

3-7-2013

Stibal v. Fano Clerk's Record v. 1 Dckt. 40427

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Vol 1 of 3

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

LAW CLERK

VIANNA STIBAL, individually, d/b/a THETAHEALING INSTITUTE OF KNOWLEDGE, INC. and NATURES PATH,,

Plaintiff s/Respondent.

vs.

APRIL FANO,

Defendant/Appellant.

RIGHTWAY PUBLISHING, INC.

Defendant.

COPY

Appealed from the District Court of the Seventh Judicial

District of the State of Idaho, in and for Bonneville County

Hon. Jon J. Shindurling, District Judge

Alan Johnston, PIKE HERNDON STOSICH JOHNSTON

PO Box 2949, Idaho Falls, ID 83403-2949
Attorney for Appellant

Stephen A. Meikle, ADVANTAGE LEGAL SERVICES

PO Box 51137, Idaho Falls, ID 83405-1137
Attorney for Respondent

Filed this _____ day of _____, 20____

FILED - COPY
MAR - 7 2013

Clerk

Deputy

410427

IN THE SUPREME COURT OF THE STATE OF IDAHO

VIANNA STIBAL, individually, d/b/a)
THETAHEALING INSTITUTE OF)
KNOWLEDGE, INC., and NATURES PATH,)
)
Plaintiffs/Respondent,)
)
vs.)
)
APRIL FANO,)
)
Defendant/Appellant.)
)
and)
)
RIGHT WAY PUBLISHING, INC.,)
)
Defendant.)
)

Case No. CV-2011-1287

Docket No. 40427-2012

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the
Seventh Judicial District of the State of Idaho,
in and for the County of Bonneville

HONORABLE JON J. SHINDURLING, District Judge.

Alan Johnston
PIKE HERNDON STOSICH JOHNSTON
PO Box 2949
Idaho Falls, ID 83403-2949

Stephen A. Meikle
ADVANTAGE LEGAL SERVICES
PO Box 51137
Idaho Falls, ID 83405-1137

Attorney for Appellant

Attorney for Respondent

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Vianna Stibal, Natures Path vs. April Fano, Right Way Publishing

Date	Code	User		Judge
3/1/2011	SMIS	DOOLITTL	Summons Issued	Jon J. Shindurling
	NCOC	DOOLITTL	New Case Filed-Other Claims	Jon J. Shindurling
	NOAP	DOOLITTL	Plaintiff: Stibal, Vianna Notice Of Appearance Stephen A. Meikle	Jon J. Shindurling
	NOAP	DOOLITTL	Plaintiff: Natures Path Notice Of Appearance Stephen A. Meikle	Jon J. Shindurling
		DOOLITTL	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Meikle, Stephen A. (attorney for Stibal, Vianna) Receipt number: 0009793 Dated: 3/1/2011 Amount: \$88.00 (Check) For: Natures Path (plaintiff) and Stibal, Vianna (plaintiff)	Jon J. Shindurling
	MOTN	DOOLITTL	Motion for Service Out of State	Jon J. Shindurling
3/3/2011	OSSI	GWALTERS	Order For Service Outside The State Issued	Jon J. Shindurling
3/10/2011		SBARRERA	Acceptance Of Service 03/08/2011 Alan Johnston For April Fano, Right Way Publishing LLC	Jon J. Shindurling
4/5/2011	NOAP	DOOLITTL	Defendant: Fano, April Notice Of Appearance Alan Johnston	Jon J. Shindurling
	NOAP	DOOLITTL	Defendant: Right Way Publishing Notice Of Appearance Alan Johnston	Jon J. Shindurling
		DOOLITTL	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Johnston, Alan (attorney for Fano, April) Receipt number: 0015957 Dated: 4/6/2011 Amount: \$58.00 (Check) For: Fano, April (defendant) and Right Way Publishing (defendant)	Jon J. Shindurling
	ANSW	DOOLITTL	Answer	Jon J. Shindurling
4/13/2011	HRSC	GWALTERS	Hearing Scheduled (Status Conference 05/03/2011 10:15 AM) set PTC/trial dates	Jon J. Shindurling
		GWALTERS	Notice of Hearing - S/C set 5/3/11 at 10:15 AM	Jon J. Shindurling
4/14/2011	HRSC	GWALTERS	Hearing Scheduled (Status Conference 06/06/2011 10:00 AM) set PTC/JT dates	Jon J. Shindurling
	CONT	GWALTERS	Hearing result for Status Conference held on 05/03/2011 10:15 AM: Continued set PTC/trial dates	Jon J. Shindurling
		GWALTERS	Notice of Hearing - S/C reset to 6/6/11 at 10 AM	Jon J. Shindurling
5/6/2011	NTOS	DOOLITTL	Notice Of Service of Discovery (Plaintiff's 1st Set of Interrogatories and Request for Production of Documents to Defendant)	Jon J. Shindurling
	NDDT	DOOLITTL	Notice Of Deposition Duces Tecum	Jon J. Shindurling
5/24/2011	NTOS	DOOLITTL	Notice Of Service (Defendant's 1st Set of Interrogatories and Requests for Production of Documents to Steven A. Meikle)	Jon J. Shindurling
3/7/2011	NOTC	DOOLITTL	Notice to Vacate Deposition	Jon J. Shindurling

Vianna Stibal, Natures Path vs. April Fano, Right Way Publishing

Date	Code	User	Judge
6/9/2011	HRHD	GWALTERS	Hearing result for Status Conference held on 06/06/2011 10:00 AM: Hearing Held set PTC/JT dates
	HRSC	GWALTERS	Hearing Scheduled (Pretrial Conference 05/21/2012 10:15 AM)
	HRSC	GWALTERS	Hearing Scheduled (Trial 06/11/2012 01:30 PM)
		GWALTERS	Notice of Hearings - PTC set 5/21/12 at 10:15 AM: CT set 6/11/12 at 1:30 PM
	ORDR	GWALTERS	Order Referring Case to Mediation
	ORPT	GWALTERS	Order Setting Pretrial Conference/trial
7/20/2011	NTOS	SOLIS	Notice Of Service Of Discovery - Plaintiff's Second Set Of Interrogatories And Request For Production Of Documents To Defendant
8/1/2011	NTOS	SOLIS	Notice Of Service - Defendants' Responses To Plaintiffs' First Set Of Interrogatories And Requests For Production Of Documents
8/31/2011	HRSC	QUINTANA	Hearing Scheduled (Motion 09/26/2011 09:00 AM) Defendant's
	MOTN	DOOLITTL	Motion to Compel
	AFFD	DOOLITTL	Affidavit of Alan Johnston in Support of Motion to Compel
	NOTH	DOOLITTL	Notice Of Hearing 9-26-11 @ 11:00 a.m.
9/16/2011		DOOLITTL	Objection to Defendants Motion to Compel and Motion for Additional Time to Provide Discovery
9/21/2011	NTOS	SBARRERA	Notice Of Service Of Discovery- Defendant's First Set Of Interrogatories and Request For Production Of Documents
	MOTN	SBARRERA	Plaintiff's Motion To Compel And For Sanctions
	MOTN	SBARRERA	Motion To Shorten Time To Give Notice Of Hearing
9/22/2011	NOTH	DOOLITTL	Notice Of Hearing 9-26-11 @ 11:00 a.m.
	AFFD	DOOLITTL	Affidavit in Support of Plaintiff's Motion to Compel and for Sanctions
	MOTN	DOOLITTL	Motion to Strike Affidavit in Support of Plaintiff's Motion to Compel and for Sanctions
		DOOLITTL	Objection to Plaintiffs' Motion to Compel
		DOOLITTL	Objection to Motion to Shorten Time
	NOTC	DOOLITTL	Notice Vacating Hearing 9-26-11 @ 11:00 a.m.
9/23/2011	HRVC	GWALTERS	Hearing result for Motion scheduled on 09/26/2011 09:00 AM: Hearing Vacated Defendant's Motion to Compel
	NOTC	DOOLITTL	Notice to Vacate Hearing on Plaintiff's Motion to Compel and for Sanctions

Vianna Stibal, Natures Path vs. April Fano, Right Way Publishing

Date	Code	User		Judge
9/23/2011	NTOS	DOOLITTL	Notice Of Service (Defendants' Responses to Plaintiffs' 2nd Set of Interrogatories and Requests for Production of Documents to Steven A. Meikle)	Jon J. Shindurling
10/5/2011		SBARRERA	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Lindsey Rae Stock Receipt number: 0046284 Dated: 10/5/2011 Amount: \$93.00 (Credit card)	Jon J. Shindurling
		SBARRERA	Miscellaneous Payment: Technology Cost - CC Paid by: Lindsey Rae Stock Receipt number: 0046284 Dated: 10/5/2011 Amount: \$3.00 (Credit card)	Jon J. Shindurling
10/7/2011	MOTN	SOLIS	Motion To Publish	Jon J. Shindurling
		SOLIS	Deposition Of April Fano (photocopy only - original cannot be located)	Jon J. Shindurling
1/11/2012	HRSC	GWALTERS	Hearing Scheduled (Motion 02/13/2012 09:00 AM) mtn for S/J - Johnston to ntc	Jon J. Shindurling
1/12/2012	MOTN	LYKE	Defendants Motion for Partial Summary Judgment	Jon J. Shindurling
	AFFD	LYKE	Affidavit of April Fano in Support of Motion for Partial Summary Judgment	Jon J. Shindurling
	MEMO	LYKE	Memorandum in Support of Motion for Partial Summary Judgment	Jon J. Shindurling
	NOTH	LYKE	Notice Of Hearing Re: Motion for Summary Judgment (02/13/12@9:00AM)	Jon J. Shindurling
1/30/2012		LYKE	Objection to Defendant's Motion for Partial Summary Judgment	Jon J. Shindurling
	MOTN	LYKE	Plaintiff's Motion for Partial Summary Judgment	Jon J. Shindurling
	AFFD	LYKE	Affidavit of Stephen A. Meikle in Opposition to Defendant's Motion for Partial Summary Judgment and in Support of Plaintiff's Motion for Partial Summary Judgment	Jon J. Shindurling
	BRIF	LYKE	Brief Filed in Opposition to Defendant's Motion for Partial Summary Judgment and in Support of Plaintiff's Motion for Partial Summary Judgment	Jon J. Shindurling
		LYKE	Plaintiff's Motion to Amend Complaint to Include Punitive Damages	Jon J. Shindurling
	AFFD	LYKE	Affidavit of Stephen A. Meikle In Support of Plaintiff's Motion to Amend Complaint	Jon J. Shindurling
		LYKE	Plaintiff's Amended Motion to Compel and for Sanctions	Jon J. Shindurling
	AFFD	LYKE	Affidavit in Support of Plaintiff's Amened Motion to Compel and for Sanctions	Jon J. Shindurling
	AFFD	LYKE	Affidavit of Rachelle Winn	Jon J. Shindurling
	NOTH	LYKE	Notice Of Hearing Re: Motion to Compel & Motion to Amend Complaint (02/13/12@9:00AM)	Jon J. Shindurling
2/6/2012		CEARLY	Objection To Plaintiff's Amended Motion To Compel And For Sanctions	Jon J. Shindurling

