARTY COMPLAINT**

**ANSWER**

Defendant, JOHN HARDEN ("Harden"), by and through undersigned counsel, hereby files his Answer and Affirmative Defenses to the Complaint ("Complaint") filed by Plaintiff, FLORIDA SOCIETY OF ADDICTION MEDICINE, INC. ("Plaintiff" and/or "FSAM"), and states as follows:

**PARTIES**

- 1. Admitted.
- 2. Admitted.

**JURISDICTIONAL STATEMENT**

3. Denied that Plaintiff is entitled to the requested relief; admitted solely for jurisdictional purposes.

**VENUE**

- 4. Admitted.

**COUNT I  
Conversion**

5. Admitted that Harden served as the Executive Director of FSAM from 2006 through 2014.

6. Any allegations that Harden wrongfully took into his possession funds from FSAM's accounts are denied. The transactions which FSAM attempts to portray as inappropriate were routine business expenses. Payments were made with the full knowledge of FSAM and its board members. The associated expenses were provided to FSAM's independent accounting professional -- Jerry Joyce at Alternative Tax Services, Inc. in Tampa, Florida – and were classified as business expenses on FSAM's tax returns. Without knowledge as to the remaining allegations of Paragraph 6.

- 7. Denied.
- 8. Denied.
- 9. Denied.

10. Admitted that on or about December 30, 2016, FSAM sent correspondence to Harden regarding this dispute. On January 30, 2017, Harden, through counsel, responded to this

correspondence. True and accurate copies of this December 30, 2016 and January 30, 2017 correspondence as attached hereto as Composite Exhibit A. The remaining allegations of Paragraph 10 are denied.

11. Admitted that Harden has denied the allegations that he wrongfully took into his possession funds from FSAM's accounts, and accordingly, no payments from Harden to FSAM have been made or are required.

12. This paragraph does not make any sense, in the context of the Complaint. Paragraph 12 attempts to incorporate by reference Paragraphs 1 through 13. It is apparent that perhaps this paragraph contains a scrivener's error, where counsel for FSAM has inadvertently and inaccurately attempted to incorporate certain paragraphs.

13. Denied.

14. Denied.

15. Denied.

#### **DEMAND FOR JURY TRIAL**

16. Admitted that Plaintiff has requested a jury trial.

#### **DEMAND FOR JUDGMENT**

Harden denies that FSAM is entitled to the requested relief, where transactions which FSAM attempts to portray as inappropriate were routine business expenses made with the full knowledge of FSAM and its board members.

## **MOTION TO STRIKE CLAIM FOR TREBLE DAMAGES**

Harden moves to strike relief requested in FSAM's Demand for Judgment, to the extent that it attempts to seek treble damages, traditionally a civil theft remedy, where no civil theft claim has been asserted.

### **AFFIRMATIVE DEFENSES**

1. To the extent it has not been specifically admitted, Defendant specifically and generally denies each and every allegation in the Complaint, and pleads its affirmative defenses in the alternative.

2. FSAM's claims are barred by the May 6, 2014 Severance Agreement and General Release ("Release") between Harden and UF Health Shands. Concurrent with his employment as the Administrative Executive Director of FSAM, Harden was also employed by UF Health. Many conferences were co-managed, co-staffed, and co-administered by UF Health along with FSAM, as the direction of Scott Teitelbaum, M.D. ("Teitelbaum"), the medical director of the UF Health Florida Recovery Center ("UF Health") and a board member of FSAM. FSAM was operated as an extension of UF Health. While the specific terms of the Release are confidential, based upon the claims asserted by FSAM and the fact that FSAM was operated as an extension of UF Health, identification of the existence of the Release and its legal impact are necessitated. In separate pleadings, the undersigned will request that the Court conduct an in camera inspection of the Release and determine the appropriateness of disclosing the terms of the Release, for purposes of enforcing it, herein.

3. Plaintiff's conversion count fails to state a cause of action. "[A]n action in tort is inappropriate where the claim is based on breach of contract" because a "mere obligation to pay money, generally, may not be enforced by a conversion action." *Douglas v. Braman Porsche*

*Audi, Inc.*, 451 So.2d 1038, 1039 (Fla. 3d DCA 1984). The relationship between Harden and FSAM is governed by employment contracts. The Complaint fails to acknowledge two contracts between Harden and FSAM dated June 2006 and April 2010. These contracts spell out the business relationship between Harden and FSAM, including the manner in which Harden would be compensated over and above his base annual salary. Any compensation and reimbursement of expenses paid to Harden by FSAM was always within the bounds of these contract and done with full knowledge by FSAM and its board.

