

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

YASSER MOHAMED ALI ALI
ESMAEIL, M.D.,

Plaintiff,

vs.

CASE NO.: 2025-CA-001848-O

GUTTERIDGE JEANCHARLES,
M.D., P.A., a Florida Corporation,
and GUTTERIDGE JEAN-CHARLES,
M.D., an individual,

Defendants.

_____ /

DEFENDANTS' MOTION TO DISMISS OR, ALTERNATIVELY,

STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT

AND

INCORPORATED MEMORANDUM OF LAW

COME NOW, Defendants Gutteridge JeanCharles, M.D., P.A., a Florida professional service corporation, and Gutteridge Jean-Charles, M.D. ("Dr. Jean-Charles," herein), by and through undersigned counsel and move to dismiss and strike Plaintiff's First Amended Complaint (the "Complaint"), stating:

SUMMARY OF CASE

1. Plaintiff Yasser Mohammed Ali Ali Esmaeil (a/k/a "John Doe," a/k/a "Yasser M. Esmaeil," a/k/a "Yasser Esmaeil"), an Egyptian national, was in the United States illegally in March 2022, having overstayed a J-1 student visa which had expired on December 31, 2019.

While living in Colorado, he responded to an online advertisement for a paid position as a clinical assistant with Defendant Gutteridge JeanCharles, M.D., P.A., an Orlando medical clinic (Complaint, Para. 17), even though he knew it was illegal for him to work in the U.S. (Complaint, Paras. 13-16). Yasser Esmaeil applied for the position stating falsely in an e-mail to Dr. JeanCharles dated March 24, 2022: "Yes, I live in Colorado. I am able to relocate. I am a green cardholder [sic]." (See Exhibit "1"). In fact, he was not a green card holder and was prohibited from working in the U.S. by federal law.

2. Later, after arriving at the job location in Orlando, Plaintiff Yasser Esmaeil was not able to obtain approval to enrol in the Defendants' payroll system because he was an illegal immigrant. Plaintiff Esmaeil then admitted that he had lied to Defendant (Complaint, Para. 35). Plaintiff Esmaeil agreed then to accept a position as an unpaid medical extern instead in the Defendants' AMA approved externship program (Complaint, Para. 43). Federal statutes make employing an illegal immigrant such as Plaintiff Esmaeil a federal crime. Federal statutes do not prohibit an unpaid volunteer medical externship.

3. Florida law is and has been clear for more than a century that an illegal agreement is unenforceable. For example, in Local No. 234, etc. v. Henley & Beckwith, Inc., 66 So.2d 818, 821 (Fla.1953), the Florida Supreme Court stated:

[A]n agreement that is violative of a provision of a constitution or a valid statute, or an agreement which cannot be performed without violating such a constitutional or statutory provision, is illegal and void. [Citation omitted]. And when a contract or agreement, express or implied, is tainted with the vice of such illegality, no alleged right founded upon the contract or agreement can be enforced in a court of justice. [Citation omitted.] Where the parties to such an agreement are in pari delicto the law will leave them where it finds them; relief will be refused in the courts because of

the public interest. Stewart v. Stearns and Culver Lumber Co., 56 Fla. 570, 48 So. 19; . . . Escambia Land & Mfg. Co. v. Ferry Pass Inspectors' & Shippers' Ass'n, 59 Fla. 239, 52 So. 715. ("For courts have no right to ignore or set aside a public policy established by the legislature or the people. Indeed, there rests upon the courts the affirmative duty of refusing to sustain that which by the valid statutes of the jurisdiction, or by the constitution, has been declared repugnant to public policy.") See also L. Maxcy, Inc. v. Mayo, 103 Fla. 552, 139 So. 121; State ex rel. Johnson v. Patterson, 67 Fla. 499, 65 So. 659; and Escambia Land & Mfg. Co. v. Ferry Pass I. & S. Ass'n, 59 Fla. 239, 52 So. 715.

4. This case is an example of "no good deed goes unpunished." Dr. Jean-Charles, a humanitarian who provides a great deal of charitable medical services to the local community through his charitable foundation, and who also provides specialized medical teaching assistance to foreign medical graduates seeking to come to the United States to practice medicine, is being sued by a male physician that he tried to help.

5. Dr. Jean-Charles, whom himself is an immigrant from Haiti, provides unpaid observerships (also called "external clinical rotations" or "externships") through his medical practice and through JC Medical Foundation, Inc. Plaintiff Esmaeil, the graduate of a top medical school in Egypt (Complaint, Para. 11), who had previously been a general surgery medical resident in New York City, failed to complete his first year of residency training in New York. He remained in the United States illegally when his J-1 visa expired on December 31, 2019 (Complaint, Para. 13). Several years later, in 2022, he sought assistance from Dr. Jean-Charles. When he first contacted Dr. Jean-Charles, he falsely told Dr. Jean-Charles that he had a green card (see Exhibit "1"), but later admitted that he did not. (Complaint, Paras. 15 & 36). Plaintiff Esmaeil could not have been legally employed in the United States at that time by anyone and he knew that (Complaint, Paras. 13-16).

BACKGROUND AND ADDITIONAL FACTS

6. Plaintiff is a medical doctor who graduated from one of the top medical schools in Egypt,¹ and was accepted into a general surgery residency program at Brookdale Medical Center in New York City. He came to the United States in 2018 to train to become a general surgeon. Plaintiff Esmaeil entered the United States on a J-1 visa, under sponsorship by and through the Educational Commission for Foreign Medical Graduates ("ECFMG") (Complaint, Para. 11).

7. In 2019 Plaintiff was either terminated from or dropped out of his general surgery residency program in New York City. He is believed to have only received eleven (11) months credit for his twelve (12) month first year of general surgery residency training.

8. Because of this, Plaintiff's J-1 visa remained valid only until December 31, 2019, expiring that date. (22 C.F.R. Part 62.) After December 31, 2019, it is believed that Plaintiff remained in the United States illegally and sought to obtain employment illegally (Complaint, Paras. 13-18), as he did not have a visa or the right to work in the United States. According to the Complaint, Plaintiff married his now wife during this period of time, so that he could obtain a green card and legally remain in the U.S., while residing in the U.S. illegally. (Complaint, Para. 12). At the time of his contact with the Defendants in 2022, the Plaintiff had no visa, no green card and no authorization to work in the U.S. (Complaint, Para. 36).

9. The Complaint in Paragraph 15 misleadingly states: "Without work authorization, [Plaintiff Esmaeil] was not able to "match" a residency program" (Complaint, Para. 15). This

¹ The Complaint refers to Plaintiff Esmaeil incorrectly as an "Immigrant Medical Graduate" [sic] using the acronym "IMG" (Complaint, Para.1). However, the acronym "IMG" is universally used within the medical community in the United States to refer to and mean "international medical graduate."

statement is misleading, as Plaintiff did not have authorization to work in the U.S. solely because his visa expired on December 31, 2019. His visa expired because of his termination from his general surgery residency program in New York in 2019.

10. He was unable to "match" into another residency program, because he had left his prior residency program without completing it. If he had "matched" into another residency program, then the ECFMG would have sponsored him for another J-1 visa.

11. What is clear is that at all times when Plaintiff was seeking a relationship with the Defendants, he was in the United States illegally and was "without work authorization." (Complaint, Para. 36).

12. Defendant Dr. Jean-Charles is himself an international medical graduate (IMG) from Haiti, and has a medical office practice in Orlando, Florida. Since becoming a physician in the United States, he has dedicated himself to assisting other international medical graduates seeking to become licensed physicians and medical residents in the U.S.

13. Defendant Gutteridge JeanCharles, M.D., P.A., is a separate, professional service corporation, incorporated under the laws of the state of Florida. It is a large medical practice which has a number of employees, including at least three (3) other licensed physicians and several other licensed health professionals working for it and treating patients for it.

14. The Defendants do not employ illegal immigrants and do not force anyone to work without pay. They have no need or desire to do this.

15. "JC Medical Center" was a registered fictitious business name owned by and used by the corporation Gutteridge JeanCharles, M.D., P.A., up until 2021, when it expired. It was never owned by or used by Dr. Jean-Charles individually.

16. As of 2021, the registered fictitious business name "JC Medical, Inc." (or JCMI) was the official fictitious business name owned by and registered to Gutteridge JeanCharles, M.D., P.A., a Florida professional service corporation or "professional association." It was never owned by or used by Dr. Jean-Charles individually.