Vianna Stibal, Natures Path vs. April Fano, Right Way Publishing

Date	Code	User		Judge
2/6/2012	MEMO	CEARLY	Memorandum In Objection To Motin To Amend Complaint To Include Punitive Damages	Jon J. Shindurling
	MEMO	CEARLY	Reply Memorandum In Support Of Motion For Partial Summary Judgment	Jon J. Shindurling
2/10/2012	AFFD	QUINTANA	Supplemental Affidavit Regarding Discovery	Jon J. Shindurling
2/13/2012	HRHD	TBROWN	Hearing result for Motion scheduled on 02/13/2012 09:00 AM: Hearing Held mtn for S/J - Johnston to ntc	Jon J. Shindurling
	HRSC	GWALTERS	Hearing Scheduled (Motion 04/02/2012 11:00 AM) Mtn for S/J - Meikle to ntc	Jon J. Shindurling
2/17/2012	NOTH	LYKE	Notice Of Hearing Re: Motion for Summary Judgment (04/02/12@11:00AM)	Jon J. Shindurling
2/22/2012	NTOS	DOOLITTL	Defendant's Notice Of Service 2-22-12 (Defendants' Supplemental Responses to Plaintiffs' 2nd Set of Interrogatories and Requests for Production of Documents)	Jon J. Shindurling
3/7/2012	HRSC	GWALTERS	Hearing Scheduled (Motion 03/19/2012 11:30 AM) Mtn for more disc - Johnston to ntc	Jon J. Shindurling
3/8/2012	MOTN	SBARRERA	Motion To Shorten Time	Jon J. Shindurling
	NTOS	SBARRERA	Notice Of Service- Second Set Of Requests For Production Of Documents To Steven A. Meikle	Jon J. Shindurling
	MOTN	SBARRERA	Defendants' Motion To Continue Summary Judgment	Jon J. Shindurling
	AFFD	SBARRERA	Affidavit Of Alan Johnston In Support Of Motion	Jon J. Shindurling
	NOTH	SBARRERA	Notice Of Hearing RE: Motion To Continue Summary Judgment 03/19/2012 11:30AM	Jon J. Shindurling
3/16/2012		DOOLITTL	Plaintiff's Objection to Defendant's Rule 56 (f) Motion to Continue Summary Judgment	Jon J. Shindurling
3/19/2012	HRVC	GWALTERS	Hearing result for Motion scheduled on 03/19/2012 11:30 AM: Hearing Vacated Mtn for more disc/Mtn to cont S/J - Johnston to ntc - Johnston's office called - parties to stip to motions	Jon J. Shindurling
3/20/2012	NOTC	SBARRERA	Notice Vacating Hearing On Motion For Summary Judgment	Jon J. Shindurling
	STIP	SBARRERA	Stipulation To Continue Hearing On Motion For Summary Judgment	Jon J. Shindurling
	NTOS	SBARRERA	Notice Of Service Of Discovery- Plaintiff's Response To Defendant's Secon Set Of Requests For Production Of Documents	Jon J. Shindurling
4/2/2012	HRVC	GWALTERS	Hearing result for Motion scheduled on 04/02/2012 11:00 AM: Hearing Vacated Mtn for S/J - Meikle to ntc	Jon J. Shindurling
4/23/2012	HRSC	GWALTERS	Hearing Scheduled (Motion 05/08/2012 10:30 AM) Mtn to amend - Meikle to ntc	Jon J. Shindurling
	MOTN	DOOLITTL	Plaintiff's Motion for Ruling On Motion to Add Claim for Punitive Damages	Jon J. Shindurling

Vianna Stibal, Natures Path vs. April Fano, Right Way Publishing

Date	Code	User	Judge
4/23/2012	MOTN	DOOLITTL	Plaintiff's 2nd Motion to Amend Complaint to Include Fraud Claim of Dismiss Defendant's Claim Jon J. Shindurling
	AFFD	DOOLITTL	Affidavit of Vianna Stibal in Support of Plaintiff's 2nd Motion to Amend Complaint Jon J. Shindurling
		DOOLITTL	Plaintiff's 2nd Amended Complaint Jon J. Shindurling
	NOTH	DOOLITTL	Plaintiff's Notice Of Hearing 5-8-12 @ 10:30 a.m. (2nd Motion to Amend Complaint) Jon J. Shindurling
4/24/2012	HRSC	GWALTERS	Hearing Scheduled (Motion 05/14/2012 10:30 AM) Mtn to amend - Meikle to ntc Jon J. Shindurling
4/25/2012	NOTH	SBARRERA	Amended Notice Of Hearing RE: Motion For Rulinog On Motion To Add Claim For Punitive Damages 05/14/2012 10:30AM Jon J. Shindurling
5/3/2012		DOOLITTL	Objection to Plaintiffs' 2nd Motion to Amend Complaint Jon J. Shindurling
5/7/2012	CONT	GWALTERS	Hearing result for Motion scheduled on 05/08/2012 10:30 AM: Continued Mtn to amend - Meikle to ntc Jon J. Shindurling
5/8/2012	MOTN	SBARRERA	Motion To Shorten Time to Give Notice Of Hearing Jon J. Shindurling
	MOTN	SBARRERA	Motion To Continue Jon J. Shindurling
	NOTH	SBARRERA	Notice Of Hearing RE: 05/14/2012 10:30AM Jon J. Shindurling
5/9/2012	ORDR	GWALTERS	Order Granting P's Motion to Shorten Time to Give Ntc of Hearing Jon J. Shindurling
5/11/2012		QUINTANA	Defendants Objection to Plaintiffs' Mot8ion to Continue Jon J. Shindurling
	AFFD	QUINTANA	Affidavit of Alan Johnston in Objection to Motion Continue Jon J. Shindurling
5/14/2012	MINE	GWALTERS	Minute Entry Hearing type: Motion Hearing date: 5/14/2012 Time: 10:31 am Courtroom: Court reporter: Nancy Marlow Minutes Clerk: Grace Walters Tape Number: Stephen Meikle Alan Johnston Jon J. Shindurling
	DCHH	GWALTERS	Hearing result for Motion scheduled on 05/14/2012 10:30 AM: District Court Hearing Held Court Reporter: nancy marlow Number of Transcript Pages for this hearing estimated: under 50 Mtn to amend - Meikle to ntc Jon J. Shindurling
5/21/2012	ORDR	GWALTERS	Opinion & Order on P's Motion to Amend Complaint to Include Punitive Damages: P's Mtn to amend complaint to include punitive damages is GRANTED. Jon J. Shindurling

Vianna Stibal, Natures Path vs. April Fano, Right Way Publishing

Date	Code	User	Judge	
5/21/2012	MINE	GWALTERS	Minute Entry Hearing type: Pretrial Conference Hearing date: 5/21/2012 Time: 10:18 am Courtroom: Court reporter: Nancy Marlow Minutes Clerk: Grace Walters Tape Number: Stephen Meikle Alan Johnston	Jon J. Shindurling
	DCHH	GWALTERS	Hearing result for Pretrial Conference scheduled on 05/21/2012 10:15 AM: District Court Hearing Held Court Reporter: Nancy Marlow Number of Transcript Pages for this hearing estimated: under 50	Jon J. Shindurling
		GWALTERS	Defendant's Witness & Exhibit List	Jon J. Shindurling
5/24/2012	SUBI	SBARRERA	Subpoena Issued	Jon J. Shindurling
	COMP	SBARRERA	Amended Complaint Filed	Jon J. Shindurling
		SBARRERA	Plaintiff's Exhibit List	Jon J. Shindurling
		SBARRERA	Plaintiff's Witness List	Jon J. Shindurling
5/29/2012		SBARRERA	Defendant's Trial Brief	Jon J. Shindurling
6/1/2012	STIP	SOLIS	Stipulation To Withdraw Claims	Jon J. Shindurling
		SOLIS	Plaintiffs' Trial Brief	Jon J. Shindurling
	MOTN	SOLIS	Defendant - Motion To Quash Subpoena Duces Tecum	Jon J. Shindurling
	MOTN	SOLIS	Defendant - Motion In Limine	Jon J. Shindurling
6/8/2012	MOTN	QUINTANA	Motion	Jon J. Shindurling
		CEARLY	Plaintiff's Amended Exhibit List	Jon J. Shindurling
6/11/2012	HRSC	GWALTERS	Hearing Scheduled (Trial 06/12/2012 09:00 AM)	Jon J. Shindurling
	MINE	GWALTERS	Minute Entry Hearing type: Trial Hearing date: 6/11/2012 Time: 1:41 pm Courtroom: Court reporter: Nancy Marlow Minutes Clerk: Grace Walters Tape Number: Stephen Meikle Alan Johnston	Jon J. Shindurling
	DCHH	GWALTERS	Hearing result for Trial scheduled on 06/11/2012 01:30 PM: District Court Hearing Held Court Reporter: Nancy Marlow Number of Transcript Pages for this hearing estimated: under 50	Jon J. Shindurling

Vianna Stibal, Natures Path vs. April Fano, Right Way Publishing

Date	Code	User	Judge	
6/12/2012	MINE	GWALTERS	Minute Entry Hearing type: Trial Hearing date: 6/12/2012 Time: 9:05 am Courtroom: Court reporter: Nancy Marlow Minutes Clerk: Grace Walters Tape Number: Stephen Meikle Alan Johnston	Jon J. Shindurling
		GWALTERS	Deposition of Vianna Stibal dtd 4/24/12	Jon J. Shindurling
	DCHH	GWALTERS	Hearing result for Trial scheduled on 06/12/2012 09:00 AM: District Court Hearing Held Court Reporter: Nancy Marlow Number of Transcript Pages for this hearing estimated: under 800	Jon J. Shindurling
		GWALTERS	Depositions Published by Court	Jon J. Shindurling
		GWALTERS	District Court Exhibit & Witness List - Court trial 6/11/12 & 6/12/12	Jon J. Shindurling
7/23/2012	BRIF	CEARLY	Plaintiffs' Post Trila Brief	Jon J. Shindurling
8/6/2012		SBARRERA	Defendants' Closing Arguments	Jon J. Shindurling
8/13/2012		SBARRERA	Plaintiffs' Post Trial Reply Brief	Jon J. Shindurling
9/20/2012	TRAN	GWALTERS	Transcript Filed Court Trial June 11 & 12, 2012 before Judge Shindurling	Jon J. Shindurling
	ORDR	GWALTERS	Findings of Fact, Conclusions of Law & Order Following Bench Trial: Def April Fano breached the Release Agreement and Ps are entitled to \$6,250.00 for the breach. It is the fur determination of this Court that Ps are entitled to \$50,000.00 in punitive damages as a result of Def April Fano's conduct. Atty fees for this matter will be determined at a later time upon a proper motion to the Court.	Jon J. Shindurling
	JDMT	GWALTERS	Judgment: Ps are entitled to \$6,250for Def Fano's breach of Release agreement and \$50,000 for punitive damages for TOTAL JUDGMENT of \$56,250.00.	Jon J. Shindurling
	STATUS	GWALTERS	Case Status Changed: Closed	Jon J. Shindurling
	CDIS	GWALTERS	Civil Disposition entered for: Fano, April, Defendant; Right Way Publishing, Defendant; Natures Path, Plaintiff; Stibal, Vianna, Plaintiff. Filing date: 9/20/2012	Jon J. Shindurling
10/3/2012	MEMO	SOLIS	Plaintiff's Verified Memorandum Of Fees And Costs	Jon J. Shindurling
10/5/2012	HRSC	GWALTERS	Hearing Scheduled (Motion 10/29/2012 10:00 AM) Mtn for atty fees - Meikle to ntc	Jon J. Shindurling
	STATUS	GWALTERS	Case Status Changed: Reopened	Jon J. Shindurling