4. FSAM's claims are barred based upon doctrine of unclean hands. Harden no longer works with FSAM as an extension of UF Health. Currently, he lawfully operates a competing business in Tampa, Florida. The end result of this has been damage the good reputation of Harden. Prior to and since filing this cause of action, FSAM, by and through its current and former board members, has been broadcasting the substance of its allegations in an effort to damage the reputation of Harden, interfere with the contracts and business relationships of Harden, and gain a competitive advantage for FSAM, as an extension of UF Health and other addiction treatment competitors represented on the FSAM board.

5. There is no conversion where Plaintiff consented to the use of FSAM funds as reimbursement of routine business expenses. Payments were made with the full knowledge of FSAM and its board members. The associated expenses were provided to FSAM's independent accounting professional -- Jerry Joyce at Alternative Tax Services, Inc. in Tampa, Florida -- and were classified as business expenses on FSAM's tax returns. *National Bank of Melbourne and Trust Co. v. Batchelor*, 266 So.2d 185, 187 (Fla. 4<sup>th</sup> DCA 1972), *cert. denied*, 269 So.2d 369 (Fla. 1972). All bookkeeping reports and tax filings prepared by Jerry Joyce were made available to FSAM and its board members.

6. To the extent that this is a Complaint to enforce an obligation to pay money or that the monies identified in the Complaint are not capable of identification, Plaintiff has failed to state a cause of action for conversion. *Rosen v. Marlin*, 486 So.2d 623, 625 (Fla. 3d DCA 1986), *rev. denied*, 494 So.2d 1151 (Fla. 1986); *Belford Trucking Co. v. Zagar*, 243 So.2d 646, 648 (Fla. 4<sup>th</sup> DCA 1970).

7. Defendant reserves the right to amend its affirmative defenses, as permitted by Florida Rules of Civil Procedure.

### **DEMAND FOR ATTORNEYS' FEES**

Based upon the express terms of the Release, Harden is entitled to recover his attorneys' fees and hereby makes formal demand for such.

### **HARDEN'S COUNTERCLAIM AND HARDEN'S THIRD PARTY COMPLAINT**

Counterclaim Plaintiff / Third Party Plaintiff, JOHN HARDEN ("Harden"), by and through undersigned counsel, hereby files his Counterclaim and Third Party Complaint, and states as follows:

17. Harden is an individual who lives and works in Hillsborough County, Florida.

18. Harden is an alcohol and addiction recovery advocate. He is a Licensed Clinical Social Worker and an International Certified Alcohol and Drug Counselor; he also has a Masters in Social Work and Public Health from the University of South Florida.

19. Florida Society of Addiction Medicine, Inc. ("FSAM") is a Florida corporation with its principal place of business in Alachua County, Florida.

20. FSAM was founded in 1986 and incorporated on June 13, 1990.

21. Along with the American Society of Addiction Medicine ("ASAM"), FSAM is an association of physicians dedicated to improving the treatment of alcoholism and other

addictions, educating physicians and medical students, promoting research and prevention, and enlightening and informing the medical community and the public about these issues.

22. Scott Teitelbaum, M.D. (“Teitelbaum”) is the medical director of the UF Health Florida Recovery Center (“UF Health”) and a board member of FSAM; Teitelbaum resides in Alachua County, Florida.

23. The amount in controversy exceeds \$15,000, excluding interest, costs and attorneys’ fees, which is within the jurisdiction of this Court.

24. Venue in Hillsborough County, Florida is appropriate because the causes of action accrued in Hillsborough County, Florida.

25. Harden was the Administrative Executive Director of FSAM from 2006 through 2014.

26. When Harden first started with FSAM, FSAM’s sole source of revenue was its membership dues. In 2006, FSAM’s revenue was only \$12,000, leaving little to no money for operating expenses or conference development.