17. Dr. Jean-Charles also has a charitable foundation set up to assist international medical graduates and to provide charity medical services for the local community.

18. In 2013, Dr. Jean Charles founded JC Medical Foundation, Inc. It is:

A national and international nonprofit organization.
. . . Its mission is to assist people in rural areas,
provide support to individuals that do not have
access to medical care or are unable to afford
necessary healthcare services due to financial issues.
JCMF has clinical and education awareness centers
worldwide allowing JCMF members and volunteers
to provide awareness of crucial medical conditions.

(JCMI, <https://www.jcmi.us/jcmfi>, (last visited May 23, 2025)).

19. On August 26, 2016, JC Medical Foundation, Inc. ("JCMF"), was registered as a Florida not-for-profit corporation with the Florida Secretary of State, and has remained active existed ever since then.

20. Gutteridge JeanCharles, M.D., P.A., d/b/a JC Medical, Inc. ("JCMI"), offers services in internal medicine to the Central Florida area. JCMI also has a team of its employees (physicians, nurses and medical assistants) who provide voluntary medical services to the Orlando Rescue Mission and other community programs in the Orlando area.

21. JCMF through JCMI, also provides training and assistance, including short external clinical rotations to medical graduates (American and foreign) seeking to become accepted into residency training programs in the United States.

JCMI has trained and assisted many AMGs [American medical graduates] and IMGs over the past decade in obtaining positions in their speciality of interest. These residents and fellows share JCMI's beliefs and ideals of giving forward, which is why they help JCMI externs to provide them with a better understanding of the U.S. health system.

(JCMI, <https://www.jcmi.us/coming-soon-01-1>, (last visited May 23, 2025)).

22. Unlike a regular medical internship, a medical "observership" or "externship" is much shorter and is usually unpaid.²

Externs also do not typically get paid. Some externships, however, such as those in healthcare, may offer payment. While an internship can last several months or even a year, externships usually last for much shorter periods--often a few days or weeks.

(Best Colleges, <https://www.bestcolleges.com/blog/externship-vs-internship/> (last Visited May 23, 2025)). Medical school graduates often accept unpaid externships in order to obtain actual, hands-on medical experience while trying to obtain a regular accredited one-year medical residency.

23. Plaintiff was very familiar with unpaid externships, because he previously had quite a few, according to his own resume.

a. In the resume that he presented to JCMI in connection with his application, Plaintiff indicated that he had previously performed an unpaid externship in internal medicine at

² Formal accredited one-year medical residencies and internship programs such as the one in which Plaintiff Esmaeil studied from 2018 through 2019 in New York City, do pay the physicians a small salary. It is usually around \$50,000 per year. However, these programs receive funding from the U.S. Department of Health and Human Services for this purpose.

Jersey Shore University Medical Center in Neptune, New Jersey, during July 2016, working for a Dr. Odejobi, working an average of 60 hours per week. (See Exhibit "2").

b. In the same resume, Plaintiff indicated that he had performed another unpaid externship in internal medicine at Jersey Shore University Medical Center in Neptune, New Jersey, in August 2016, working for a Dr. Chinnici, working an average of 40 hours per week. (See Exhibit "2.")

c. In the same resume, Plaintiff indicated that he had performed an unpaid externship in neurological surgery at the Brain and Spinal Surgery Center, Troy, Michigan, in July 2017, working for a Dr. Zamorano, working an average of 40 hours per week. (See Exhibit "2.")

d. In the same resume, Plaintiff indicated that he had performed an unpaid externship in general surgery at the St. James Franciscan Hospital, Chicago Heights, Illinois, working for a Dr. Vera, from July 2017 through August 2017, working an average of 45 hours per week. (See Exhibit "2.")

24. JCMF's website is replete with testimonials from IMGs similar to Plaintiff Esmaeil (including one or more other physicians from Egypt), who participated in its programs in Orlando, Florida, and who have gone on to succeed in highly lucrative medical specialties. (JCMI, <https://www.jcml.-us/testimonials>, (last visited May 23, 2025)).

25. In fact, JCMF, is a necessary party to this litigation, yet Plaintiff has failed to name it as a party.

26. JCMI is the organization that advertised the position for which the Plaintiff applied, not Dr. Jean-Charles, individually. Plaintiff used the application form on the JCMI website to apply for the position about which he complains in the present lawsuit.

27. During 2022, JCMI and JCMF posted on Indeed.com listing for both unpaid short clinical internships (or "observerships") and also some paid clinical positions. If the position was a paid position, Indeed.com asked a series of "screening requirement" questions to the applicant.

28. One of these screening questions was "Are you authorized to work in the following country: United States?" In order to get past the screening and successfully submit an application Plaintiff would have had to falsely answer "Yes" when applying.

29. It is crucial to note that the Plaintiff had previously been in a general surgery residency program, which is a highly competitive, highly sought after medical specialty training. He left that program in 2019, having failed to complete it.

30. Plaintiff advised JCMI/JCMF that he was now attempting to obtain entry into a medical residency program in internal medicine, a less competitive medical specialty. He was seeking internal medicine experience at JCMI/JCMF to assist him in getting into an internal medicine residency program.

31. In his initial application to JCMI/JCMF on March 24, 2022, Plaintiff Esmail admitted that his J-1 visa had previously expired (Complaint, Para. 36), but falsely claimed that he now had a green card. (See Exhibit "1").

32. Plaintiff Esmail did not have a visa or green card (Complaint, Para. 36), is believed to have been in the United States illegally, could not have legally worked in the United States, and as such, he did not qualify for the position with JCMI for which he applied.

33. Based on Plaintiff Esmail's false application for a paid position as a clinical assistant, Dr. Jean-Charles decided to interview him. Plaintiff came to Orlando to JCMI for the purpose of being interviewed.

34. While Plaintiff Esmaeil was at the JCMI office interviewing, Plaintiff falsely informed Dr. Jean-Charles that he was a green card holder and falsely stated that he was able to legally work in the United States.

35. Later, when Plaintiff Esmaeil returned to Orlando to begin working in the paid position, he was asked to complete all payroll and employment documents and forms, including IRS forms and immigration forms.

36. This was normally done for new JCMI employees through an online software platform called "Gusto." (Complaint, Paras. 34-36). Plaintiff Esmaeil was given access to a computer at JCMI and was asked to complete the information required by Gusto. Id.

37. The onboarding process included requesting Plaintiff Esmaeil to provide documents showing that he was in the U.S. legally and had authorization to work. He was required to produce identification documents such as a passport and driver's license and providing a visa or green card. He was also required to assist in completing a Form I-9.³

38. Plaintiff Esmaeil left without providing any of the above documents.

39. Plaintiff Esmaeil refused to ever provide any information or documents that could be used to confirm he was in the United States legally and that he was authorized to work. He failed to provide a social security number, passport, drivers license, visa, green card, work authorization, or anything similar.

40. On April 18, 2022, Defendant Dr. Jean-Charles received the following e-mail from his medical group's payroll company, Gusto:

³ Form I-9 (officially the "Employment Eligibility Verification"), is a United States Citizenship and Immigration Services (CIS) form mandated by the Immigration Reform and Control Act of 1986. It is used to verify the identity of persons legally residing in the United States and to verify that they have legal authorization to work in the United States.

From: Gusto
Sent: Monday, April 18, 2022 8:07 AM
To: Gutteridge Jean Charles;

Subject: [Action Required] Remind Yasser Esmaeil
to complete Gusto self-onboarding

Yasser [Esmaeil] needs to finish self-onboarding.

Yay! Today is Yasser [Esmaeil] first day at
GUTTERIDGE JEANCHARLES, MD, P.A.

Please remind Yasser [Esmaeil] to complete Gusto
onboarding when they arrive today. To be federally
compliant, Yasser [Esmaeil] must also complete the
Form I-9 employment eligibility document.

(See Exhibit "3.")

41. Before Plaintiff Esmaeil began any actual work-related activities at JCMI, Defendants requested that Plaintiff Esmaeil complete a Form I-9 and provide his social security number, identification documents, and authorization to work to JCMI's payroll service. Plaintiff Esmaeil failed to ever do this.

42. Once Dr. Jean-Charles found out that Plaintiff Esmaeil was unable to provide proper work documentation and was not legally authorized to work in the United States, Dr. Jean-Charles confronted Plaintiff Esmaeil. Plaintiff Esmaeil admitted to him that he had lied about having a green card and had lied about being able to work legally in the U.S.