Vianna Stibal, Natures Path vs. April Fano, Right Way Publishing

Date	Code	User		Judge
10/11/2012	NOTH	CEARLY	Notice Of Hearing RE: Memorandum Of Attorneys Fees And Costs 10-29-12 @ 10:00 AM	Jon J. Shindurling
10/12/2012	MOTN	CEARLY	Defendant Right Way Publishing, LLC's Motion For Attorney's Fees	Jon J. Shindurling
	AFFD	CEARLY	Affidavit Of Alan Johnston In Support Of Defendant Right Way Publishing, LLC's Motion For Attorney's Fees And Costs	Jon J. Shindurling
	MEMO	CEARLY	Memorandum In Objection To Plaintiff's Verified Memorandum Of Fees And Costs And In Support Of Right Way Publishing's Motion For Attorney's Fees	Jon J. Shindurling
	MEMO	CEARLY	Right Way Publishing's Memorandum Of Fees And Costs	Jon J. Shindurling
	NOTH	CEARLY	Notice Of Hearing RE: Motion For Attorney's Fees And Costs 10-29-12 @ 10:00 AM	Jon J. Shindurling
10/17/2012		DOOLITTL	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Johnston, Alan (attorney for Fano, April) Receipt number: 0050665 Dated: 10/18/2012 Amount: \$109.00 (Check) For: Fano, April (defendant)	Jon J. Shindurling
	NOTC	DOOLITTL	Defendant's Notice of Appeal	Jon J. Shindurling
		DOOLITTL	Objection to Defendant's Motion for Attorney Fees	Jon J. Shindurling
	APSC	LMESSICK	Appealed To The Supreme Court	Jon J. Shindurling
10/18/2012	CERTAP	LMESSICK	Clerk's Certificate of Appeal	Jon J. Shindurling
	BNDC	LMESSICK	Bond Posted - Cash (Receipt 50859 Dated 10/18/2012 for 100.00)	Jon J. Shindurling
10/25/2012		LMESSICK	(SC) Order Re: Amended Notice of Appeal	Jon J. Shindurling
10/26/2012		BOULWARE	Amended Notice of Appeal	Jon J. Shindurling
10/29/2012	MINE	GWALTERS	Minute Entry Hearing type: Motion Hearing date: 10/29/2012 Time: 10:12 am Courtroom: Court reporter: Nancy Marlow Minutes Clerk: Grace Walters Tape Number: Stephen Meikle Alan Johnston	Jon J. Shindurling
	DCHH	GWALTERS	Hearing result for Motion scheduled on 10/29/2012 10:00 AM: District Court Hearing Held Court Reporter: Nancy Marlow Number of Transcript Pages for this hearing estimated: under 50 Mtn for atty fees - Meikle to ntc	Jon J. Shindurling
11/29/2012	STATUS	GWALTERS	Case Status Changed: closed pending clerk action	Jon J. Shindurling
		LMESSICK	Appellate Record Due: 1/31/03	Jon J. Shindurling

Vianna Stibal, Natures Path vs. April Fano, Right Way Publishing

Date	Code	User		Judge
11/30/2012	ORDR	GWALTERS	Opinion & Order on Motions for Attorney Fees: P's memo of fees/costs is GRANTED in amt of \$516.70 for costs; \$27,670.00 in atty fees to TOTAL of \$28,186.70. Def Right Way's mtn for atty fees is DENIED. Counsel for P shall prepare a final form of judgment.	Jon J. Shindurling
1/18/2013	HRSC	GWALTERS	Hearing Scheduled (Motion 02/12/2013 10:00 AM) Mtn for writ of exec. & final judgment - Meikle to ntc	Jon J. Shindurling
	MOTN	DOOLITTL	Plaintiff's Motion to Issue Writ of Execution to Require Defendant to Secure Payment of Fees	Jon J. Shindurling
	MOTN	DOOLITTL	Plaintiff's Motion for Final Judgment to Include Fees and Costs	Jon J. Shindurling
	NOTH	DOOLITTL	Plaintiff's Notice Of Hearing 2-12-13 @ 10:00 a.m. {Motion to Issue Writ of Execution to Require Defendant to Secure Payment of Fees and Motion for Final Judgment}	Jon J. Shindurling

ADVANTAGE LEGAL SERVICES
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Idaho State Bar No. 2976
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482 Constitution Way - Suite 203
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Idaho Falls, Idaho 83405-1137
Telephone (208) 524-3333
Attorney for plaintiffs

RECEIVED
COURT CLERK
JAN 13 2011

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

VIANNA STIBAL, individually, d/b/a)
THETAHEALING INSTITUTE OF)
KNOWLEDGE, INC., and NATURES PATH,)
)
Plaintiff,)
)
vs.)
)
APRIL FANO, RIGHT WAY PUBLISHING)
LLC,)
)
Defendant.)
_____)

Case No: CV-11-1287

PLAINTIFF'S
VERIFIED COMPLAINT

COMES NOW the plaintiff Vianna Stibal, individually and d/b/a Nature's Path, Inc. and ThetaHealing Institute of Knowledge (herein after referred to as plaintiffs), and for cause of action against the defendants claim as follows:

I.

JURISDICTION

1. Plaintiff, Vianna Stibal (hereinafter referred to as Stibal), is an individual and resident of the State of Idaho doing business as ThetaHealing Institute of Knowledge and operates Natures Path, Inc. as her business entity chartered in the State of Idaho.

2. Defendant, April Fano (hereinafter referred to as Fano), is a resident of the state of Utah, individual, and defendant Right Way Publishing is a LLC registered in the State of Utah. April

Fano is the LLC's registered agent, owner and manager.

3. Plaintiffs entered into contract with Fano in Idaho Falls, Bonneville County, Idaho, which is the subject of this suit.

COUNT ONE
BREACH OF CONTRACT

4. Plaintiff repleads paragraphs one through three in full herein.

5. On July 29, 2010, plaintiffs entered into a release agreement (hereinafter referred to as the contract) with defendant Fano to settle the lawsuit between the parties in the Seventh District Court of the State of Idaho, Bonneville County, case number CV-2009-1852, (hereafter referred to as "lawsuit").

6. Said contract provided, inter-alia, that Stibal execute a guarantee agreement that provided for payment of \$12,500 for a debt owed by Joshua Opfar, which Fano received on July 30, 2010 from Stibal.

7. Further, the agreement provided that (1) Stibal and Fano keep confidential all matters, documents, and medical records pertaining to the lawsuit; (2) Stibal and Fano not make any disparaging, defaming, or otherwise negative comments regarding each other; and (3) to pay the attorney fees and costs to the prevailing party in the event of litigation relating to the agreement.

8. Fano thinly formed a LLC in the State of Utah named Right Way Publishing, LLC as her alter ego.

9. The LLC published and distributed a book called "*Shady Healing*" (hereinafter referred to as Shady book) after July 29, 2010 which represented and attributing words, actions, and deeds to Stibal, including but not limited to:

1. Deceit

2. Trickery
3. Lies
4. False teaching
5. Stealing
6. Misrepresentation
7. Fraud
8. Disrespect for the law
9. Cocaine and heroine use
10. Cultism

10. Fano's shady book further breached the contract by publishing excerpts of depositions taken on February 4, 2010 and interrogatory and other information in the above described law suit.

11. Plaintiffs are entitled to actual and consequential damages arising from defendant's breach of contract including but not limited to \$12,500 paid by plaintiff to Fano and in excess of \$60,000 in attorney fees expended and wasted to reach the promises made in the contract and broken by Fano.

12. Plaintiffs retained Advantage Legal Services, Stephen A. Meikle, attorney, to prosecute all claims in this suit. Plaintiffs are entitled to an award against the defendant of reasonable attorney fees under the contract and Idaho Code §12-120.

**COUNT TWO
UNJUST ENRICHMENT**

13. Plaintiffs replead paragraphs 1 through 12 set forth in full herein.

14. Defendant, Fano, received a benefit of money which she was not entitled to because of her breach of contract.

15. Defendant, April Fano, in all equity and good conscience, should not be able to retain said benefit.

COUNT THREE
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

16. Plaintiffs replead paragraphs 1 through 12 as set forth in full herein.

17. Defendant, April Fano, by the intentional actions described above inflicted emotional distress upon plaintiffs.

18. Plaintiff suffered severe emotional distress over the terrible things said and the hurt caused to her because of the grief suffered by her children over the disparaging, defamatory, despicable, and damaging statements made by defendants against their mother.

19. Plaintiff is entitled to award damages proximately caused by defendants wrongful acts.

COUNT FOUR
DEFAMATION/LIBEL

20. Plaintiffs replead paragraphs 1 through 12 as set forth in full herein.

21. Defendants have intentionally published written information to others after July 29, 2010, which it knew or reasonably should have known to be false, and which written information has impugned the honesty, integrity, virtue or reputation of the plaintiffs.

22. As a direct proximate result of these and other libelous statements published to third persons by defendant's shady book and other means, plaintiffs have suffered lost profits, business loss, damaged reputation and other special general damages in an amount to be proven at trial including the loss of money paid to defendant and expended against defendant to silence defendant's defamatory utterances.

COUNT FIVE
LIBEL PER SE

23. Plaintiffs re-allege paragraphs 1 through 12 as set forth in full herein.


24. The written words of defendant, including but not limited to those words stated herein, are of such nature that the court can presume as a matter of law that they will tend to disgrace and degrade plaintiffs in their personal and business reputation and therefore constitute libel per se.

25. As a direct proximate result of these and other libelous statements published to third persons by defendant's shady book and other means, plaintiffs have suffered lost profits, business loss, damaged reputation and other special general damages in an amount to be proven at trial including the loss of money paid to defendant and expended against defendant to silence defendant's defamatory utterances.

WHEREFORE, plaintiffs pray for judgment and relief as follows:

1. Money damages in excess of \$72,500.00.
2. Other general damages in an amount to be proven at trial.
3. A preliminary and permanent injunction against defendants from further publication and distribution of the shady book or other media.
4. A jury trial for all issues of fact.
5. For costs and attorney fees pursuant to Idaho Code §§12-120, 12-121, and I.R.C.P. 54(e) *et seq.* A reasonable attorney fee in event of default is \$2,000.00.
6. For such other and further relief as the Court deems just and equitable in the premises.

DATED This 10th day of January, 2011.



Stephen A. Meikle
Attorney for Plaintiff

STATE OF IDAHO)
) ss.
County of Bonneville)

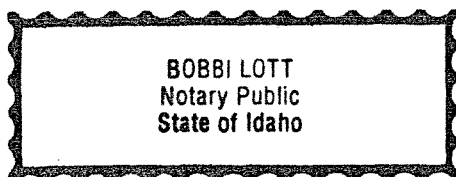
Vianna Stibal, being first duly sworn, deposes and says:

That she is the plaintiff in the above-entitled action, and that she has read the foregoing document, knows the contents thereof, and believes that the facts stated herein are true and correct to the best of her knowledge and belief.

Vianna Stibal
Vianna Stibal

SUBSCRIBED AND SWORN to before me this 14th day of January, 2011.

Bobbi Lott
Notary Public for Idaho
Residing in: *Archie Falls*
Commission expires: *5/21/11*



2011 APR -5 PM 4: 27

James C. Herndon
Alan Johnston
PIKE HERNDON STOSICH & JOHNSTON, P.A.
O.E. Bell Center
151 N. Ridge, Suite 210
P.O. Box 2949
Idaho Falls, ID 83403-2949
Telephone: (208) 528-6444
Facsimile: (208) 528-6447
ISB #1083 & 7709

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

VIANNA STIBAL, individually, d/b/a/)	
THETAHEALING INSTITUE OF	)	Case No. CV-11-1287
KNOWLEDGE, INC., and NATURES)	
PATH ,)	
	)	ANSWER
Plaintiffs)	
)	
vs.)	
)	
APRIL FANO, RIGHT OF WAY)	
PUBLISHING, LLC.)	
)	
Defendants.)	
)	
)	

Defendants, April Fano and Right of Way Publishing, LLC, through their attorney of record, Alan Johnston of the law firm Pike Herndon Stosich & Johnston, PA, file their Answer as follows:

ANSWER

FIRST DEFENSE

Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Defendants deny all allegations of Plaintiffs' Complaint not specifically admitted herein, or admitted by an affirmative allegation of fact.