27. Over the course of his eight year tenure with FSAM, Harden achieved significant accomplishments which benefited FSAM, including the following:

- a. Leadership of FSAM through 8 successful annual conferences, with an additional specialty conference on Florida’s “pill mill” crisis in 2010;
- b. Initiation of a successful workforce development initiative which funded the fellowship training of five new addiction medicine physicians who successfully graduated, entered the field of addiction medicine, and became members of FSAM;
- c. Establishment of FSAM as a member-specialty medical society with the Florida Medical Association (“FMA”), taking advantage of FSAM’s delegate status to introduce, promote and pass meaningful resolutions in furtherance of FSAM’s mission;

- d. Promotion of FSAM in innovative, cost-effective ways, while growing FSAM's revenue base and operating "in the black";
- e. Filing of federal income taxes each year, with no audits from the IRS;
- f. Maintenance of FSAM's corporate status and non-profit status;
- g. Maintenance of positive relationships with the American Society of Addiction Medicine ("ASAM") and FMA; and
- h. Establishment of partnerships and contractual relationships with University of Florida College of Medicine, Florida Alcohol and Drug Abuse Association, Substance Abuse and Mental Health Services Administration, and Drug Abuse Comprehensive Coordinating Office ("DACCO").

28. Concurrent with his employment as the Administrative Executive Director of FSAM, Harden was also employed by UF Health, serving as the Founding Executive Director of the Florida Recovery Center ("FRC"); Harden was recruited and supervised by Teitelbaum, who served as Medical Director of FRC.

29. Many FSAM conferences were co-managed, co-staffed, and co-administered by UF Health along with FSAM, at the direction of Teitelbaum.

30. Since 2011, FSAM was operated as an extension of UF Health, at the direction of Teitelbaum.

31. From 2007 through to present, Teitelbaum has been on the board of directors of FSAM.

32. When Harden resigned from FSAM in 2014, he returned FSAM's records and property to a representative of FSAM's board. This included computers, projectors, electronic data (including passwords for website and email server access), and paper files, including copies of banking and accounting information, contracts, tax filings, conference materials, business expenses, and travel expenses.



33. All of these records in FSAM's possession reflect the contractual relationship between Harden and FSAM and the financial dealings of FSAM during Harden's tenure.

34. The information returned by Harden to FSAM contains records which reflect Harden's compensation and reimbursement of expenses, including the following:

- a. Documentation from contracted conference hotels which required Harden to secure the venue with his personal American Express and subsequent payment to American Express by FSAM;
- b. FSAM board minutes authorizing the opening of the FSAM operations account at Bank of America for use by Harden as FSAM's Administrative Executive Director;
- c. Contemporaneous reports to the FSAM board by Harden on his activities as the Executive Director on the Workforce Development initiatives, such as the Addiction Medicine Fellowship Program at DACCO and policy resolutions of the FMA;
- d. Invoices from the University of Florida College of Medicine for contracted services; and
- e. Contracts with clinical sites and clinical supervisors.

35. On January 30, 2017, FSAM was cautioned to maintain all information related to these allegations and its business relationship with Harden.

36. During his tenure with FSAM, Harden executed two contracts – one in June 2006 and April 2010. The terms of these contracts spelled out the business relationship between Harden and FSAM, including the manner in which Harden would be compensated and reimbursed for expenses.

37. During his tenure with FSAM, Harden always conducted himself within the bounds of these contracts and kept FSAM and its board, including, but not limited to Teitelbaum, fully informed of FSAM's business and financial dealings.

38. Compensation and reimbursements by FSAM to Harden were made with the full knowledge of FSAM and its board members, including, but not limited to, Teitelbaum.

39. Documentation associated with compensation and reimbursements by FSAM to Harden was provided to FSAM's independent accounting professional -- Jerry Joyce at Alternative Tax Services, Inc. in Tampa, Florida -- and were classified as business expenses on FSAM's tax returns.

40. All bookkeeping reports and tax filings prepared by Jerry Joyce were made available to FSAM and its board members.

41. Close in time to his resignation from FSAM, Harden also left his employment with UF Health.

42. On May 6, 2014, Harden entered into a Severance Agreement and General Release ("Release") with UF Health.

43. Since Harden left his employment with FSAM and UF Health, Harden has been operating an addiction recovery center in Tampa, Florida.