43. At that point Dr. Jean-Charles, acting on behalf of the medical group, rescinded the offer of paid employment as it would have been illegal to have employed Plaintiff Esmaeil.

44. Dr. Jean-Charles generously offered Plaintiff Esmaeil an unpaid three-month long externship. Plaintiff Esmaeil accepted this and began working as an unpaid extern. Paragraph 37

of the Complaint states that Dr. Jean-Charles told Plaintiff Esmaeil that all he was able to do was allow Plaintiff Esmaeil to "'volunteer' for three [sic] months."

45. In Paragraph 43 of the Complaint, Plaintiff Esmaeil quotes a statement believed to be from Dr. Jean-Charles to Plaintiff:

This is an official communication to confirm your request to be granted the status of "volunteer" at the JC Medical Center for a period of three months in which you will be receiving training and an opportunity to gain valuable US [sic] clinical experience as an IMG. This training period will be followed by a salaried position starting July 2022, if all goes according to plan and all other requirements are met. (Emphasis added.)

46. Dr. Jean-Charles being an IMG himself, agreed to take Plaintiff Esmaeil on as a volunteer extern at JCMI. While working as a volunteer in an unpaid observership or externship with Defendants and JCMF, Plaintiff was to obtain his green card or other work authorization within three (3) months. Plaintiff kept promising to Dr. Jean-Charles that he would obtain his legal paperwork soon, but he never provided them.

47. At no point did Dr. Jean-Charles ever offer to overlook Plaintiff's immigration status.

48. Paragraphs 1-93 of the Complaint clearly show that Plaintiff Esmaeil knew he was in the United States illegally and was not legally allowed to work for pay for the Defendants or anyone else.

49. Paragraphs 1-93 of the Complaint are incorporated into each Count of the Complaint, thus rendering each Count a nullity, undercutting any legal cause of action.

GROUND'S FOR DISMISSAL AND SUPPORTING LEGAL ARGUMENT

Rule 1.420(b), Florida Rules of Civil Procedure, provides:

Involuntary Dismissal. Any party may move for dismissal of an action or of any claim against that party for failure of an adverse party to comply with these rules or any order of court.

Legal Standard

It is well established that “[f]or the purposes of [a] motion to dismiss for failure to state a cause of action, allegations of the complaint are assumed to be true and all reasonable inferences are allowed in favor of the plaintiff’s case.” Orlando Sports Stadium, Inc. v. State ex rel. Powell, 262 So. 2d 881, 883 (Fla. 1972).

However, even assuming the truth of all of the allegations and all reasonable inferences in the light most favorable to the plaintiff, to state a cause of action, a complaint must allege sufficient ultimate facts to show that the pleader is entitled to relief. Saidi v. Saqr, 207 So. 3d 991, 992 (Fla. 5th DCA 2016) (“a pleading setting forth a claim for relief must state a cause of action and contain, among other things, 'a short and plain statement of the ultimate facts showing that the pleader is entitled to relief'" under Rule 1.110, Florida Rules of Civil Procedure); see also Beckler v. Hoffman, 550 So. 2d 68, 70 (Fla. 5th DCA 1989) (holding vague and conclusory allegation insufficient to state a claim under Rule 1.110(b)(2), Florida Rules of Civil Procedure); Held v. Trafford Realty Co., 414 So. 2d 631, 632 (Fla. 5th DCA 1982) (in stating a claim for fraud or misrepresentation, “[m]ere legal conclusions are fatally defective unless they are substantiated by adequate allegations of ultimate facts”).

Under Florida law, an exhibit attached to a pleading becomes part of the pleading for all purposes. Rule 1.130, Florida Rules of Civil Procedure; Glen Garron, LLC v. Buchwald, 210 So. 3d 229, 233 (Fla. 5th DCA 2017).

1. The Illegality of the Alleged Employment Arrangement Bars Enforcement

The "big picture" that Plaintiff Esmaeil appears to gloss over in Counts I and II of the Complaint (Complaint, Paras. 94 through 113), and carried over through all other Counts, is that Plaintiff attempts to manufacture and plead an employer–employee situation and various jobs, contracts, and agreements for employment, that are prohibited by law. It would be illegal and against public policy for the Court to enforce them.

Plaintiff Esmaeil seeks to plead a contract for employment or other entitlement to "unpaid wages" when it was, in fact, illegal for Plaintiff to be working in the United States, and Plaintiff knew this. In fact, Plaintiff Esmaeil lied in his initial contact with the Defendants for this very reason; to deceive them into hiring him when he knew it was illegal to do so.

When Plaintiff Esmaeil submitted his application to Defendants on Indeed.com in 2022, he knew it was illegal for him to work in the United States. He was residing in the country illegally at the time on a J-1 visa that had expired on December 31, 2019.

The Immigration Reform and Control Act of 1986 ("IRCA"), Pub. L. No. 99-603, 100 Stat. 3359 (1986), specifically, 8 U.S.C. § 1324a, makes it unlawful to hire or to continue to employ anyone, such as Plaintiff Esmaeil, who does not have proper authorization to work in the United States. The Complaint shows that Plaintiff Esmaeil knew this. IRCA also prohibits

employers from continuing to employ an individual knowing that he or she is unauthorized for employment.

An illegal contract may not be enforced in a cause of action. Katz v. Woltin, 765 So. 2d 279, 280 (Fla. 4th DCA 2000) ("An illegal contract cannot be the basis of a cause of action either in law or in equity."). This is an established principle of American jurisprudence. In McMullen v. Hoffman, 174 U.S. 639, 654 (1899), the U.S. Supreme Court stated:

No court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought in which it is necessary to prove the illegal contract in order to maintain the action, the courts will not enforce it, nor will they enforce any alleged rights directly springing from such contract.

Id. at 644. This principle has been echoed through the decades.

[To] permit a recovery . . . is in substance to enforce an illegal contract, and one which is illegal because it is against public policy to permit it to stand. The court refuses to enforce such a contract and it permits defendant to set up its illegality, not out of any regard for the defendant who sets it up, but only on account of the public interest.

Kaiser Steel Corp. v. Mullins, 455 U.S. 72, 77 (1982) (quoting McMullen, 174 U.S. at 669).

Paragraph 15 of the Complaint states that Plaintiff was "without work authorization" around the time when he applied for a position with the Defendants. Paragraph 14 of the Complaint states that Plaintiff was "waiting for his legal paperwork" (most likely referring to his "immigration application" for a "visa waiver" or a "green card" (Complaint, Para. 13). Paragraph 19.c. of the Complaint states that Plaintiff Esmail admitted [to the Defendants] on March 26, 2022, that he did not have a green card or work authorization.

In Paragraph 35 of the Complaint, for example, Plaintiff alleges "Plaintiff was unable to access Gusto [on April 19, 2022] due to a lack of work authorization paperwork. . . . "

The foregoing paragraphs in the Complaint make it clear that the Plaintiff did not have a visa or green card or work authorization to be legally employed at the time he applied for a position with the Dfendants. No court should lend its assistance in any way toward Plaintiff Esmaeil's ill-intentioned attempt to enforce the terms of an illegal contract or business arrangement of any kind.

The principle that courts will not enforce illegal contracts is well established. . . . [T]here can be no legal remedy for that which is itself illegal. Indeed, there rests upon the courts the affirmative duty of refusing to sustain that which by the valid laws of the state (or nation), statutory or organic, has been declared repugnant to public policy. To do otherwise would be for the law to aid in its own undoing.

Gonzalez v. Trujillo, 179 So. 2d 896, 897-98 (Fla. 3d DCA 1965) (citations omitted). See also, Harris v. Gonzalez, 789 So. 2d 405, 409 (Fla. 4th DCA 2001) (where a contract is void as violative of the law, it "confers no enforceable rights on appellants based upon it"); Local No. 234, United Ass'n of Journeymen & Apprentices v. Henley & Beckwith, Inc., 66 So. 2d 818, 821 (Fla. 1953) (when a contract or agreement, express or implied, is tainted with the vice of such illegality, no alleged right founded upon the contract or agreement can be enforced in a court of justice).

The most important issue regarding the Complaint which is fatal to each and every cause of action pleaded, is that it seeks to have the Court enforce what is clearly shown in the Complaint to be an illegal business arrangement, with illegal contracts and agreements.