THIRD DEFENSE

1. Defendants are without knowledge to admit or deny paragraph 1, and therefore deny the same.
2. Defendants deny paragraph 2.
3. Defendants admits paragraph 3.
4. Paragraph 4 is a statement of fact and does not require an admittance or a denial.
5. Defendants admit paragraphs 5, 6, and 7.
6. Defendants deny paragraphs 8, 9, 10, 11, and 12.
7. Paragraph 13 is a statement of fact and does not require an admittance or a denial.
8. Defendants deny paragraphs 14 and 15.
9. Paragraph 16 is a statement of fact and does not require an admittance or a denial.
10. Defendants deny paragraphs 17, 18, and 19.
11. Paragraph 20 is a statement of fact and does not require an admittance or a denial.
12. Defendants deny paragraphs 21 and 22
13. Paragraph 23 is a statement of fact and does not require an admittance or a denial.
14. Defendants deny paragraphs 24 and 25

FOURTH DEFENSE

Any statement(s) made by Defendants regarding Plaintiffs are not actionable because said statement(s) were factual.

FIFTH DEFENSE

Any statement(s) made by Defendants regarding Plaintiffs are not actionable because said statement(s) were expressions of Defendant's opinion.

SIXTH DEFENSE

Any statement(s) made by Defendants regarding Plaintiffs are protected speech by an individual speaking on a matter of public concern.

SEVENTH DEFENSE

Any statement(s) made by Defendants were made without actual malice or reckless disregard for the truth or falsity of said statement(s).

EIGHTH DEFENSE

Plaintiffs' Complaint is barred by the doctrine of unclean hands.

NINTH DEFENSE

Plaintiffs' own negligence and intentional actions are the proximate and but-for cause of any damages they have allegedly suffered. By this defense, Defendant is not conceding in any way that Plaintiffs have suffered any damages.

TENTH DEFENSE

Plaintiffs have failed to mitigate their damages, if any.

ELEVENTH DEFENSE

Any statements made by Fano were made before the date of the Mutual Release, Hold Harmless, Confidentiality, and Settlement Agreement.

TWELFTH DEFENSE

Fano is not liable for any actions by Right Way Publishing.

THIRTEENTH DEFENSE

Defendants are not the authors of any statements made in the book "Shady Healing."

FOURTEENTH DEFENSE

Plaintiffs' Complaint should be dismissed for failure to join an indispensable party.


FIFTEENTH DEFENSE

Defendants have incurred attorneys fees and costs in defending this matter, and should be awarded their reasonable fees and costs pursuant to I.C. §§ 12-120 and 12-121, and the terms of the Mutual Release, Hold Harmless, Confidentiality, and Settlement Agreement.

WHEREFORE: Fano prays for judgment as follows:

1. Plaintiffs' Complaint be dismissed and they take nothing thereby.
2. For an award of attorneys' fees and costs.
3. For such other and further relief as the Court deems just and proper in the premises.

DATED this 5 day of April, 2011.



Alan Johnston
Pike Herndon Stosich & Johnston, P.A.

CERTIFICATE OF SERVICE

I hereby certify that on this 5 day of April, 2011, I caused a true and correct copy of the foregoing document to be served by first class U.S. mail, postage prepaid to the following:

Stephen A. Meikle
P.O. Box 51137
Idaho Falls, ID 83405-1137
Facsimile: (208)524-6199

U.S. Mail
 Fax
 Hand Delivered



ADVANTAGE LEGAL SERVICES
 Stephen A. Meikle, Attorney, P.A.
 Idaho State Bar #2976
 482 Constitution Way, Suite 203
 Post Office Box 51137
 Idaho Falls, Idaho 83405-1137
 Telephone (208) 524-3333
 Attorney for defendant

DISTRICT COURT
 MAGISTRATE DIVISION
 BONNEVILLE COUNTY, IDAHO
 12 APR 23 PM 4:38

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

VIANNA STIBAL, individually, d/b/a)
 THETAHEALING INSTITUTE OF)
 KNOWLEDGE, INC., and NATURES PATH,)
)
 Plaintiff)
)
 vs.)
)
 APRIL FANO, RIGHT WAY PUBLISHING,)
 LLC,)
 Defendant)
 _____)

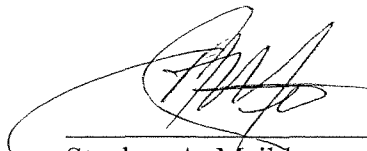
Case No: CV-2011-1287

PLAINTIFF'S MOTION FOR
 RULING ON MOTION TO ADD
 CLAIM FOR PUNITIVE DAMAGES

COMES NOW, the plaintiffs, by and through their attorney of record, Stephen A. Meikle, and hereby moves the court to rule on it's motion to add claim for punitive damages as follows:

1. Plaintiff submitted it's Motion to Amend Complaint to Add Claim for Punitive Damages on January 30, 2012.
2. A hearing was held on plaintiff's motion on February 13, 2012 and the court took the motion under advisement.

DATED this 23rd day of April, 2012.



 Stephen A. Meikle
 Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the ____ day of April, 2012, I served a true copy of the foregoing document on the attorney(s)/person(s) listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Attorney(s)/Person(s) served:

Method of Service:

Bonneville County Court Clerk
Bonneville County Courthouse
605 N Capital
Idaho Falls, ID 83402

Hand Delivery
 Mailing
 Facsimile

Vianna Stibal
1615 Curlew Drive
Idaho Falls, ID 83406

Hand Delivery
 Mailing
 Facsimile

Alan Johnston
PIKE HERNDON STOSICH & JOHNSTON, P.A.
PO Box 2949
Idaho Falls, ID 83403
Fax: 528-6447

Hand Delivery
 Mailing
 Facsimile
 Courthouse Box



Natalie Moss
Legal Assistant

ADVANTAGE LEGAL SERVICES
 Stephen A. Meikle, Attorney, P.A.
 Idaho State Bar No. 2976
 Idaho Professional Building
 482 Constitution Way - Suite 203
 Post Office Box 51137
 Idaho Falls, Idaho 83405-1137
 Telephone (208) 524-3333
 Attorney for plaintiffs

DISTRICT COURT
 MAGISTRATE DIVISION
 BONNEVILLE COUNTY, IDAHO
 12 APR 23 PM 4:38

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

VIANNA STIBAL, individually, d/b/a)	
THETAHEALING INSTITUTE OF	)	Case No: CV-2011-1287
KNOWLEDGE, INC., and NATURES PATH,)	
	)	PLAINTIFF'S SECOND
Plaintiff,	)	AMENDED COMPLAINT
vs.)	
)	
APRIL FANO, RIGHT WAY PUBLISHING)	
LLC,)	
)	
Defendant.)	
_____)	

COMES NOW the plaintiff Vianna Stibal, individually and d/b/a Nature's Path, Inc. and ThetaHealing Institute of Knowledge (herein after referred to as plaintiffs), and for cause of action against the defendants claim as follows:

I.

JURISDICTION

1. Plaintiff, Vianna Stibal (hereinafter referred to as Stibal), is an individual and resident of the State of Idaho doing business as ThetaHealing Institute of Knowledge and operates Natures Path, Inc. as her business entity chartered in the State of Idaho.

2. Defendant, April Fano (hereinafter referred to as Fano), is a resident of the state of Utah, individual, and defendant Right Way Publishing is a LLC registered in the State of Utah. April Fano is the LLC's registered agent, owner and manager.

3. Plaintiffs entered into contract with Fano in Idaho Falls, Bonneville County, Idaho, which is the subject of this suit.

COUNT ONE
BREACH OF CONTRACT

4. Plaintiff repleads paragraphs one through three in full herein.

5. On July 29, 2010, plaintiffs entered into a release agreement (hereinafter referred to as the contract) with defendant Fano to settle the lawsuit between the parties in the Seventh District Court of the State of Idaho, Bonneville County, case number CV-2009-1852, (hereafter referred to as "lawsuit").

6. Said contract provided, inter-alia, that Stibal execute a guarantee agreement that provided for payment of \$12,500 for a debt owed by Joshua Opfar, which Fano received on July 30, 2010 from Stibal.

7. Further, the agreement provided that (1) Stibal and Fano keep confidential all matters, documents, and medical records pertaining to the lawsuit; (2) Stibal and Fano not make any disparaging, defaming, or otherwise negative comments regarding each other; and (3) to pay the attorney fees and costs to the prevailing party in the event of litigation relating to the agreement.

8. Fano paid for the printing costs for the book described below. Fano thinly formed a LLC in the State of Utah named Right Way Publishing, LLC as her alter ego on July 22, 2010.

9. The LLC published and distributed a book called "*Shady Healing*" (hereinafter referred to as Shady Book) after July 29, 2010 which represented and attributing words, actions, and deeds to Stibal, including but not limited to:

1. Deceit
2. Trickery
3. Lies

4. False teaching
5. Stealing
6. Misrepresentation
7. Fraud
8. Disrespect for the law
9. Cocaine and heroine use
10. Cultism

10. Fano's shady book further breached the contract by publishing excerpts of depositions taken on February 4, 2010 and interrogatory and other information in the above described law suit.

11. Plaintiffs are entitled to actual and consequential damages arising from defendant's breach of contract including but not limited to \$12,500 paid by plaintiff to Fano and in excess of \$60,000 in attorney fees expended and wasted in the suit to reach the promises made in the contract and broken by Fano.

12. Plaintiffs retained Advantage Legal Services, Stephen A. Meikle, attorney, to prosecute all claims in this suit. Plaintiffs are entitled to an award against the defendant of reasonable attorney fees under the contract and Idaho Code §12-120.

COUNT TWO
BREACH OF COVENANT OF GOOD FAITH

13. Plaintiffs replead paragraphs 1 through 12 as set forth in full herein.

14. Defendant, April Fano, had a duty of acting in good faith when entering into the contract. Before, during, and after the contract she entered into with plaintiff, defendant was preparing to publish *Shady Healing*, breach the contract, acting in bad faith, and breaching her duty.

15. Plaintiff paid defendant \$12,500.00 in good faith that defendant would honor said

contract. Defendant accepted said payment with knowledge of the book Shady Healing and knowing that the contract would not be honored.

16. Plaintiffs are entitled to actual and consequential damages arising from defendant's breach of contract including but not limited to \$12,500 paid by plaintiff to Fano and in excess of \$60,000 in attorney fees expended and wasted in the suit to reach the promises made in the contract and broken by Fano.

17. Plaintiffs retained Advantage Legal Services, Stephen A. Meikle, attorney, to prosecute all claims in this suit. Plaintiffs are entitled to an award against the defendant of reasonable attorney fees under the contract and Idaho Code §12-120.

COUNT THREE
FRAUD IN THE INDUCEMENT OF CONTRACT

18. Plaintiffs replead paragraphs 1 through 17 as set forth in full herein.

19. At the time the parties entered into the Mutual Release, Hold Harmless, Confidentiality Agreement (contract), defendant represented to plaintiff that defendant would not make any disparaging, defaming, or otherwise negative comments regarding each other to any third parties as of the date of the agreement.

20. At the time the parties entered into the contract, defendant was well aware of and was preparing to publish the Shady book which disparaged and defamed and negatively commented on plaintiff. Defendant failed to disclose to plaintiff defendant's involvement and the publication of the Shady book.

21. Defendant's representation above and promise was a material representation because it was the primary reason she entered into the contract and agreed to pay defendant \$12,500.00. Plaintiff relied on defendant's representation to her detriment. Defendant published the Shady book which disparages, defames, and negatively references plaintiff.

22. Plaintiffs are entitled to actual and consequential damages arising from

defendant's breach of contract including but not limited to \$12,500 paid by plaintiff to Fano and in excess of \$60,000 in attorney fees expended and wasted in the suit to reach the promises made in the contract and broken by Fano.