44. Since 2014, FSAM, by and through its current and former board members, including, but not limited to Teitelbaum, has been broadcasting, outside the judicial process, inaccurate and untrue information about Harden in an effort to damage the reputation of Harden, interfere with the contracts and business relationships of Harden, and gain a competitive advantage for FSAM, as an extension of UF Health.

45. FSAM and Teitelbaum have negatively impacted Harden's relationship with Professionals Resources Network, Inc. ("PRN").

46. PRN is one of the premier programs for impaired professionals in the United States.

47. Harden has a business relationship with PRN, having served as a PRN facilitator since 2000, running support groups for PRN-referred impaired professionals in the Tampa area.

48. At the direction of its former Medical Director and current Medical Director Emeritus, Penny Ziegler, M.D., FASAM (“Ziegler”), PRN stopped referring impaired professionals to support groups facilitated by Harden.

49. Ziegler was also a member of the board of directors of FSAM and a faculty member of the University of Florida, Department of Psychiatry under Teitelbaum.

50. Upon information and belief, the sole reason for the cessation of the PRN referrals to Harden has been the broadcasting of inaccurate and untrue information about Harden by FSAM and Teitelbaum.

51. Forrest Arthur (“Arthur”) works at HealthCare Connections of Tampa (“HealthCare”) and has a close relationship with PRN staff.

52. HealthCare is a competitor of Harden in the arena of alcohol and addiction therapy.

53. Arthur is a regular in the addiction counseling and treatment business circles, attending conferences and marketing the services of HealthCare.

54. Arthur has informed numerous others in the addiction counseling and treatment business circles that, as a result of information provided by Teitelbaum and Ziegler to PRN, Harden will remain “on the list” for PRN referrals but will not actually receive referrals.

55. Since 2014, the census of the group of PRN-referred impaired professionals has dropped from 35 participants in 3 groups to 10 total participants, requiring the contraction to one group. This has resulted in the loss of compensation to Harden.

56. Affinity Online Solutions (“Affinity eHealth”) is a company involved in drug testing administration, online compliance monitoring, and case management.

57. Barry Lubin, M.D. (“Lubin”) is the director of National Sales and Marketing Director at Affinity Online Solutions.

58. Lubin is a regular in the addiction counseling and treatment business circles, attending conferences and marketing the drug testing and monitoring services of Affinity eHealth.

59. At numerous conferences in the field of addiction counseling and treatment, Lubin has been passing along the same inaccurate and untrue information about Harden.

60. Upon information and belief, the sole source of this inaccurate and untrue information which Lubin is spreading about Harden is FSAM and Teitelbaum.

**COUNT I**  
**TORTIOUS INTERFERENCE WITH A BUSINESS RELATIONSHIP**

61. Harden incorporates the allegations in Paragraphs 1 through 43 as though fully set forth, herein.

62. FSAM and Teitelbaum were aware of the business relationship between PRN and Harden.

63. By broadcasting inaccurate and untrue information about Harden to PRN, FSAM and Teitelbaum have intentionally and unjustifiably interfered with Harden’s relationship with PRN.

64. The communications did not take place as part of a judicial proceeding; therefore no immunity applies to such communications.

65. The communications were not made by FSAM or Teitelbaum to safeguard or promote their own financial interests.

66. As a result of this intentional and unjustified interference, Harden has been damaged.

67. Pursuant to the terms of the relationship between PRN and Harden, Harden was supposed to have been paid \$100 per month for each impaired professional referred to and participating in support groups facilitated by Harden. As a result of the PRN referrals stopping, Harden has lost compensation.

WHEREFORE, Harden prays for judgment against FSAM and Teitelbaum for (a) equitable relief directing FSAM and Teitelbaum to cease and desist their broadcasting inaccurate and untrue information about Harden; (b) compensatory damages based upon tortious interference with a business relationship; (c) attorneys' fees, interest and costs permitted by law; and (d) other such relief as may be just and proper.

**COUNT II  
INJURIOUS FALSEHOOD**

68. Harden incorporates the allegations in Paragraphs 1 through 43 as though fully set forth, herein.

69. FSAM and Teitelbaum have broadcasting inaccurate and untrue information regarding Harden to third parties, including Zeigler and Lubin.

70. No privilege attaches to these communications containing inaccurate and untrue information.

71. Because FSAM and Teitelbaum were in possession of the books and records of FSAM which demonstrate the falsity of their statements, their communications containing inaccurate and untrue information were made without reasonable care as to their truth or falsity.