Although the allegations made by the Plaintiff Esmaeil are for the most part false, nevertheless, Plaintiff seeks this Court's assistance in enforcing contracts and agreements for work for pay in violation of federal laws which were being violated by the Plaintiff. Plaintiff Esmaeil admitted he was in the United States illegally at all times relevant to this Complaint. Plaintiff Esmaeil did not have the required visa, green card or any work authorization that would have allowed him to be legally employed by any employer.

In the present case, the illegal arrangement is incorporated into each Count in the Complaint, requiring dismissal of the entire Complaint.

2. Plaintiff Esmaeil's Attempt to Commit Illegal Acts Constitute "Unclean Hands" on the Part of Plaintiff, Barring Enforcement of any Equitable Causes of Action

The illegal acts as spelled out in the Complaint, as detailed further in Paragraphs 1 through 39, above, of this Motion, show that Plaintiff Esmaeil clearly has "unclean hands." The blatant lie of Plaintiff Esmaeil from his first contact, falsely stating: "I have a greencard [sic]" constitutes unclean hands that cannot be washed away by any subsequent event.

Furthermore, these illegal acts are incorporated by Plaintiff into each Count of the Complaint. This is a bar to any cause of action in equity such as those stated in Counts III, VII through VIX [sic],⁴ making them unenforceable and a legal nullity.

The "unclean hands doctrine applies to 'any unrighteous, unconscientious, or oppressive conduct by one seeking equitable interference in his own behalf.'" PNC Bank, Nat'l Ass'n v.

⁴ The Roman numeral "VIX," as used in the Complaint, is not a valid Roman numeral. Nevertheless, for the sake of consistency and clarity, this Motion will refer to the count as it appears in the Complaint. It should be correctly numbered as "IX."

Smith, 225 So. 3d 294, 296 (Fla. 5th DCA 2017) (citing Dale v. Jennings, 90 Fla. 234, 107 So. 175, 180 (Fla. 1925)).

The "conduct constituting the 'unclean hands' must be connected with the matter in litigation and must affect the adverse party." Pennington v. Pennington, 390 So. 2d 809, 810 (Fla. 5th DCA 1980) (citing Faber v. Landman, 123 So. 2d 405 (Fla. 2d DCA 1960)).

"A litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair or unconscientious in respect to the matter concerning which he seeks relief." Ryan v. Ryan, 277 So. 2d 266, 276 (Fla. 1973) (quoting National Fire Insurance Co. v. Thompson, 281 U.S. 331, 50 S. Ct. 288, 74 L. Ed. 881 (1930); Keystone Co. v. Excavator Co., 290 U.S. 240, 54 S. Ct. 146, 78 L. Ed. 293 (1933); Nedd v. Starry, 143 So.2d 522 (Fla.App.1962); Gables Racing Association v. Persky, 148 Fla. 627, 6 So.2d 257 (1940)).

Furthermore, Count III attempts to plead a cause of action for a contract "implied in law" or a quasi-contract, a creature of equity. Count X, although labeled as a request for declaratory relief, incorporates a request for equitable relief in that Count in Paragraph 163 of the Complaint stating: "163. Plaintiff is also seeking supplemental relief in the form of equitable and injunctive relief as pertains to the Defendants."

3. The Complaint Should Be Dismissed for Improper "Shotgun Pleading"

Each Count (I through X) of the Complaint incorporates Paragraphs 1 through 93 of the Complaint into those Counts. Many of the Paragraphs incorporated contradict each other.

Under Rule 1.110(b), Florida Rules Civil Procedure, a complaint must state a cause of action and shall contain (1) a short and plain statement of the grounds upon which the court's

jurisdiction depended, and (2) also contain a short and plain statement of the ultimate facts showing that the pleader was entitled to relief. In addition, under Rule 1.110(f), Florida Rules Civil Procedure, all averments of claim had to be made in consecutively numbered paragraphs. The contents of each has to be limited as far as practicable to a statement of a single set of circumstances.

To satisfy the pleading requirements of Rule 1.110(b), Florida Rules of Civil Procedure, a complaint must contain a short and plain statement showing an entitlement to relief. See Dewitt v. Rossi, 559 So. 2d 659, 659 (Fla. 5th DCA 1990).

"The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." Cramer v. State of Fla., 117 F.3d 1258, 1261 (11th Cir. 1997).

Shotgun pleadings are described as those that improperly commingle different causes of action in each count and fail to delineate damages or claims against specific defendants. Such pleadings are legally insufficient and fail to meet basic pleading requirements of Rule 1.110(b), Florida Rules of Civil Procedure. Cannie v. City of Jacksonville, No. 16-2019-CA-8617, 2022 Fla. Cir. LEXIS 2801 (Fla. Cir. Ct., Nov. 4, 2022).

A shotgun pleading is one that is "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action and fails the requirement of Rule 1.110, Florida Rules of Civil Procedure, for short, plain statements of ultimate fact." Tran v. City of Holmes Beach, No. 2018-CA-5800, 2020 Fla. Cir. LEXIS 19564 (Fla. Cir. Ct., Dec. 11, 2020) (citing Cramer, 117 F.3d at 1261).

Paragraphs 1 through 93, also show that the Plaintiff had no valid visa and no valid green card and knew it would be illegal for him to apply for or accept a job in the United States. On information and belief, it appears that these paragraphs also show that the Plaintiff was knowingly, willfully, and voluntarily staying in the United States without legal authority at all times relevant in the Complaint, making each Count void and unenforceable.

Paragraphs 1 through 93, incorporated into each Count, also attempt to plead a written contract or contracts that Plaintiff seeks to enforce. This is specifically pleaded in Paragraph 17 (Plaintiff refers to an advertisement for employment for a paid position that he allegedly responded to), Paragraphs 20 and 23 (Plaintiff discusses e-mails that were allegedly sent to him by the Defendants on March 26 and 29, 2022, providing the specific terms of a "job offer" (also later referred to as an "employment position") and Paragraphs 72 and 73 (alleging "a 3-year employment contract" that the Defendants allegedly offered Plaintiff).

"In substantial measure the Florida Rules of Civil Procedure are modeled after the Federal Rules of Civil Procedure. . . . [T]he objective in promulgating the Florida rules has been to harmonize our rules with the federal rules to the extent possible." Miami Transit Co. v. Ford, 155 So. 2d 360, 362 (Fla. 1963).

The 11th Circuit Court of Appeal identified four types of shotgun pleadings:

Though the groupings cannot be too finely drawn, we have identified four rough types or categories of shotgun pleadings. The most common type . . . is a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint. The next most common type . . . is a complaint that . . . is guilty of the venial sin of

being replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action. The third type of shotgun pleading is one that commits the sin of not separating into a different count each cause of action or claim for relief. Fourth, and finally, there is the relatively rare sin of asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against. The unifying characteristic of all types of shotgun pleadings is that they fail . . . to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests.

Weiland v. Palm Beach Cnty. Sheriff's Off., 792 F.3d 1313, 1321-23 (11th Cir. 2015).

The allegations concerning the existence of a written contract in the Complaint are also incorporated into Counts III, IV, VII, VIII, VIX [sic], and X, which are causes of action pleaded in whole or in part inequity, therefore contradicting them and making them each nullities.

**4. Internal Inconsistencies Pleaded in Make Each Count In the Complaint
Makes Them Each Internally Inconsistent and a Nullity**

The internal inconsistency is a byproduct of the Plaintiff's "shotgun pleading" which incorporates Paragraphs 1-93 into each Count of the Complaint.

In addition to the deficiencies already noted above, there are a number of contradictory statements and allegations made by the Plaintiff in the Complaint which demonstrate that little effort has been made to investigate and verify any facts nor has attention been paid to accurately pleading the facts.

Paragraph 17 of the Complaint states that the job advertisement relied upon by Plaintiff "offered full-time employment with a salary of \$500 per month." Not only has Plaintiff failed to

attach a copy of any document showing this, but the statement itself is absurd. Full-time employment at a salary of \$500 per month would be paying at the rate of \$2.88 per hour, violating both Florida and federal minimum wage laws.

Paragraph 17 of the Complaint is contradicted by Paragraphs 19.b., 26, 35, and 40 of the Complaint.

Paragraph 26 of the Complaint is contradicted by Paragraphs 15–17, 19.b., 35 and 40 of the Complaint.