23. Plaintiffs retained Advantage Legal Services, Stephen A. Meikle, attorney, to prosecute all claims in this suit. Plaintiffs are entitled to an award against the defendant of reasonable attorney fees under the contract and Idaho Code §12-120.

COUNT FOUR
FRAUD UPON THE COURT

24. Plaintiffs replead paragraphs 1 through 23 as set forth in full herein.

25. In Bonneville County case number CV-2009-1852, plaintiff sued defendant for defamation, libel, slander, and intentional infliction of emotional distress and defendant countersued for fraud, breach of contract, and unjust enrichment.

26. Plaintiff and defendant signed the Mutual Release, Hold Harmless, Confidentiality, and Settlement Agreement (contract) on July 30, 2010 which provided and represented that the parties shall not disparage, defame, or negatively comment on each other.

27. Based on the above contract, promise, and representation, the plaintiff signed a stipulation to dismiss her suit and the court dismissed the case. However, the defendant's representations were false, resulting in obtaining a court order under false pretense.

28. Plaintiffs are entitled to actual and consequential damages arising from defendant's breach of contract including but not limited to \$12,500 paid by plaintiff to Fano and in excess of \$60,000 in attorney fees expended and wasted in the suit to reach the promises made in the contract and broken by defendant, April Fano. However, defendant April Fano did not intend to honor the contract, misrepresented her promise to not disparage, defame, or negatively comment about plaintiff, and obtained the court's order dismissing plaintiff's case under false pretense or fraud.

29. Plaintiffs retained Advantage Legal Services, Stephen A. Meikle, attorney, to prosecute all claims in this suit. Plaintiffs are entitled to an award against the defendant of reasonable attorney fees under the contract and Idaho Code §12-120.

COUNT FIVE
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

30. Plaintiffs replead paragraphs 1 through 29 as set forth in full herein.

31. Defendant, April Fano, by the intentional actions described above inflicted emotional distress upon plaintiffs.

32. Plaintiff suffered severe emotional distress over the terrible things said and the hurt caused to her because of the grief suffered by her children over the disparaging, defamatory, despicable, and damaging statements made by defendants against their mother.

33. Plaintiff is entitled to award damages proximately caused by defendants wrongful acts.

34. Plaintiffs are entitled to actual and consequential damages arising from defendant's breach of contract including but not limited to \$12,500 paid by plaintiff to Fano and in excess of \$60,000 in attorney fees expended and wasted in the suit to reach the promises made in the contract and broken by Fano.

35. Plaintiffs retained Advantage Legal Services, Stephen A. Meikle, attorney, to prosecute all claims in this suit. Plaintiffs are entitled to an award against the defendant of reasonable attorney fees under the contract and Idaho Code §12-120.

COUNT SIX
PUNITIVE DAMAGES

36. Plaintiff repleads paragraphs 1 through 35 and incorporates them herein.

37. April Fano/Right Way Publishing, defendant, published a book called "Shady Healing" which falsely states that Vianna Stibal is a fraud, liar, thief, and hard drug user

[criminal].

38. Defendant, April Fano, entered into a contract with plaintiffs not to disparage , defame, or otherwise negatively comment regarding Vianna Stibal during the time period April Fano and Right Way Publishing were in bad faith arranging publication of "Shady Healing."

39. April Fano's acts were an extreme deviation from reasonable standards of conduct and these acts were performed by the defendant with malice or oppression or wantonness.

40. Defendants acts proximately caused injury to plaintiffs in both breach of contract and/or defamation causes of action.

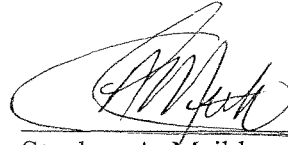
41. Plaintiff is entitled to punitive damages not to exceed \$250,000.00.

42. Plaintiffs retained Advantage Legal Services, Stephen A. Meikle, attorney, to prosecute all claims in this suit. Plaintiffs are entitled to an award against the defendant of reasonable attorney fees under the contract and Idaho Code §12-120.

WHEREFORE, plaintiffs pray for judgment and relief as follows:

1. Money damages in excess of \$72,500.00.
2. Other general damages in an amount to be proven at trial.
3. A preliminary and permanent injunction against defendants from further publication and distribution of the shady book or other media.
4. Punitive damages not to exceed \$250,000.00.
5. A jury trial for all issues of fact.
6. For costs and attorney fees pursuant to Idaho Code §§12-120, 12-121, and I.R.C.P. 54(e) *et seq.* A reasonable attorney fee in event of default is \$2,000.00.
7. For such other and further relief as the Court deems just and equitable in the premises.

DATED This 23rd day of April, 2012.



Stephen A. Meikle
Attorney for Plaintiff

STATE OF IDAHO)
) ss.
County of Bonneville)

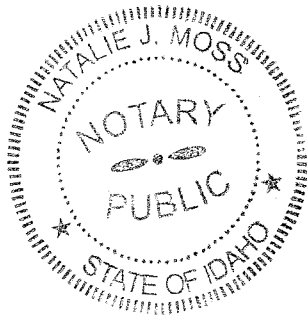
Vianna Stibal, being first duly sworn, deposes and says:

That she is the plaintiff in the above-entitled action, and that she read the foregoing document, knows the contents thereof, and believes that the facts stated herein are true and correct to the best of her knowledge and belief.

Vianna Stibal
Vianna Stibal

SUBSCRIBED AND SWORN to before me this 23rd day of April, 2012.

Natalie Moss
Notary Public for Idaho
Residing in: Meran, ID
Commission expires: 6-13-2012



5/4
Stundberg

BONNEVILLE COUNTY
IDAHO

12 MAY -3 PM 4:12

James C. Herndon
Alan Johnston
PIKE HERNDON STOSICH & JOHNSTON, P.A.
O.E. Bell Center
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P.O. Box 2949
Idaho Falls, ID 83403-2949
Telephone: (208) 528-6444
Facsimile: (208) 528-6447
ISB #1083 & 7709

Attorneys for Defendants

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

VIANNA STIBAL, individually, d/b/a/)	
THETAHEALING INSTITUE OF)	
KNOWLEDGE, INC., and NATURES	)	Case No. CV-11-1287
PATH ,)	
)	
Plaintiffs	)	OBJECTION TO PLAINTIFFS'
	)	SECOND MOTION TO AMEND
	)	COMPLAINT
vs.)	
)	
APRIL FANO, RIGHT OF WAY)	
PUBLISHING, LLC.)	
)	
Defendants.)	
)	
)	

Defendants April Fano and Right Way Publishing, LLC, through their attorney of record, Alan Johnston of the law firm Pike Herndon Stosich & Johnston, PA object to Plaintiffs' Second Motion to Amend Complaint to Include Fraud Claim and Dismiss Defendants' Claim upon the following grounds:

FACTUAL AND PROCEDURAL HISTORY

The Plaintiffs and Defendant April Fano were involved in litigation in Bonneville County Case No. CV-2009-1852. The litigation resulted in a Release Agreement which is the subject of this litigation. The Release Agreement was entered on July 30, 2010.

This litigation was filed by the Plaintiffs on January 19, 2011. The Court issued a scheduling order on June 6, 2011 setting trial for June 11, 2012. The scheduling order also set a cutoff date for the disclosure of expert witnesses (March 13, 2012), discovery (April 2, 2012), and summary judgment (May 14, 2012).

On April 23, 2012, Plaintiffs filed their Second Motion to Amend Complaint, seeking to bring in new claims against the Defendants, and to remove other claims. While the motion is titled to include dismissal of "Defendant's Claim," the body of the motion specifies that Plaintiffs wish to dismiss some of their own claims. Said motion is scheduled to be heard May 14, 2012.

ARGUMENT

It would be improper for the Court to allow the Plaintiffs to amend their complaint this late in the action, with trial scheduled to begin four weeks after this motion will be heard. While Plaintiffs should be allowed to dismiss their own claims, Defendants are unduly prejudiced by the entry of new claims this close to trial.

A party may amend its pleading once as a matter of course before a responsive pleading is filed, but must have the Court's permission to amend further after that. *Idaho Rules of Civil Procedure*, 15(a). Although leave to amend should be granted liberally, "the grant or denial of an opportunity to amend is within the discretion of the district court." *Maroun v. Wyreles Sys.*,

Inc., 141 Idaho 604, 612, 114 P.3d 974, 982 (2005). In considering whether to grant a motion to amend, the trial court may consider whether the amended pleadings set out a valid claim and whether the opposing party would be prejudiced by any undue delay. *Black Canyon Racquetball Club v. Idaho First National Bank, N.A.*, 119 Idaho 171, 175, 804 P.2d 900, 904 (1991). Timeliness of a motion for leave to amend is not decisive, but is important in view of factors such as undue delay, bad faith, and prejudice to the opponent.” *Carl H. Christensen Family Trust v. Christensen*, 133 Idaho 866, 871, 993 P.2d 1197, 1202 (1999).

In this case, allowing the Plaintiffs to amend their complaint on the eve of trial, after over a year and a half of litigation unduly prejudices Defendants. The Plaintiffs had ample time to amend their complaint to include new counts before this late date. In fact, the Plaintiffs had already moved to amend their complaint to include punitive damages in January, 2012. Plaintiffs have not offered the Court a reason why their new counts could not have been included at that time or any other time in the last year since trial was scheduled. Nor have the Plaintiffs made any argument to suggest that the interests of justice will be promoted by the amendment, or any explanation justifying their untimely request.

Allowing the Plaintiffs to amend at this late time would not be in the interests of justice, but a reward for giving untimely notice. In addition, the Defendants would be unduly prejudiced by such an amendment. The Defendants would not have sufficient time to identify witnesses for the new counts, and are not permitted by the scheduling order to retain any new expert witnesses to defend the new claims. Further, the Defendants would not be able to propound discovery regarding the new counts because discovery has been closed since April 2, 2012. In sum, by the time this motion is heard, Defendants will have only four weeks to prepare for the new counts before trial, without the ability to conduct any discovery on the new counts.

Regardless, the new counts alleged by the Plaintiffs are not well taken. Since discovery began in this action, through the filing of motions for summary judgment, and to the present, no evidence has been discovered to suggest that April Fano has breached the contract between her and the Plaintiffs, much less committed fraud on the court or breached the covenant of good faith and fair dealing. While April Fano engaged in business with Right Way Publishing before the parties signed their release agreement, she has not been engaged in Right Way Publishing's distribution of the book Shady Healing since that time. Plaintiffs have never asserted, produced, or discovered any evidence to the contrary. Therefore, the Court should deny the motion because Plaintiffs have not provided any reason to believe the new claims in the Second Amended Complaint are valid or promote justice.

CONCLUSION

Wherefore, Defendants respectfully request that the Court deny Plaintiffs' Second Motion to Amend Complaint because Defendants would be prejudiced by any change in the issues for trial when trial will be less than a month away once this motion is heard. If the Plaintiffs are allowed to amend their complaint, Defendants will have no opportunity to conduct discovery on the new issues before trial. Therefore, the motion should be denied.

DATED this 3 day of May, 2012.



Alan Johnston
Pike Herndon Stosich & Johnston, P.A.
Attorneys for the Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 3 day of May, 2012, I caused a true and correct copy of the foregoing document to be served by first class U.S. mail, postage prepaid to the following:

Stephen A. Meikle
P.O. Box 51137
Idaho Falls, ID 83405-1137
Facsimile: (208)524-6199

U.S. Mail
 Fax
 Hand Delivered



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

VIANNA STIBAL,)
)
 Plaintiff,)
)
 -vs.-)
)
 APRIL FANO,)
)
 Defendant.)
 _____)

Case No. CV-2011-1287

MINUTE ENTRY

DISTRICT COURT
 MAGISTRATE DIVISION
 BONNEVILLE COUNTY
 IDAHO
 2012 MAY 14 PM 4:25

On May 14, 2012, a Motion to Amend Complaint came on for hearing before the Honorable Jon J. Shindurling, District Judge, sitting in open court at Idaho Falls, Idaho.