72. By broadcasting inaccurate and untrue information to third parties, FSAM and Teitelbaum have interfered with and negatively impacted the economic interests of Harden.

WHEREFORE, Harden prays for judgment against FSAM and Teitelbaum for (a) equitable relief directing FSAM and Teitelbaum to cease and desist their broadcasting inaccurate and untrue information about Harden; (b) compensatory damages based upon their communicating injurious falsehoods; (c) attorneys' fees, interest and costs permitted by law; and (d) other such relief as may be just and proper.

**DEMAND FOR JURY TRIAL**

Harden formally demands a jury trial.

Dated: September 1, 2017.

/s/ Eric S. Adams  
ERIC S. ADAMS  
Florida Bar No. 0090476  
SHUTTS & BOWEN LLP  
4301 W. Boy Scout Blvd., Suite 300  
Tampa, Florida 33607  
Telephone: (813) 229-8900  
Facsimile: (813) 229-8901  
[eadams@shutts.com](mailto:eadams@shutts.com)  
Secondary: [shatfield@shutts.com](mailto:shatfield@shutts.com)  
*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via E-Portal Electronic Filing this 1<sup>st</sup> day of September, 2017, to:

Robert W. Bauer, Esq.  
The Law Office of Robert W. Bauer, P.A.  
2610 NW 43<sup>rd</sup> St., Suite 1-B  
Gainesville, FL 32606  
(352) 375-5960 – Telephone  
(352) 337-2518 – Facsimile  
[RWB.Pleadings@BauerLegal.com](mailto:RWB.Pleadings@BauerLegal.com)  
Attorney for Plaintiff

/s/ Eric S. Adams  
Attorney

# **COMPOSITE EXHIBIT A**



Law Office of Robert W. Bauer, P.A.

2610 NW 43rd Street, Suite 1B, Gainesville, FL 32606  
www.bauerlegal.com

*Robert W. Bauer, Esq.*  
*Maria Perez Youngblood, Esq.*

Phone: (352)375.5960  
Fax: (352)337.2518

---

December 30, 2016

John Harden  
420 South Oregon Avenue  
Tampa, Florida 33606-2134  
Regular and Certified Mail

Ref: Conversion Demand Letter  
Our Client: Florida Society of Addiction Medicine

Dear Mr. Harden:

This letter is to advise you that this office has been retained by Florida Society of Addiction Medicine regarding your fraudulent conversion and embezzlement of company funds in the amount of \$335,127.31. You fraudulently, and without the knowledge of Florida Society of Addiction Medicine, used your status as the company's Executive Director to access our client's monies, which was used extensively for personal expenses and embezzle funds from the company's account. As of November 8, 2016, you fraudulently obtained \$335,127.31 from the Florida Society of Addiction Medicine. You were not authorized to make personalized transactions. Please see attached a spreadsheet detailing the fraudulent transactions.

It is clear that you fraudulently obtained our client's funds and converted them as your own. Therefore, please consider this letter to be the written demand of the original theft amount of \$335,127.31 less the amount that has already been paid, plus accrued interest in regards to your embezzlement of funds from your former employer by wrongfully using the company's credit card.

If you have any questions, please feel free to contact me at the above number.

Sincerely,

Robert W. Bauer, Esq.

Cc: Florida Society of Addiction Medicine





ERIC S. ADAMS  
PARTNER  
Shutts & Bowen LLP  
4301 W. Boy Scout Boulevard  
Suite 300  
Tampa, Florida 33607  
DIRECT (813) 227-8122  
FAX (813) 227-8222  
EMAIL EAdams@shutts.com

January 30, 2017

VIA EMAIL: [rwb@bauerlegal.com](mailto:rwb@bauerlegal.com)  
VIA EMAIL: [Docs@BauerLegal.com](mailto:Docs@BauerLegal.com)

Robert W. Bauer, Esq.  
Law Office of Robert W. Bauer, P.A.  
2610 NW 43rd St., Suite 1B  
Gainesville, FL 32606

**Re: John Harden / Florida Society of Addiction Medicine  
Response to Civil Theft and Conversion Demand Correspondence  
Evidence Preservation Notice**

Dear Mr. Bauer:

It is our firm's privilege to represent John R. Harden ("Harden"). Please accept this correspondence as the substantive response to the December 30, 2016 demand letters which you sent on behalf of Florida Society of Addiction Medicine ("FSAM").<sup>1</sup>

The allegations which you have made against Harden are without merit and are vigorously disputed. Based upon the information contained in your correspondence, it appears that either you or FSAM have been misinformed. Please take the time to read this correspondence and its attachments carefully. Furthermore, I would recommend that FSAM take the time to further review the information and records in its possession.