Paragraph 29 of the Complaint, falsely alleges: "Dr. Jean-Charles was the sole, licensed doctor at JC Medical Center."⁵ However, Paragraph 47 of the Complaint then refers to another "two providers and three clinical assistants Monday–Friday," and another "three providers and two clinical assistants" on Saturday. Paragraph 61 of the Complaint also states that there was "another doctor from Haiti" working there and various international medical graduates.

5. Failure to Plead Sufficient Ultimate Facts

Counts I, II, III, IV, V, and VI of the Complaint do not provide sufficient statements of fact to support the claims made. They all fail to state a claim upon which relief can be granted as required by Rule 1.110(b), Florida Rules of Civil Procedure.

Rule 1.110(b), Florida Rules of Civil Procedure, "forces counsel to recognize the elements of their cause of action and determine whether they have or can develop the facts necessary to

⁵ In fact, Defendant Gutteridge JeanCharles, M.D., P.A. d/b/a JC Medical, Inc., at that time in 2020, in addition to himself, employed one (1) other full-time Florida licensed physician, two (2) other part-time Florida licensed physicians, three (3) Florida licensed advanced practice registered nurses (APRNs), and one (1) Florida licensed physician assistant (PA) who saw and treated patients.

support it, which avoids a great deal of wasted expense to the litigants and unnecessary judicial effort.” Continental Baking Co. v. Vincent, 634 So. 2d 242, 244 (Fla. 5th DCA 1994). See also Arky, Freed, Stearns, Watson, Greer, Weaver, & Harris, P.A. v. Bowmar Instrument Corp., 537 So. 2d 561 (Fla. 1988). Plaintiffs have not satisfied Rule 1.110(b).

For instance, in Counts I and II of the Complaint, Plaintiff alleges the existence of a contractual relationship between himself and Dr. Jean-Charles. However, Plaintiff has failed to allege or demonstrate that he possessed the requisite visa or work authorization to lawfully engage in employment within the United States and to complete the Gusto onboarding process.

6. Counts III and IV Must be Dismissed for Failure to State a Claim Upon Which Relief can be Granted

Count III and IV of the Complaint pleads a cause of action for contract implied in law and contract implied in fact.

a. Count III, Contract Implied in Law, Must be Dismissed

A "contract implied in law," also known as a "quasi-contract," is not a contract in the traditional sense. It is a legal fiction used for the purpose of preventing unjust enrichment and to bring about justice and equity. It is not based on the mutual assent or agreement of the parties, but rather on an equitable obligation to pay for benefits received. Therefore, a contract implied in law is considered to be a creature of equity because it is grounded in fairness and not in the traditional contract principles of offer, acceptance, and consideration.

A contract implied in law is "an obligation created by the law without regard to the parties' expression of assent by their words or conduct." Cds & Assocs. of the Palm Beaches v. 1711

Donna Rd. Assocs., 743 So. 2d 1223, 1224 (Fla. 4th DCA 1999) (quoting Commerce Partnership 8098 Ltd. Partnership v. Equity Contracting Co., 695 So. 2d 383, 385 (Fla. 4th DCA 1997)).

A contract implied in law is a quasi-contract since it does not require an agreement. Cds & Assocs. of the Palm Beaches v. 1711 Donna Rd. Assocs, 743 So. 2d at 1224. As such, it is subject to all of the defenses applicable to any other cause of action in equity.

The elements of a cause of action for a contract implied in law or a quasi-contract are: (1) the plaintiff has conferred a benefit on the defendant; (2) the defendant has knowledge of the benefit; (3) the defendant has accepted or retained the benefit conferred; and (4) the circumstances are such that it would be inequitable for the defendant to retain the benefit without paying fair value for it. Commerce Partnership 8098 Ltd. Partnership, 695 So. 2d at 386 (citing Hillman Constr. Corp. v. Wainer, 636 So. 2d 576, 577 (Fla. 4th DCA 1994); Henry M. Butler, Inc. v. Trizec Properties, Inc., 524 So. 2d 710, 711-12 (Fla. 2d DCA 1988)).

Here, Plaintiff Esmaeil attempts to make the argument that Plaintiff Esmaeil conferred a benefit on the Defendants. However, because of Plaintiff Esmaeil's failure to obtain the necessary work visa to work in the United States, Dr. Jean-Charles was forced to rescind the offer of employment to Plaintiff. Plaintiff Esmaeil could not perform any productive work for which he could be paid. Because of this, the Defendants could not actually bill for any services Plaintiff Esmaeil performed, either. Instead, the Defendants conferred a benefit upon Plaintiff Esmaeil, experience as an extern, for which Plaintiff Esmaeil failed to pay Defendants.

At Plaintiff Esmaeil's request, Dr. Jean-Charles agreed to allow Plaintiff to work as a volunteer, unpaid extern for three (3) months (Complaint, Para. 43.) Therefore, Plaintiff's Count

III of the Complaint (contract implied in law), must be dismissed for failure to state a claim upon which relief can be granted.

b. Count IV, Contract Implied in Fact, Must be Dismissed

"A contract implied in fact is one form of an enforceable contract; it is based on a tacit promise, one that is inferred in whole or in part from the parties' conduct, not solely from their words." Commerce Partnership 8098 Ltd. Partnership, 695 So. 2d at 385 (citing 17 Am. Jur. 2d "Contracts" § 3 (1964); 1 Arthur Linton Corbin, Corbin on Contracts §§ 1.18-1.20 (Joseph M. Perillo ed. 1993)).

Common examples of contracts implied in fact are where a person performs services at another's request, or "where services are rendered by one person for another without his expressed request, but with his knowledge, and under circumstances" fairly raising the presumption that the parties understood and intended that compensation was to be paid.

Commerce Partnership 8098 Ltd. Partnership, 695 So. 2d at 386 (quoting Lewis v. Meginniss, 30 Fla. 419, 12 So. 19, 21 (Fla. 1892)). See also Tipper v. Great Lakes Chem. Co., 281 So. 2d 10, 13 (Fla. 1973).

Here, Plaintiff Esmaeil attempts to plead a contract implied in fact alleging that the parties entered into an agreement where Plaintiff would provide employment services for monetary compensation. However, again, this cause of action fails.

As Plaintiff lacked the necessary documentation to complete his I-9 form and lawfully work in the United States, Plaintiff requested to serve as a an unpaid volunteer for a period of three (3) months (Complaint, Para. 43.), which Dr. Jean-Charles accepted.

Therefore, there can be no logical presumption that the Plaintiff and Dr. Jean-Charles understood and intended that compensation was to be paid.

As a result, Plaintiff's Count IV of the Complaint, contract implied in fact, must be dismissed for failure to state a claim upon which relief can be granted.

Furthermore, where Plaintiff Esmaeil is attempting to prove the intent of the parties is different from what the contract states, then Plaintiff Esmaeil is seeking equity relief. Where a written instrument fails to express the true intention of the parties due to a mistake, whether of law or fact, then the courts apply principles of equity, when relief is proper and just. In such cases, courts may grant relief through reformation, cancellation, or other equitable remedies to align the written contract with the actual agreement made by the parties. This principle is illustrated in Heisler v. Florida Mortg. Title & Bonding Co., 105 Fla. 657, 142 So. 242 (1932), in which the court emphasized that equity intervenes to correct mistakes in written instruments to reflect the true contract intended by the parties. So, a count that alleges this is subject to all of the defense available against any other cause of action pleaded in equity.

7. Count V of the Complaint Should Be Dismissed for Failure to Plead Fraud with Particularity

Count V of the Complaint should be dismissed because Plaintiff Esmaeil's allegations for fraudulent misrepresentation fall far short of the heightened pleading requirement for fraud claims under Rule 1.120(b), Florida Rules of Civil Procedure. Moreover, Plaintiff's fraudulent misrepresentation claim does not allege with particularity any fraudulent act or omission committed by Dr. Jean-Charles.

Florida courts have consistently held that motions to dismiss may be based on a litigant's failure to comply with Rule 1.120(b), Florida Rules of Civil Procedure. See Eagletech Communications, Inc. v. Bryn Mawr Inv. Group, Inc., 79 So. 3d 855, 861-62 (Fla. 4th DCA 2012) (in order for a claim of fraud to withstand a motion to dismiss, a pleading must allege fraud with the particularity required by Rule 1.120(b)); Van Meter v. Bank of Clearwater, 276 So. 2d 241, 245 (Fla. 2d DCA 1973) (reversing trial court's denial of motion to dismiss based on party's failure to plead fraud with particularity).