Ms. Nancy Marlow, Court Reporter, and Ms. Grace Walters, Deputy Court Clerk, were present.

Mr. Stephen Meikle appeared on behalf of the plaintiff.

Mr. Alan Johnston appeared on behalf of the defendant.

Mr. Meikle presented argument on the plaintiff's Motion to Amend Complaint.

Mr. Johnston opposed the Motion to Amend.

Mr. Meikle rebutted the opposition argument, requested the motion be granted and the complaint be amended. Mr. Meikle requested the trial be continued.

Mr. Johnston opposed the Motion to continue.

After a discussion with the parties, the Court will issue an opinion on the Motion for Punitive damages, the Motion to Amend is denied. The trial will remain as set. Mr. Johnston will prepare an order for signature.

Court was thus adjourned.



JON J. SHINDURLING
District Judge

c: Stephen Meikle
Alan Johnston

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

VIANNA STIBAL, individually, d/b/a
THETAHEALING INSTITUTE OF
KNOWLEDGE, INC., and NATURE'S
PATH,

Plaintiffs,

v.

APRIL FANO, RIGHT WAY
PUBLISHING, LLC,

Defendants.

Case No. CV-2011-1287

OPINION AND ORDER ON
PLAINTIFF'S MOTION TO AMEND
COMPLAINT TO INCLUDE PUNITIVE
DAMAGES

12 MAY 21 09:31

7TH JUDICIAL DISTRICT COURT
BONNEVILLE, IDAHO

I.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Vianna Stibal and Defendant April Fano were involved in litigation in Bonneville County Case No. CV-2009-1852. A Release Agreement in that case was entered on July 30, 2010. Plaintiffs filed their Complaint in this case on March 1, 2011 alleging breach of contract, unjust enrichment, intentional infliction of emotional distress, defamation/libel, and libel per se based on alleged actions of Defendants concerning the Release Agreement. On January 30, 2012, Plaintiffs filed a Motion to Amend the Complaint to Include Punitive Damages. The matter came before this

Court for hearing on February 13, 2012. After considering the argument of counsel and the submitted briefs, the Court now renders its decision.¹

II.

STANDARD OF REVIEW

Idaho Code § 6-1604 provides the following direction to the Court regarding allowing pleading to be amended to include punitive damages:

6-1604. Limitation on punitive damages. (1) In any action seeking recovery of punitive damages, the claimant must prove, by clear and convincing evidence, oppressive, fraudulent, malicious or outrageous conduct by the party against whom the claim for punitive damages is asserted.

(2) In all civil actions in which punitive damages are permitted, no claim for damages shall be filed containing a prayer for relief seeking punitive damages. However, a party may, pursuant to a pretrial motion and after hearing before the court, amend the pleadings to include a prayer for relief seeking punitive damages. The court shall allow the motion to amend the pleadings if, after weighing the evidence presented, the court concludes that, the moving party has established at such hearing a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages. A prayer for relief added pursuant to this section shall not be barred by lapse of time under any applicable limitation on the time in which an action may be brought or claim asserted, if the time prescribed or limited had not expired when the original pleading was filed.

III.

ANALYSIS

Plaintiffs argue they should be allowed to amend their Complaint to include punitive damages because April Fano fronted personal funds to print and helped publish a book containing accusations that Vianna Stibal is a fraud, liar, thief, and hard drug user. April Fano, Plaintiffs argue,

¹ The Court and the Parties have agreed that the submission of this motion was lost in the presentation of the motion to compel heard at the same time.

knowingly entered into a contract with Vianna Stibal agreeing not to disparage, defame or otherwise negatively comment upon her while in the process of printing and publishing a book doing all of those things. Plaintiffs argue that the actions of April Fano are clearly malicious or outrageous and they have more than a reasonable likelihood of proving facts sufficient to support awarding punitive damages in this case.

Defendants argue April Fano's conduct was proper under the conditions of the Release Agreement and not an extreme deviation from acceptable conduct. They argue the Release Agreement releases April Fano from any liability for any action made before July 30, 2010, and all of the actions upon which Plaintiffs base their motion occurred before that date. Defendants additionally argue that punitive damages cannot be sought against Right Way Publishing, LLC because it was not a party to the Release Agreement.

At trial, in order for Plaintiffs to be awarded punitive damages, they will be required to "prove, by clear and convincing evidence, oppressive, fraudulent, malicious or outrageous conduct" by April Fano. For purposes of this motion and pursuant to Idaho Code § 6-1604, this Court must grant the motion to amend if "after weighing the evidence presented, the court concludes that, the moving party has established...a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages." Although the Defendants argue that the actions of April Fano upon which Plaintiffs base their motion occurred before July 30, 2010, the book at issue was set to be published after July 30, 2010. As such, this Court finds that Plaintiffs have met their burden to amend the Complaint to include punitive damages. Where this case is not being tried to a jury, the Court will determine the full application of the amendment at trial.

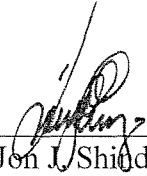
IV.

CONCLUSION AND ORDER

For the foregoing reasons, Plaintiff's Motion to Amend Complaint to Include Punitive Damages is GRANTED.

IT IS SO ORDERED.

Dated this 21 day of May, 2012.



Jon J. Shindurling
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 21 day of May, 2012, the foregoing OPINION AND ORDER ON PLAINTIFF'S MOTION TO AMEND COMPLAINT TO INCLUDE PUNITIVE DAMAGES was entered and a true and correct copy was served upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be delivered to their courthouse boxes.

Attorney for Plaintiff

Stephen A. Meikle
Advantage Legal Services
Idaho Professional Building
482 Constitution Way – Suite 203
P.O. Box 51137
Idaho Falls, Idaho 83405

Attorneys for Defendant

James C. Herndon
Alan Johnston
Pike Herndon Stosich & Johnston, P.A.
O.E. Bell Center
151 N. Ridge, Suite 210
P.O. Box 2949
Idaho Falls, Idaho 83403

Ronald Longmore
Clerk of the District Court
Bonneville County, Idaho

by RLW
Deputy Clerk

ADVANTAGE LEGAL SERVICES
 Stephen A. Meikle, Attorney, P.A.
 Idaho State Bar No. 2976
 Idaho Professional Building
 482 Constitution Way - Suite 203
 Post Office Box 51137
 Idaho Falls, Idaho 83405-1137
 Telephone (208) 524-3333
 Attorney for plaintiffs

BONNEVILLE COUNTY
 IDAHO
 12 MAY 24 PM 3: 28

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

VIANNA STIBAL, individually, d/b/a)	
THETAHEALING INSTITUTE OF	)	Case No: CV-2011-1287
KNOWLEDGE, INC., and NATURES PATH,)	
)	
Plaintiff,)	
)	
vs.	)	AMENDED COMPLAINT
)	
APRIL FANO, RIGHT WAY PUBLISHING)	
LLC,)	
)	
Defendant.)	
_____)	

COMES NOW the plaintiff Vianna Stibal, individually and d/b/a Nature's Path, Inc. and ThetaHealing Institute of Knowledge (herein after referred to as plaintiffs), and for cause of action against the defendants claim as follows:

I.

JURISDICTION

1. Plaintiff, Vianna Stibal (hereinafter referred to as Stibal), is an individual and resident of the State of Idaho doing business as ThetaHealing Institute of Knowledge and operates Natures Path, Inc. as her business entity chartered in the State of Idaho.

2. Defendant, April Fano (hereinafter referred to as Fano), is a resident of the state of Utah, individual, and defendant Right Way Publishing is a LLC registered in the State of Utah. April

ORIGINAL

Fano is the LLC's registered agent, owner and manager.

3. Plaintiffs entered into contract with Fano in Idaho Falls, Bonneville County, Idaho, which is the subject of this suit.

COUNT ONE
BREACH OF CONTRACT

4. Plaintiff repleads paragraphs one through three in full herein.

5. On July 29, 2010, plaintiffs entered into a release agreement (hereinafter referred to as the contract) with defendant Fano to settle the lawsuit between the parties in the Seventh District Court of the State of Idaho, Bonneville County, case number CV-2009-1852, (hereafter referred to as "lawsuit").

6. Said contract provided, inter-alia, that Stibal execute a guarantee agreement that provided for payment of \$12,500 for a debt owed by Joshua Opfar, which Fano received on July 30, 2010 from Stibal.

7. Further, the agreement provided that (1) Stibal and Fano keep confidential all matters, documents, and medical records pertaining to the lawsuit; (2) Stibal and Fano not make any disparaging, defaming, or otherwise negative comments regarding each other; and (3) to pay the attorney fees and costs to the prevailing party in the event of litigation relating to the agreement.

8. Fano thinly formed a LLC in the State of Utah named Right Way Publishing, LLC as her alter ego.

9. The LLC published and distributed a book called "*Shady Healing*" (hereinafter referred to as Shady book) after July 29, 2010 which represented and attributing words, actions, and deeds to Stibal, including but not limited to:

1. Deceit

2. Trickery
3. Lies
4. False teaching
5. Stealing
6. Misrepresentation
7. Fraud
8. Disrespect for the law
9. Cocaine and heroine use
10. Cultism

10. Fano's shady book further breached the contract by publishing excerpts of depositions taken on February 4, 2010 and interrogatory and other information in the above described law suit.

11. Plaintiffs are entitled to actual and consequential damages arising from defendant's breach of contract including but not limited to \$12,500 paid by plaintiff to Fano and in excess of \$60,000 in attorney fees expended and wasted to reach the promises made in the contract and broken by Fano.

12. Plaintiffs retained Advantage Legal Services, Stephen A. Meikle, attorney, to prosecute all claims in this suit. Plaintiffs are entitled to an award against the defendant of reasonable attorney fees under the contract and Idaho Code §12-120.

**COUNT TWO
UNJUST ENRICHMENT - WITHDRAWN**

13. N/A
14. N/A
15. N/A

COUNT THREE
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

16. Plaintiffs replead paragraphs 1 through 12 as set forth in full herein.

17. Defendant, April Fano, by the intentional actions described above inflicted emotional distress upon plaintiffs.

18. Plaintiff suffered severe emotional distress over the terrible things said and the hurt caused to her because of the grief suffered by her children over the disparaging, defamatory, despicable, and damaging statements made by defendants against their mother.

19. Plaintiff is entitled to award damages proximately caused by defendants wrongful acts.

COUNT FOUR
DEFAMATION/LIBEL - WITHDRAWN

20. N/A

21. N/A

22. N/A

COUNT FIVE
LIBEL PER SE - WITHDRAWN

23. N/A

24. N/A

25. N/A

COUNT SIX
PUNITIVE DAMAGES

26. Plaintiff repleads paragraphs 1 through 25 and incorporates them herein.

27. April Fano/Right Way Publishing, defendant, published a book called "Shady Healing" which falsely states that Vianna Stibal is a fraud, liar, thief, and hard drug user [criminal].

28. Defendant, April Fano, entered into a contract with plaintiffs not to disparage , defame, or otherwise negatively comment regarding Vianna Stibal during the time period April Fano and Right Way Publishing were in bad faith arranging publication of "Shady Healing."

29. April Fano's acts were an extreme deviation from reasonable standards of conduct and these acts were performed by the defendant with malice or oppression or wantonness.

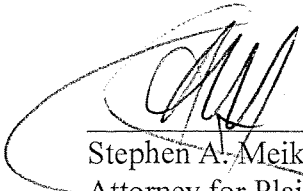
30. Defendants acts proximately caused injury to plaintiff's in both breach of contract and/or defamation causes of action.