---

<sup>1</sup> While is not necessarily controlling of the issues raised in your demand correspondence, it is incumbent upon me to point out that your client, FSAM, is not in good standing with the Division of Corporations. FSAM was administratively dissolved on April 2, 2015 based upon its failure to appropriately designate / maintain a registered agent. Under Florida law, when a corporation is dissolved, it is not permitted to carry on *any* business, except that appropriate to wind up and liquidate the business and its affairs. Section 607.1405(1), Florida Statutes. To the extent that FSAM's "board members" are purporting to conduct business in the name of FSAM, it is also important to note that such "board members" may be held *personally* responsible for liability associated with such business. Section 607.1421(4), Florida Statutes (providing that "a director, officer, or agent . . . purporting to act on behalf of the corporation is personally liable for the debts, obligations, and liabilities . . . arising from such action and incurred subsequent to the corporation's administrative dissolution"). At it currently appears in records on file with the Division of Corporations, Scott A Teitelbaum, M.D., F.A.S.M. is the only officer listed.

Before diving into the allegations in your demand correspondence, a discussion of the history and context of the relationship between Harden and FSAM is appropriate. In 2006, Harden was recruited by the FSAM board to be its Administrative Executive Director. Harden was recruited by FSAM, based on his 10 years of highly successful, executive level conference planning experience. Harden served in that role and at the direction of FSAM's board until his resignation in 2014.

When Harden began serving as the Administrative Executive Director of FSAM in 2006, FSAM's revenue was limited to \$12,000, annually -- from membership dues only. This was barely enough to cover the initial contract for Harden and left no money for operating expenses or conference development. The FSAM "annual conference" was no longer annual and struggled to break even. Despite this dismal starting place, Harden achieved significant accomplishments during his 8 year tenure as the Administrative Executive Director of FSAM:

Leadership of FSAM through 8 successful annual conferences, with an additional specialty conference on Florida's "pill mill" crisis in 2010 ("Pharmageddon in Florida"). Consistent feedback each year from conference participants was "best conference ever;"

Initiation of a successful workforce development initiative which funded the fellowship training of five new addiction medicine physicians who successfully graduated, entered the field of addiction medicine, and became members of FSAM;

Establishment of FSAM as a member-specialty medical society with the Florida Medical Association, taking advantage of FSAM's delegate status to introduce, promote and pass meaningful resolutions in furtherance of FSAM's mission;

Promotion of FSAM in innovative, cost-effective ways, while growing FSAM's revenue base and operating "in the black;"

Filing of federal income taxes each year, with no audits from the IRS;

Maintenance of FSAM's corporate status and non-profit status;

Maintenance of positive relationships with ASAM and FMA; and

Establishment of partnerships and contractual relationships with University of Florida College of Medicine, Florida Alcohol and Drug Abuse Association, Substance Abuse and Mental Health Services Administration, and Drug Abuse Comprehensive Coordinating Office.

In conjunction with his resignation in 2014, Harden returned FSAM's records and property to a representative of FSAM's board. This included computers, electronic data, and paper files, including copies of banking and accounting information, contracts, tax filings, conference materials, business expenses, and travel expenses. All of these records in FSAM's possession<sup>2</sup> reflect the contractual relationship between Harden and FSAM and the financial dealings of FSAM during Harden's tenure. And the fact that this information and these records are in the possession of FSAM make it incumbent upon FSAM and its counsel to review and be informed of their content. And the fact that the allegations in your demand correspondence are not supported by and expressly contradicted by the content of this information and these records can only lead Harden to the conclusion that either you have not reviewed the available information or the allegations are not supported by material facts.