Here, Plaintiff Esmaeil makes a vague accusation against Dr. Jean-Charles alleging that he intentionally made false statements to Plaintiff. However, the Complaint itself shows that Dr. Jean-Charles offered Plaintiff a job offer based on Plaintiff's own statement claiming that he had the proper documentation necessary to work legally in the U.S. (See Exhibit "1").

Plaintiff has failed to explain the substance of the alleged false statements made by Dr. Jean-Charles, the time frame in which the alleged false statements were made, and the context in which the statements were made.

Florida courts have required a party seeking recovery in fraud to plead "who made the false statement, the substance of the false statement, the time frame in which it was made and the context in which the statement was made." Bankers Mut. Capital Corp. v. U.S. Fidelity and Guar. Co., 784 So. 2d 485, 490 (Fla. 4th DCA 2001) (citing Williams v. Bear Stearns & Co., 725 So. 2d 397, 400-01 (Fla. 5th DCA 1998)).

As a matter of fact, Plaintiff Esmaeil misrepresented to Dr. Jean-Charles that he was authorized to work in the U.S. and that he had his green card when Plaintiff Esmaeil knew or should have known that he did not have the required documentation to work in the U.S.

Dr. Jean-Charles relied on this false statement and offered Plaintiff a position which was later rescinded and transformed into an unpaid volunteer position, at Plaintiff's request, due to Plaintiff not having the required documents to work in the U.S.

In order to state a cause of action for fraud or misrepresentation, it is necessary to specifically allege ultimate facts which would show each element. Held v. Trafford Realty Co., 414 So. 2d at 632 (citing Kutner v. Kalish, 173 So.2d 763 (Fla. 3d DCA), cert. denied, 183 So.2d 210 (Fla. 1965)). Here Plaintiff Esmaeil's Complaint failed to allege facts sufficient to establish the elements of a fraud or fraudulent misrepresentation cause of action. As such, Count V of the Complaint should be dismissed.

8. Count VI, Negligent Misrepresentation, is Time-barred by the Statute of Limitations

As required by Section 95.11(5)(a), Florida Statutes, an action founded on Negligence shall commence within two (2) years.

Per the Complaint, the cause of action alleged in Count VI arose in early 2022. Accordingly, pursuant to Section 95.11(5)(a), Florida Statutes, such an action must be commenced within two (2) years of accrual. However, Plaintiff did not assert this cause of action until nearly three (3) years after it allegedly accrued. As such, Count VI is untimely and must be dismissed in its entirety as barred by the Statute of Limitations.

9. Equitable Causes of Action are Negated by Incorporating Allegations of an Existing Contract and Availability of Monetary Damages

Counts III, IV, VII, VIII, VIX [sic], and X purport to plead counts based in whole or in part in equity. However, Plaintiff has completely negated any equitable cause of action by

incorporating allegations that there were enforceable written and oral contracts between and among the parties and the existence of monetary damages, even going so far as to attach a purported written contract (Exhibits A and B of the Complaint). For example:

a. Count VII of the Complaint, a cause of action for promissory estoppel, at Paragraph 142 incorporates prior Paragraphs 1-93. These include Paragraphs 17, 20, 23, and 28, which allege an offer and acceptance of a job offer and alleges in Paragraph 8 a request for monetary damages exceeding \$50,000.

b. Count VIII of the Complaint, a cause of action for quantum meruit, at Paragraph 146 incorporates prior Paragraphs 1-93. These include Paragraphs 17, 20, 23, and 28 which allege an offer and acceptance of a job offer and alleges in Paragraph 8 a request for monetary damages exceeding \$50,000.

c. Count VIX [sic] of the Complaint, a cause of action for unjust enrichment, at Paragraph 150 incorporates prior Paragraphs 1-93. These include Paragraphs 17, 20, 23, and 28 which allege an offer and acceptance of a job offer and alleges in Paragraph 8 a request for monetary damages exceeding \$50,000.

d. Count X, in Paragraph 163 of the Complaint, also seeks equitable relief.

Incorporating allegations for monetary damages into Counts VII through X, makes each count internally inconsistent and negates any relief based in equity for each Count.

An action for unjust enrichment or promissory estoppel fails upon a showing that an express contract exists. Williams v. Bear Stearns & Co., 725 So. 2d 397, 400 (Fla. 5th DCA 1998), rev. denied, 737 So. 2d 550 (Fla. 1999); Diamond "S" Dev. Corp. v. Mercantile Bank,

989 So. 2d 696, 697 (Fla. 1st DCA 2008) ("[A] plaintiff cannot pursue a quasi-contract claim for unjust enrichment if an express contract exists concerning the same subject matter.").

In addition, quantum meruit is premised upon the absence of an express and enforceable agreement; accordingly, the existence of a valid, written contract between the parties necessarily precludes the doctrine's application. Daake v. Decks N Such Marine, Inc., 201 So. 3d 179, 181 (Fla. 1st DCA 2016); Solutech Corp. v. Young & Lawrence Assocs., 243 So. 2d 605, 606 (Fla. 4th DCA 1971) ("Any proof of an express agreement between the parties as to the compensation to be paid for the services rendered would defeat . . . an action based upon quantum meruit. . . ."); Kovtan v. Frederiksen, 449 So. 2d 1, 1 (Fla. 2d DCA 1984) ("It is well settled that the law will not imply a contract where an express contract exists concerning the same subject matter."); Paschen v. B&B Site Dev., Inc., 311 So. 3d 39, 49 (Fla. 4th DCA 2021).

Because Counts I, II, III, and IV are predicated upon the existence of an alleged contract (or a quasi-contract or a contract implied in law), and Counts III, VII, VIII, VIX, and X expressly incorporate by reference the same purported contractual relationship, all counts necessarily fail to state a claim upon which relief can be granted. Accordingly, the Complaint should be dismissed in its entirety.

10. Failure to Name an Indispensable Party

As stated in Paragraphs 19-21, 24-25, and 30-31, herein, JC Medical Foundation, Inc. ("JCMF"), as explained above, was the corporation in which Plaintiff Esmaeil actually worked as an unpaid extern. It is obviously a necessary party that should have been named. The failure to name a necessary, indispensable party to the cause of action is grounds for dismissal.

MOTION TO STRIKE

Scandalous, Impertinent, Immaterial, and Redundant Matter Must be Stricken

Rule 1.140(f), Florida Rules of Civil Procedure, states:

(f) Motion to Strike. A party may move to strike or the court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time.

The Complaint uses a number of inflammatory and derogatory statements accusing the Defendants, especially Dr. Jean-Charles, of horrendous acts. These prejudicial allegations are scandalous, impertinent, and immaterial, and have no bearing on the equities and no influence on the decision.

A "scandalous matter" is defined as that which "improperly casts a derogatory light on someone, usually a party to the action." Morris v. Propel People, No. 6:20-cv-1053-HMH-KFM, 2020 U.S. Dist. LEXIS 261048 (D.S.C., Jun. 17, 2020) (quoting 61A Am. Jur. 2d § 471.). "Impertinent matter" is defined as "any allegation not responsive or relevant to the issues involved in the action and which could not be put in issue or be given in evidence between the parties." Id. "An allegation is 'impertinent' or 'immaterial' when it is neither responsive nor relevant to the issues involved in the action." Sprengle v. Smith Maritime, Inc., 2021 U.S. Dist. LEXIS 94974 (M.D. Fla. May 19, 2021), (quoting State Farm Mut. Auto. Ins. v. Advantacare of Fla., LLC, No. 6:19-cv-1837-CEM-LRH, 2020 U.S. Dist. LEXIS 92302, 2020 WL 2630226 (M.D. Fla. May 22, 2020)) (unpublished op.) (citation omitted).

Paragraph 1 of the Complaint contains prejudicial wording: "Dr. Jean-Charles targeted desperate and vulnerable Immigrant Medical Graduates ("IMG") [sic], he lured them to work for JeanCharles' Office."

Paragraph 2 of the Complaint contains prejudicial wording: "Dr. Jean-Charles profited from this operation while his victims remained desperate, scared, and poverty stricken."