31. Plaintiff is entitled to punitive damages not to exceed \$250,000.00.

WHEREFORE, plaintiffs pray for judgment and relief as follows:

1. Money damages in excess of \$72,500.00.
2. Other general damages in an amount to be proven at trial.
3. A preliminary and permanent injunction against defendants from further publication and distribution of the shady book or other media.
4. Punitive damages not to exceed \$250,000.00.
5. A jury trial for all issues of fact.
6. For costs and attorney fees pursuant to Idaho Code §§12-120, 12-121, and I.R.C.P. 54(e) *et seq.* A reasonable attorney fee in event of default is \$2,000.00.
7. For such other and further relief as the Court deems just and equitable in the premises.

DATED This 27th day of May, 2012.



Stephen A. Meikle
Attorney for Plaintiff

BONNEVILLE COUNTY
IDAHO
12 JUN -1 PM 4:51

ADVANTAGE LEGAL SERVICES
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Telephone (208) 524-3333
Attorney for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

VIANNA STIBAL, individually, d/b/a)
THETAHEALING INSTITUTE OF)
KNOWLEDGE, INC. and NATURE'S PATH,)
)
Plaintiffs,)
)
vs.)
)
APRIL FANO, RIGHT WAY PUBLISHING,)
LLC,)
)
Defendants.)


Case No.: CV-2011-1287

STIPULATION TO
WITHDRAW CLAIMS

COMES NOW, the plaintiff's Vianna Stibal, ThetaHealing Institute of Knowled, Inc., and Nature's Path, by and through their attorney of record, Stephen A. Meikle, and the defendant's April Fano and Right Way Publishing, LLC, by and through their attorney, Alan Johnston, and hereby agree and stipulate as follows:

1. That the claim for defamation, libel, and unjust enrichment under counts four and two of plaintiff's complaint are hereby withdrawn.
2. That the remaining issues to be tried before the court are breach of contract, intentional infliction of emotional distress, and punitive damages.

DATED this 22nd day of May, 2012.


Stephen A. Merkle
Attorney for Plaintiffs


Alan Johnston
Attorney for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on ~~May~~ ^{June} 1, 2012, I served a true copy of the foregoing document on the attorney(s)/person(s) listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Attorney(s)/Person(s) served:

Method of Service:

Bonneville County Court Clerk
Bonneville County Courthouse
605 N Capital
Idaho Falls, ID 83402

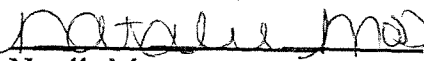
Hand Delivery

Vianna Stibal
1615 Curlew Drive
Idaho Falls, ID 83406

Mailing

Alan Johnston
Pike, Herndon, Stosich, & Johnston
PO Box 2949
Idaho Falls, ID 83406
Fax: 528-6477

Facsimile


Natalie Moss
Legal Assistant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

VIANNA STIBAL, individually, d/b/a
THETAHEALING INSTITUTE OF
KNOWLEDGE, INC., and NATURE'S
PATH,

Plaintiffs,

v.

APRIL FANO, RIGHT WAY
PUBLISHING, LLC,

Defendants.

Case No. CV-2011-1287

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOLLOWING
BENCH TRIAL

12 SEP 20 P 2:52

7TH JUDICIAL DISTRICT COURT
BONNEVILLE COUNTY, IDAHO

I.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Vianna Stibal (Vianna) and Defendant April Fano (April) were involved in litigation in Bonneville County Case No. CV-2009-1852. A Release Agreement in that case was entered on July 30, 2010. Plaintiffs filed their Complaint in this case on March 1, 2011, alleging breach of contract, unjust enrichment, intentional infliction of emotional distress, defamation/libel, and libel per se based on alleged actions of Defendants concerning the Release Agreement. On May 24, 2012, Plaintiffs filed an amended complaint, alleging breach of contract, intentional infliction of emotional distress, and punitive damages.

Court trial was held on June 11, 2012 and June 12, 2012. At the end of the trial the parties agreed to submit written closing briefs. The Court received Plaintiff's closing brief on July 23, 2012.

The Court received Defendants' closing brief on August 6, 2012 and Plaintiffs' reply brief on August 13, 2012 and the matter was taken under advisement.

After considering the Court's file, pleadings, testimony, exhibits, and the argument of counsel, the Court renders the following opinion.

II. STANDARD OF REVIEW

Rule 52(a) of the Idaho Rules of Civil Procedure states:

Findings by the Court--Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for the purposes of review. Findings of fact shall not be set aside unless clearly erroneous. In the application of this principle regard shall be given to the special opportunity of the trial court to judge the credibility of those witnesses who appear personally before it. The findings of the master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary in support of a judgment by default, or an interlocutory order made pursuant to a show cause hearing or on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b); in all instances findings of fact and conclusions of law may be waived by stipulation of all parties upon approval by the court. A written memorandum decision issued by the court may constitute the findings of fact and conclusions of law

only if the decision expressly so states or if it is thereafter adopted as the findings of fact and conclusions of law by order of the court.

When a case has been tried to a court, it is the province of the trial judge to weigh the conflicting evidence and testimony and to judge the credibility of witnesses. *Magic Valley Truck Brokers, Inc. v. Meyer*, 133 Idaho 110 (Ct. App. 1999). Rule 52(a) requires the trial court to exercise its independent judgment in the preparation of findings of fact and conclusions of law. *Marshall Bros. v. Geisler*, 99 Idaho 734 (1978). The court is not required to resolve every factual dispute between the parties; rather, the court's findings need address only those factual issues that are material to the resolution of the claims. *Quiring v. Quiring*, 130 Idaho 560 (1997).

III. FINDINGS OF FACT

Vianna and April were involved in litigation in Bonneville County Case No. CV-2009-1852. A Release Agreement in that case was entered on July 30, 2010 and admitted at trial as Plaintiff's Exhibit 1. As stated in the Release Agreement, Vianna brought the previous lawsuit with claims for defamation, libel, slander, and intentional infliction of emotional distress. April countersued with claims for fraud, breach of contract, and unjust enrichment. The Release Agreement indicates that "Vianna and April have agreed to resolve the dispute pursuant to the terms of this Agreement." The pertinent portions of the Release Agreement, paragraphs 8, 9, 10, 11 and 12, provide as follows:

8. April and Vianna agree to keep confidential the terms of this Agreement, as well as all matters, documents and medical records pertaining to the Lawsuit unless:
 - a. Ordered to do so by a court of law,
 - b. Upon the request of a law enforcement office acting in his or her official capacity,
 - c. Confidential disclosure to an accountant or tax adviser in connection with preparation of income tax returns or other financial documents is necessary;

d. Agreed to by the parties.

9. April and Vianna agree not to make any disparaging, defaming, or otherwise negative comment regarding each other to any third party as of the date of this Agreement forward unless:

- a. Ordered to do so by a court of law,
- b. Upon the request of a law enforcement office acting in his or her official capacity,
- c. Agreed to by the parties.

10. April and Vianna agree to remove any comment regarding each other that is posted on the internet, for which each one of them has control, within 45 days of this agreement. April shall make a good faith effort to have the video of Vianna posted on www.youtube.com regarding USANA removed, and will provide Vianna's attorney with a copy of any correspondence sent in an effort to remove said video.

11. The confidentiality and nondisclosure requirements of this mutual release and hold harmless agreement shall not apply to any statements, disclosures, or other communications to third parties made before the date of this Agreement, whether known or unknown.

12. The mutual release and hold harmless agreement shall apply to any statements, disclosures, or other communications to third parties made before the date of this Agreement, whether known or unknown.

Shady Healing is a book written by Lindsey Stock, who is the former daughter-in-law of Vianna. *Shady Healing* was published by Right Way Publishing, LLC. The book contains disparaging, defaming, or otherwise negative comments about Vianna. See Plaintiff's Exhibit 3; Trial Tr. 161:19-24. An Invoice from Sunrise Press LLC, admitted at trial as Defendants' Exhibit F, shows that *Shady Healing* was printed on July 21, 2012 and was paid for by April Fano. The Articles of Organization of Right Way Publishing, LLC, admitted as Defendants' Exhibit C at trial, show that Right Way Publishing, LLC was formed on July 22, 2010. April's home address is listed as the company's designated office and its principal place of business. The company's registered agent is listed as April Fano and her home address is again listed as the company's registered office. The

company is manager-managed and its two managers are April Fano and Lindsey Stock. *Shady Healing* has been sold to the public since the Release Agreement was entered and is still available for purchase on Amazon. Trial Tr. 161:16-18. Before the Release Agreement was signed, April provided Lindsey Stock with emails and portions of depositions from her previous lawsuit with Vianna. Trial Tr. 193:3-195:23. April denied giving Lindsey Stock any medical records. Trial Tr. 160:11-13. April knew about the contents of *Shady Healing* before she signed the Release Agreement. April testified that she intended to publish the book and intended that the book would be read by others. Trial Tr. 173:21-176:1.

Brandy Opfar, Vianna's daughter, testified at trial that an article entitled "The Truth About 'The Truth About Theta Healing®'" was removed from Vianna's website in June 2010. Trial Tr. 137:13-17. She testified that all websites have an archive which would allow removed articles to be pulled up at a later time. Trial Tr. 137:21-138:1.

Regarding Vianna's emotional distress, Guy Stibal, Vianna's husband, testified that he observed that Vianna was in "a lot of emotional trauma." Trial Tr. 113:4-16. He further described that she was sleepless, really upset and it caused her heartache. Trial Tr. 113:17-20. He finally stated that the "best way that I can answer that is Vianna is a very sensitive -- by nature a very sensitive person. Okay? So if someone disparages her without recourse, or really without foundation of truth, it affects her to the very core of her being." Trial Tr. 114:13-17. Bobbi Lott, Vianna's daughter, testified that Vianna was "emotional, tired, overwhelmed, frustrated." Trial Tr. 123:18-24 She also testified that any time the book was brought up it would cause Vianna distress and it was brought up a lot in classes locally and abroad. Trial Tr. 122:6-24.

Vianna testified that the book was "devastating" and "painful in ways I don't even -- I don't even know how to describe it." Trial Tr. 43:11-44:7. She testified that she went to her family

physician to have her blood pressure medication adjusted right after the book came out. Trial Tr. 44:8-12. Vianna testified that she stayed up at night and cried and could not sleep. Trial Tr. 44:23-24. Finally, Vianna testified that she felt violated. Trial Tr. 67:24-68:3.

IV. CONCLUSIONS OF LAW

a. Breach of Contract

Paragraph 8 of the Release Agreement requires April to keep confidential all matters, documents and medical records pertaining to the previous lawsuit between her and Vianna. Paragraph 9 of the Release Agreement prohibits April and Vianna from making any disparaging, defaming, or otherwise negative comments regarding each other to any third party as of the date of the Release Agreement. There is no question that *Shady Healing* contains disparaging, defaming, or otherwise negative comments about Vianna. In addition, the book contains documents that April gave to Lindsey Stock that are from April's previous lawsuit with Vianna. Therefore, the only question before the Court is whether April's involvement in the publishing of *Shady Healing* combined with the fact that the book was sold to the public after the Release Agreement was entered, violated paragraphs 8 and 9 of the Release Agreement.