Your correspondence fails to acknowledge two contracts between Harden and FSAM dated June 2006 and April 2010. These contracts spell out the business relationship between Harden and FSAM, including the manner in which Harden would be compensated over and above his \$12,000 annual salary. Harden's compensation and reimbursement of expenses was always within the bounds of these contract and done with full knowledge by FSAM and its board. Any suggestion to the contrary is unsubstantiated and without merit.

---

<sup>2</sup> FSAM is cautioned to maintain all information related to these allegations and its business relationship with Harden. FSAM must take the immediate and necessary steps to issue a legal hold and preserve all documents and "electronically stored information" (ESI), on whatever storage media, device or location, in your client's possession or control (including third parties) that contain ESI relating to the claims and defenses of the above referenced matter, in order to avoid spoliation of this ESI. This includes a demand that FSAM suspend all document retention or destruction policies, including but not limited to backup, restoration, deletion, destruction, and tape recycling.

As you may know, a legal hold is a directive to that FSAM preserve ESI or other information pertaining to its allegations and its business relationship with Harden. *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 218 (S.D.N.Y.2003) ("[o]nce a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a litigation hold to ensure the preservation of relevant documents"). Failure to preserve information (whether intentional or inadvertent) is sanctionable as spoliation of evidence. *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co., Inc.*, 2005 WL 679071 (Fla. 15th Cir., Mar. 1, 2005).

In order to assure that you and your client's obligation to preserve ESI and other documents will be met, please forward a copy of this letter to all persons and entities who may have "custody, control or possession" of the documents and ESI relating to this matter.

The information returned by Harden to FSAM contains additional records which reflect the compensation to and reimbursement of expenses to Harden, including the following:

documentation from contracted conference hotels which required Harden to secure the venue with his personal American Express and subsequent payment to American Express by FSAM;

FSAM board minutes authorizing the opening of the FSAM operations account at Bank of America for use by Harden as FSAM's Administrative Executive Director;

Invoices from the University of Florida College of Medicine for contracted services; and

Contracts with clinical sites and clinical supervisors.

The fact that supporting documents have not been attached to this correspondence is a result of Harden having turned over the information and records to FSAM in 2014.

The success of the FSAM annual conferences created projected conference venue/hotel expenses exceeded the typical FSAM reserve in its accounts. FSAM did not have any business credit. This was discussed in Board meetings. So, in order for the FSAM annual conferences to move forward, it was required that an individual with good credit personally guarantee contracts with hotel and convention services. The hotel and convention services were expensive, because of the high-end venues preferred by FSAM's board, such as the Hilton Bonnet Creek and Hilton Orlando. Board members declined to extend their own personal credit to cover these expenses. So, at the request of FSAM's board, Harden provided his personal credit guarantee to the venues and settled the entire conference venue bill, using his personal American Express. The payments to American Express by FSAM are simply FSAM's using revenue from the annual conferences to pay that portion of Harden's American Express bill. This practice was conducted openly and at the direction of FSAM's board.

The transactions<sup>3</sup> which FSAM attempts to portray as inappropriate were routine business expenses. Payments were made with the full knowledge of FSAM and its board members, at the time. The associated expenses were provided to FSAM's independent accounting professional -- Jerry Joyce at Alternative Tax Services, Inc. in Tampa, Florida -- and were classified as business expenses on FSAM's tax returns. Payments to the Department of Psychiatry were related to the fellowship program that FSAM established in conjunction with the University of Florida and Drug Abuse Comprehensive Coordinating Office. Payments to the Florida Medical Society and the Florida Medical Professionals Group were related to marketing and sponsorship of joint events. Payments to Harden were for contractual compensation associated his administration of

---

<sup>3</sup> I am surprised that you elected include payments to "no name" in your demand correspondence. Without more information, it is impossible for FSAM to substantiate its allegation that these expenses were not legitimate business expenses. And, without more information, it is impossible for Harden to rebut the unsubstantiated allegations.

FSAM, as well as the fellowship program. The payment to Murv Seymour, a filmmaker and professional comedian, was related to his appearance at a conference event. Payments to Starbucks were associated with the purchase of Starbucks gift cards, which were used to express appreciation to volunteers at conferences. Payments to iTunes were related to business applications and software which were used in the course of FSAM's business. The payment to rushmypassport.com was a reimbursement of a passport expenses when Harden travelled to Canada for FSAM, to attend a conference, recruit speakers, and market FSAM. Payments to Verizon were reimbursements of phone and internet expenses incurred by Harden while serving as the Administrative Executive Director of FSAM.