Paragraph 55 of the Complaint states: "He [the Plaintiff] was ominously scolded [by Dr. Jean-Charles] instead of taught how to correct the mistake." Paragraph 58 states that Dr. Jean-Charles: "used humiliation in his 'teaching' approach, calling out and embarrassing his employees and interns. . . ."

"A motion to strike a matter as redundant, immaterial or scandalous should only be granted if the material is wholly irrelevant, can have no bearing on the equities and no influence on the decision." McWhirter, Reeves, McGothlin, Davidson, Rief & Bakas, P.A. v. Weiss, 704 So. 2d 214, 216 (Fla. 2d DCA 1998), (citing Pentecostal Holiness Church, Inc. v. Mauney, 270 So. 2d 762, 769 (Fla. 4th DCA 1972)).

The Complaint is replete with numerous allegations stating nothing more than "scandalous," "impertinent," and "immaterial" matters. These allegations are wholly irrelevant and have no bearing on the equities or influence on the decision. These are so numerous and so integrated into each Count that the entire Complaint should be stricken by the Court.

Such pleading makes the offending paragraphs, incorporated into each Count, a violation of Rule 1.140(f), Florida Rules of Civil Procedure, and requires striking.

Additionally, claiming a right to attorney's fees as stated on page 25 of the Complaint at subparagraph h, without alleging any authority to support it is an improper pleading and should be stricken.

Likewise Paragraph 165 of the Complaint insinuating that punitive damages are appropriate in this case is an improper, premature pleading and it, also, must be stricken.

ENTITLEMENT TO ATTORNEY'S FEES

The Defendants have been required to retain the services of undersigned counsel to defend them in this matter. They have incurred attorney's fees and costs in doing so. To the same extent and under the same authority as the Plaintiff claims his attorney's fees and costs, the Defendants are entitled to payment of their attorneys' fee sand costs. More specifically, Defendants request payment of their attorney's fees and costs pursuant to Section 448.08, Florida Statutes, and any other authority pleaded by Plaintiff in his Complaint.

RELIEF REQUESTED

For the foregoing reasons, Defendants respectfully request the Court to enter an Order against Plaintiff Esmaeil and in favor of the Defendants:

- A. Dismissing the Complaint (First Amended Complaint) with prejudice;
- B. Alternatively, striking the offensive parts of the Complaint (First Amended Complaint), as stated on pp 31-32 above;
- C. Awarding Defendants payment of their attorney's fees and costs for defending this matter; and
- D. Any other relief the Court deems just, fair and equitable under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have filed this document electronically with the Clerk of the Court using the Florida Courts E-Filing Portal system, which automatically serves it on all counsel who have made an appearance in this matter, on this 2d day of June 2025.

/s/ George F. Indest III

GEORGE F. INDEST III, ESQUIRE

Certified by The Florida Bar in Health Law

Florida Bar No.: 382426

Primary E-mail: GIndest@TheHealthLawFirm.com

Secondary E-mail: Court filings@TheHealthLawFirm.com

LANCE O. LEIDER, ESQUIRE

Florida Bar No.: 96408

Primary E-mail: LLeider@TheHealthLawFirm.com

Secondary E-mail: Court filings@TheHealthLawFirm.com

CASTILLANA F. (DUVERNAY) AGUY, ESQUIRE

Florida Bar No.: 1049635

Primary E-mail: CDuvernay@TheHealthLawFirm.com

Secondary E-mail: Court filings@TheHealthLawFirm.com

THE HEALTH LAW FIRM, P.A.

1101 Douglas Avenue, Suite 1000

Altamonte Springs, Florida 32714

Telephone: (407) 331-6620

Telefax: (407) 331-3030

COUNSEL FOR DEFENDANTS,

GUTTERIDGE JEANCHARLES, M.D., P.A., and

GUTTERIDGE JEAN-CHARLES, M.D.

ATTACHMENTS:

- "1" E-mail from Plaintiff Yasser Esmaeil to Gutteridge Jean-Charles dated 3/24/2022, 10:20 P.M., falsely stating "I am a green cardholder [sic]"
- "2" Resume of Yasser M. Esmaeil submitted to Defendants
- "3" E-mail from Gusto to Gutteridge Jean-Charles dated 4/18/2022, 8:07 P.M., stating: "Please remind Yasser to complete Gusto onboarding when they arrive today. To be federally compliant, Yasser must also complete the Form I-9 employment eligibility document"

Your video interview with JC Medical Inc is scheduled

Yasser Esmaeil (Indeed Applicant) <yasserresmaeil9_z4w@indeedemail.com>

Thu 3/24/2022 10:20 PM

To:Gutteridge Jean-Charles <gjeancharlesmd@jcmedicalcenters.com>

Yes, I live in colorado. I am able to relocate. I am a green cardholder.



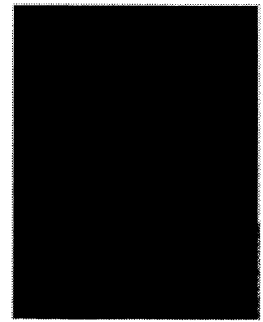
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Esmaeil, Yasser M
AAMC ID: 14305188

14293 E Mississippi Ave, Apt 253
Aurora, CO 80012
Phone: (929) 270-9474
Yasser.esmaeil18@gmail.com



Medical Education

Ain Shams University Faculty of Medicine, Egypt 09/2012 - 12/2015
 M.B.B.Ch., 06/2016

Education

Undergraduate - Alfayoum University School of Medicine, Alfayoum, Egypt Medicine
 09/2009 - 07/2012

Work Experience

02/2020 – Present
 Self-employed, Aurora, CO, United States of America
 USMLE instructor

Average Hours/Week: 40

Full-time USMLE Tutor by helping students strengthen their basic science and clinical medicine. Prepare students for their Step1, Step2, Step3, and Internal Medicine Board exams

- I worked with varsity tutors website with 4.9/5 ratings
- I tutored 2 physicians to pass their internal medicine board exam. This process made me study internal medicine at a deeper and clinical level and strengthened my knowledge and understanding of clinical medicine.

07/2018 - 06/2019

Average Hours/Week: 70

Brookdale Hospital Medical Center, Brooklyn, NY, United States of America
 ACGME Residency
 Kothuru, Ravi MD Garguilo,
 Surgical Resident, Nicholas Gargiulo, MD

11 months of ACGME accredited hours with three 24 hours shifts per week in Surgical ICU/Trauma/vascular/general surgery

- Admitted pre/post-operative patients
- Wrote daily progress notes about patients that involved daily assessment and examination
- Participated and implemented plans of management for patients
- Performed surgical procedures like wound debridement, transmetatarsal amputation, and tracheostomy
- First assist in a variety of general and vascular/endovascular procedures
- Performed bedside procedures like central line, arterial line, and ultrasound
- Mechanical ventilator trained to manage and wean patient of the ventilator
- Managed and monitored common and uncommon postoperative complications like post-operative delirium/pneumonia/pulmonary embolism/line sepsis, hemorrhagic/septic/cardiogenic shocks, and wound infection/dehiscence
- Monitored and implemented the nutritional plan for patients
- Discharged patients after achieving medical stability



07/2017 - 08/2017

Average Hours/Week: 45

St. James Franciscan Health Hospital, Chicago Heights, IL, United States of America Extern, Daniel Vera, M.D.

It was a 4-week General Surgery externship. I followed the surgical residents and the chairman of the surgical department during the pre-op and post-op rounds and discussed the cases and progress of each patient. I attended Port-A-Cath insertion, colonoscopy, incision and drainage for scrotal abscess, laparoscopic cholecystectomy, robotic surgeries, ventral incisional herniorrhaphy, cervical lymph node resection for metastatic HPV-related oropharyngeal squamous cell carcinoma and partial gastrectomy for gastric cancer. I attended scrubbing, IV catheter, and foley catheter insertion classes. I had 2 outpatient days per week where I went to Dr. Vera's office taking history and performing a physical exam on new and old patients then presenting the cases to the doctor followed by discussing the management plan. I also attended the tumor board conference about gallbladder adenocarcinoma and HPV-related oropharyngeal squamous cell carcinoma.