There is a significant legal hurdle to the claims which FSAM has threatened to assert. Concurrent with his employed as the Administrative Executive Director of FSAM, Harden was also employed by UF Health Shands ("UF Health"). Many conferences were co-managed, co-staffed, and co-administered by UF Health along with FSAM. While its terms are confidential, you should also be informed that, effective May 6, 2014, Harden entered into a Severance Agreement and General Release with UF Health. The breadth of the release provided by UF Health is arguably broad enough to encompass a release of the claims which FSAM is threatening to assert. Because Harden is bound by the confidentiality provision of this Severance Agreement and General Release, it cannot be discussed in more detail or attached hereto. But, suffice it to say, should FSAM imprudently pursue litigation threatened in your correspondence, Harden will take steps to obtain leave to court to be excused from the confidentiality provisions.

FSAM's claims appear to be the manipulations of current board members, in an effort to damage the reputation of Harden and use the claims for a competitive advantage, now that Harden no longer works for the UF Health and operates a competing business in Tampa. It is clear that you have been given false or incomplete information by a reckless instigator. The end result of this has been damage the good reputation of Harden. Should FSAM continue to harass or initiate litigation against Harden, he will take aggressive action to recover corresponding damages and related attorneys' fees and costs.

Any questions that FSAM had regarding the financial affairs of FSAM when Harden was its executive director could have been answered by (a) FSAM's examination of the contracts and financial records which Harden turned over to FSAM on his resignation, or (b) FSAM's examination of the bookkeeping and financial records which were maintained by Jerry Joyce at Alternative Tax Services, Inc. in Tampa, Florida. If, after the detailed explanation provided herein and review of the extensive records in its possession, FSAM continues to have unanswered questions, I would suggest that a more efficient use of the resources of Harden and FSAM would be to have a business dialogue discussing FSAM's questions and providing explanations as to the nature of the expenditures.

At best, despite your efforts to cast this matter in the light of a conversion claim or a civil theft claim, this matter is little more than a contractual dispute between Harden and FSAM. Florida law is clear that when the claims sued upon are clearly contractual in nature, claims for civil theft cannot lie. See attached copy of *Ginsberg v. Lennar Fla. Holdings*, 645 So. 2d 490, 494 (Fla 3rd DCA 1994). “[A]n action in tort is inappropriate where the claim is based on breach of contract” because a “mere obligation to pay money, generally, may not be enforced by a conversion action.” *Douglas v. Braman Porsche Audi, Inc.*, 451 So.2d 1038, 1039 (Fla. 3d DCA 1984). As you know or should know, FSAM cannot maintain a claim for civil theft or conversion as a matter of Florida law under these circumstances. And, even if there were factual support of FSAM’s claims, many of the transactions of which FSAM complains are barred by the four year statute of limitations associated with civil theft and conversion claims.

The sweeping but unsubstantiated claims of FSAM are rejected. Harden will not accede to FSAM’s civil theft claim. If FSAM decides to proceed further on these claims, Harden will defend to the fullest extent of the law and will seek to tax his attorneys’ fees and costs against FSAM and/or its individual board members for having done so. Based upon the lack of factual information and legal bases to support FSAM’s allegations, should a claim be filed against Harden, Harden will serve you<sup>4</sup> and your clients with a “57.105 letter” and motion for sanctions accordingly. And, to the extent that sanctionable conduct occurred while FSAM was not in good standing, Harden will seek to impose sanctions against individual board members, pursuant to Section 607.1421(4), Florida Statutes. However, should FSAM heed the information and records in its possession and elect to no longer pursue these meritless claims against Harden, this will not be the case.

Sincerely,

Shutts & Bowen LLP



Eric S. Adams

ESA/sh

cc: John Harden, LCSW, ICADC, MPH (via email)

---

<sup>4</sup> As I am sure you are aware, section 57.105, Florida Statutes was amended in 1999 to permit imposition of sanctions against clients and against their lawyers. 1999 Fla. Laws Ch. 225 amended and expanded section 57.105, Florida Statutes. Courts can now impose sanctions against clients and against their lawyers, for “[losing] any claim or defense . . . not supported by the material facts . . . or . . . not supported by the application of the then-existing law.”