Average Hours/Week: 40

07/2017 - 07/2017

Brain and Spinal Surgical Center, Troy, MI, United States of America Extern, Lucia Zamorano, M.D., PLC

It was a 4-week Neurological surgery externship. I checked the patient's computerized data about their history, physical examination findings, diagnosis, management plan and surgical plan, and then interviewed, examined the patients in the clinic the following day, and discussed the cases with the doctor. I also monitored their post-op progress notes. I did descriptive research reporting the difference between the baseline and the 90-day post-op progress of patients who underwent cervical and lumbar surgeries. I also observed spinal epidural injections.

Average Hours/Week: 60

09/2016 - 05/2017

Ain Shams University Hospital, Cairo, Egypt Intern

This is a part of a 12-month internship year which is the final year of my medical education and a prerequisite for receiving my medical degree. I rotated 2 months each in Pediatrics and General Surgery. I did a 1-month rotation each in Anesthesiology, Emergency medicine, Orthopedics, and Pulmonology. All rotations included outpatient and inpatient where we can take history, perform a physical exam, and follow/discuss with the attending and the residents the management plan. I did neonatal care, newborn screening, IV catheter insertion, foley catheter insertion, vaccination, NGT insertion, endotracheal intubation, ABG extraction, epidural catheter removal, suturing, wound dressing, and first or second assist in the minor and major surgical operations.

08/2016 - 08/2016

Average Hours/Week: 40

Jersey Shore University Medical Center, Neptune, NJ, United States of America Extern, Angelo Chinnici, M.D.

It was a 4-week Internal medicine externship. I took the patients' history, performed the physical examination of the outpatients, and followed the doctor with the management plan. I also did rounds with the doctor in the hospital, monitored the progress of the patients and followed the management plan and discharge plan. I was exposed to the medical representatives who explained the most recent drugs in the market.

07/2016 - 07/2016

Average Hours/Week: 60

Jersey Shore University Medical Center, Neptune, NJ, United States of America
Extern, Lookman Odejobi, M.D.

It was a 4-week internal medicine externship. I rotated with the doctor and saw out-patient, in-patient and nursing home patients. It involved history taking, physical examination, discussing the diagnosis and management plan of the patient. I also attended a medical conference for bariatric surgery as well as a drug conference about factor X anticoagulant vs warfarin.

05/2016 - 07/2016

Average Hours/Week: 60

Shrouk General Hospital, Cairo, Egypt
Intern, Mohamed Akram, M.D.

This is a part of a 12-month internship year which is the final year of my medical education and a prerequisite for receiving my medical degree. I rotated 2 months in Internal Medicine including outpatient and inpatient where we can take history, perform a physical exam, and follow/discuss with the attending and the residents the management plan. I did IV catheter insertion, foley catheter insertion, vaccination, NGT insertion, endotracheal intubation, ABG extraction, and performing/reading ECG.

03/2016 - 05/2016

Average Hours/Week: 60

Embaba General Hospital, Cairo, Egypt
Intern, Mohamed Salah MD

This is a part of a 12-month internship year which is the final year of my medical education and a prerequisite for receiving my medical degree. I rotated 2 months in Obstetrics and Gynecology including outpatient and inpatient where we can take history, perform a physical exam, and follow/discuss with the attending and the residents the management plan. I did IV catheter insertion, foley catheter insertion, vaccination, vaginal delivery, repair of episiotomy, repair of laceration, Pap smear, bimanual pelvic exam, fetal heart tone monitoring, CTG monitoring, non-stress test, oxytocin titration, internal examination, and first or second-assist in cesarean section and major/minor operations.

Hobbies & Interests

I am very interested in the growing development in the field of Medicine. My best moment is when I share my knowledge and teach people. I love to be able to help others and be part of their success someday. In my free time, I enjoy playing soccer and watching soccer and tennis games. I also love watching movies especially those that are about a person who can make a difference in the world just like the movies Taken, Non-stop, and Casino Royale.

Language Fluency

Language	Language Proficiency	Proficiency Description
Arabic	Native/functionally native	I converse easily and accurately in all types of situations. Native speakers, including the highly educated, may think that I am a native speaker, too.
English	Advanced	I speak very accurately, and I understand other speakers very accurately. Native speakers have no problem understanding me, but they probably perceive that I am not a native speaker.

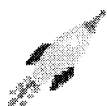
From: Gusto

Sent: Monday, April 18, 2022 8:07 AM

To: Gutteridge Jean-Charles;

Subject: [Action Required] Remind Yasser Esmaeil to complete Gusto self-onboarding ←

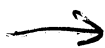
gusto



Yasser needs to finish self-onboarding

Yay! Today is Yasser's first day at GUTTERIDGE JEANCHARLES, MD, P.A..

Please remind Yasser to complete Gusto onboarding when they arrive today. To be federally compliant, Yasser must also complete the Form I-9 employment eligibility document.



Gusto



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Shannon Gentry

From: eservice@myflcourtaccess.com
Sent: Monday, June 2, 2025 4:51 PM
Subject: SERVICE OF COURT DOCUMENT CASE NUMBER 482025CA001848A001OX ESMAEIL, YASSER vs. JEAN CHARLES, M,D, GUTTERIDGEet al.

Notice of Service of Court Documents

Filing Information

Filing #: [224363629](#)
Filing Time: 06/02/2025 04:51:15 PM ET
Filer: George F. Indest III 407-331-6620
Court: Ninth Judicial Circuit in and for Orange County, Florida
Case #: 482025CA001848A001OX
Court Case #: 2025-CA-001848-O
Case Style: ESMAEIL, YASSER vs. JEAN CHARLES, M,D, GUTTERIDGEet al.

Documents **Click on the file name below to download or print your document NOW. The link expires in 14 days**

Documents

Title	File
Motions Motion To Dismiss	Motion to Dismiss-Complete.pdf

E-service recipients selected for service:

Name	Email Address
George F. Indest III	GIndest@TheHealthLawFirm.com
	CourtFilings@TheHealthLawFirm.com
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Lisa D Haba	lisahaba@habalaw.com
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Thank you,
The Florida Courts E-Filing Portal

request_id#:224363629;Audit#:770218689;UCN#:482025CA001848A001OX;

Shannon Gentry

From: noreply@myflcourtaccess.com
Sent: Monday, June 2, 2025 4:51 PM
Subject: Filing Received

Dear George F. Indest III:

This email verifies the receipt of 1 document submitted by you to Orange Circuit Civil on 06/02/2025 04:51:15 PM.

UCN: 482025CA001848A001OX
Clerk Case #: 2025-CA-001848-O
Case Style: ESMAEIL, YASSER vs. JEAN CHARLES, M,D, GUTTERIDGE et al.
Document Title: Motions Motion to Dismiss
Matter #:
Memo:
Filing Fee: \$0.00
Motions Motion to Dismiss: \$0.00
Statutory Convenience Fee: \$0.00
Total Fee: \$0.00
Fee Status: Assessed
Paid By: No Payment Required
Order #:
Financial ID:

The E-Portal reference number of this filing is: 224363629. Please reference this Filing # in any correspondence.

You will receive a follow-up email when your filing has been docketed with the Clerk.

This is a non-monitored email. Do not reply directly to it. If you have any questions about this filing please contact the Orange Circuit Civil division.

Thank you,
The Florida Courts E-Filing Portal

Shannon Gentry

From: noreply@myflcourtagency.com
Sent: Monday, June 2, 2025 9:53 PM
Subject: Processing Completed for Filing # 224363629

Dear George F. Indest III:

This email verifies the processing of your Filing # **224363629** with the Orange County, Florida Circuit Civil Division.

Status:	Accepted
Filing Date/Time:	06/02/2025 04:51:15 PM
UCN:	482025CA001848A001OX
Clerk Case #:	2025-CA-001848-O
Case Style:	ESMAEIL, YASSER vs. JEAN CHARLES, M,D, GUTTERIDGE et al.
Matter #:	
Memo:	
Filing Fee:	\$0.00
Motions Motion to Dismiss:	\$0.00
Statutory Convenience Fee:	\$0.00
Total Paid:	\$0.00
Fee Status:	Processed
Paid By:	No payment required
Order #:	
Financial ID:	

Documents

#	Document Type	Status	Filing Date	Rejection Reason	Your Attachment
1	Motions Motion to Dismiss	Accepted	06/02/2025		Motion to Dismiss-Complete.pdf

Fees

Your filing has been docketed with the Clerk's office. The fee is in the process of Processed.

This is a non-monitored email. Do not reply directly to it. If you have any questions about this filing, please contact the Orange County, Florida Circuit Civil Division.

Thank you.