April's involvement was substantial, and included: (1) giving Lindsey Stock emails and portions of depositions from her previous lawsuit with Vianna; (2) paying for *Shady Healing* to be printed; (3) forming Right Way Publishing, LLC together with Lindsey Stock to publish *Shady Healing*; and (4) receiving bank statements for Right Way Publishing, LLC. Based on April's substantial involvement in publishing *Shady Healing*, it is the determination of this Court that April is responsible for the comments expressed in the book and for the documents contained in the book from the previous lawsuit with Vianna. This includes comments made by April under the name Tyra

and those made by the author. Based on the evidence before the Court, the book would not have been published but for April's substantial involvement. Paragraphs 10 and 11 of the Release Agreement do not excuse April from liability. As the book was sold after the date of the Release Agreement, and continues to be sold today, April has breached the Release Agreement by making disparaging, defaming, or otherwise negative comments about Vianna and by failing to keep confidential documents related to their previous lawsuit. In making this determination, it is not necessary for this Court to analyze the arguments made by Vianna regarding a breach of the implied covenant of good faith and fair dealing or any alter ego arguments regarding April and Right Way Publishing, LLC.

The Court notes that it recognizes the arguments made by April that her actions in forming Right Way Publishing, LLC and paying for the printing of *Shady Healings* were not improper because she did not anticipate settling her case on July 30, 2010. While that may be true, it is not an excuse for failing to disclose the existence of the book once it became clear that she would agree to the requirements contained in the Release Agreement. The Court simply cannot allow April to fraudulently enter into a release agreement and agree not to make certain comments or disclose certain documents when she knows that a book she helped publish and paid to print would soon be for sale to the public doing those same things. April did nothing to disclose the existence of the book and did nothing to attempt to stop it from being sold to the public.

i. Doctrine of Unclean Hands

April argues that Vianna breached the Release Agreement by failing to remove anything that mentioned April from her website, as contemplated in Paragraph 10 of the Release Agreement. Defendant's Exhibit G was admitted at trial and appears to show that an article entitled "The Truth About 'The Truth About Theta Healing®'" was still on Vianna's website on April 23, 2012. However, the testimony at trial from Brandy Opfar indicated that the article was removed June 2010.

She testified that all website have an archive which would allow removed articles to be pulled up at a later time. Similarly, Vianna argues that April failed to remove a Youtube video but there was not sufficient evidence before the Court to make a determination on that issue.

“The Idaho definition...of ‘unclean hands’ is based on the maxim that, ‘he who comes into equity must come with clean hands.’” *Sword v. Sweet*, 140 Idaho 242, 251, 92 P.3d 492, 501 (2004) (quoting *Gilbert v. Nampa School Dist. No. 131*, 104 Idaho 137, 145, 657 P.2d 1, 9 (1983)). “It allows a court to deny equitable relief to a litigant on the ground that his or her conduct has been ‘inequitable, unfair and dishonest, or fraudulent and deceitful as to the controversy at issue.’ *Id.* (citations omitted). “In determining if this doctrine applies a court has discretion to evaluate the relative conduct of both parties and to determine whether the conduct of the party seeking an equitable remedy should, in the light of all the circumstances, preclude such relief.” *Sword*, 140 Idaho at 251, 92 P.3d at 501 (citation omitted). “A trial court's decision to afford relief based on the unclean hands doctrine, or to reject its application, will not be overturned on appeal absent a demonstration that the lower court abused its discretion. *Id.*

Based on the evidence before the Court, it appears that the article at issue was timely removed from Vianna’s website. Either way, based on the conduct of the parties and the determinations of this Court, the doctrine of unclean hands is not applicable in this case.

ii. Damages for breach of contract

Vianna argues that she is entitled to damages in the amount of \$12,500.00, the amount that she paid to April as part of the Release Agreement, and \$55,510.00, the amount of attorney fees spent on securing the Release Agreement, for a total of \$68,010.00. April argues the \$12,500.00 payment by Vianna to her as part of the Release Agreement is not a proper amount of damages because that amount was paid to settle the claims between the parties, not just for April’s agreement

not to make disparaging, defaming, or other negative comments about Vianna. April likewise argues that the \$55,510.00 in attorney fees is inappropriate because that amount is not supported by evidence and that amount was spent for the entirety of the Release Agreement, not just the agreement that April would not make disparaging, defaming, or otherwise negative comments about Vianna.

Plaintiff's Exhibit 8 contains invoices detailing the amount of attorney fees incurred by Vianna in the previous case when she was represented by Nelson Hall Parry Tucker, P.A. However, those documents were not timely disclosed to April and this Court indicated at trial that they would be precluded as a violation of the Court's discovery order. Plaintiff's Exhibit 9 contains invoices detailing the amount of attorney fees incurred by Vianna in the previous case when she was represented by her current counsel. That exhibit was never offered or admitted. Bobbi Lott testified that the amount was \$22,845.00 but there is no other evidentiary foundation for the request for attorney fees as damages. The Court finds that the \$12,500.00 that was paid to April as part of the Release Agreement was not solely for the purpose of securing an agreement by April not to make negative comments about Vianna or disclose documents relating to the previous lawsuit. As such, the Court will only award Vianna half of the amount requested, \$6,250.00, in damages.

b. Intentional Infliction of Emotional Distress

To prove intentional infliction of emotional distress, "the plaintiff must prove four elements: (1) the conduct must be intentional or reckless; (2) the conduct must be extreme and outrageous; (3) there must be a causal connection between the wrongful conduct and the emotional distress; and (4) the emotional distress must be severe." *McKinley v. Guaranty Nat. Ins. Co.*, 144 Idaho 247, 253, 159 P.3d 884, 891 (2007) (quoting *Est. of Becker v. Callahan*, 140 Idaho 522, 527, 96 P.3d 623, 628 (2004)).

i. Was April's conduct intentional or reckless?

First, the Court finds that April's substantial involvement in the publishing of *Shady Healing* coupled with her not disclosing the book at mediation and the book being sold after the Release Agreement was intentional conduct by April. April testified at trial that she intended to publish the book and intended that the book would be read by others.

ii. Was April's intentional conduct extreme and outrageous?

"To qualify as 'extreme and outrageous,' the defendant's conduct must be more than merely objectionable or unreasonable. 'Even if a defendant's conduct is unjustifiable, it does not necessarily rise to the level of 'atrocious' and 'beyond all possible bounds of decency' that would cause an average member of the community to believe it was 'outrageous.'" *Alderson v. Bonner*, 142 Idaho 733, 740, 132 P.3d 1261, 1268 (Ct. App. 2006) (quoting *Edmondson v. Shearer Lumber Prod.*, 139 Idaho 172, 180, 75 P.3d 733, 741 (2003)). The Restatement (Second) of Torts § 46, comment d explains:

The cases thus far decided have found liability only where the defendant's conduct has been extreme and outrageous. It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by "malice," or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"

April paid for and published the book *Shady Healing*, which contains countless disparaging, defaming, or otherwise negative comments about Vianna and documents from April and Vianna's previous lawsuit that were provided to the author by April. Nine days later, April promised not to

make any disparaging, defaming, or negative comment about Vianna and to keep confidential documents related to the previous lawsuit between her and Vianna. She never disclosed the existence of *Shady Healing*. She did not do anything to try to stop the book from being sold to the public. She did nothing, as she assumed that because the book was published and printed before the Release Agreement, it would be okay to sell the book after the Release Agreement. Trial Tr. 172:18-173:1. Breaching a contract in this manner is extreme and outrageous. It is even more extreme and outrageous in this situation because the Release Agreement was a contract that settled all claims which were pending before the court in a previous lawsuit between April and Vianna. April promised not to make disparaging, defaming, or negative comments about Vianna and to keep confidential certain documents and received substantial consideration for those promises while knowing the entire time that a book she paid to have printed would soon be sold and would make countless comments that she was prohibited from making and disclose documents she was required to keep confidential.

iii. Is there a causal connection between April's wrongful conduct and the emotional distress and is the emotional distress severe?

The evidence before the Court is clear that the emotional distress complained of by Vianna was caused by April's wrongful conduct. There is no question that Vianna and her family members testify that her emotional distress was severe. The question before the Court is whether the emotional distress was severe based on Idaho law.

“As a guideline on the requisite severity of emotional injury, Idaho courts have repeatedly referred to this commentary from the Restatement (Second) of Torts § 46 cmt. j (1965):

Emotional distress passes under various names, such as mental suffering, mental anguish, mental or nervous shock, or the like. It includes all highly unpleasant mental reactions, such as fright, horror,

grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea. It is only where it is extreme that the liability arises. Complete emotional tranquility is seldom attainable in this world, and some degree of transient and trivial emotional distress is a part of the price of living among people. The law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it. The intensity and the duration of the distress are factors to be considered in determining its severity.”

Alderson v. Bonner, 142 Idaho 733, 741, 132 P.3d 1261, 1269 (Ct. App. 2006).

Another case explained as follows:

Severe emotional distress may be shown either by physical manifestation of the distress or subjective testimony. There is only one indication in the record of physical manifestation of emotional distress. Sandra Davis' mother testified, unsupported by the testimony of either Sandra or David Davis, that plaintiffs developed ulcers because of the Gages' conduct. The subjective testimony of the Davises indicated they were upset, embarrassed, angered, bothered and depressed. Liability, however, only results when these reactions are so severe that no reasonable person could be expected to endure it. The required severity is not borne out by the record. There is no competent evidence to show that the Davises incurred any physical damage or were hampered in the performance of their daily functions, nor did they demonstrate that they suffered a severely disabling emotional response to the Gages' conduct. Therefore, we hold, as a matter of law, that the Davises did not suffer the severe emotional distress required to warrant recovery of damages.

Davis v. Gage, 106 Idaho 735, 741, 682 P.2d 1282, 1288 (Ct. App. 1984) (citations omitted).

The distress found in this case is similar to how the *Davis* court characterized the distress complained of in that case where it stated that “[t]he subjective testimony of the Davises indicated they were upset, embarrassed, angered, bothered and depressed.” As in *Davis*, there is no evidence that Vianna incurred any physical manifestation of her emotional distress other than her statement that she went to the doctor to have her blood pressure medicine increased and Bobbi Lott’s testimony that she thinks Vianna had been to the doctor more in the last year than ever before over stress from

remarks about *Shady Healing*. Trial Tr. 123:18-24. There is no evidence that Vianna was “hampered in the performance of [her] daily functions.” In fact, the testimony about *Shady Healing* being brought up to Vianna at classes indicates that she was performing her daily functions. Although the evidence indicates that there was significant emotional distress, it simply does not rise to the level contemplated in the Second Restatement of Torts where the “law intervenes” because the “distress inflicted is so severe that no reasonable man could be expected to endure it.”

c. Punitive Damages

“In Idaho, then, so long as the evidence shows that there has been an injury to the plaintiff from an act which is an extreme deviation from reasonable standards of conduct, and that the act was performed by the defendant with an understanding of or a disregard for its likely consequences (in the words of prior cases, with fraud, malice or oppression), it is appropriate for the trier of fact to award punitive damages.” *Linscott v. Rainier Nat. Life Ins. Co.*, 100 Idaho 854, 858, 606 P.2d 958, 962 (1980). The Court further explained that “it must be pointed out that nothing herein is to be construed as in any way approving the awarding of punitive damages in an ordinary breach of contract case. Punitive damages may only be considered in those cases where there has been alleged in the pleadings and proof of conduct by one party involving some element of outrage similar to that usually found in the commission of crimes or torts done intentionally or with reckless indifference to the rights of the other party (E. g. fraud) or with an evil motive, (E. g. to vex, harass, annoy, injure or oppress) in conscious disregard of the rights of the injured person.” *Id.* 100 Idaho at 861, 606 P.2d at 965 (citations omitted).

As discussed above, April’s conduct in this case was outrageous. April knew at the mediation that she had funded and helped publish *Shady Healing*. The book was printed nine days before the mediation. April admits that the book contains countless comments in violation of the Release

Agreement and contains documents from a previous lawsuit between Vianna and April, both of which are a violation of the Release Agreement April agreed to and signed. April did all of this knowing that this book, which violated the Release Agreement she was signing, would be sold to the public after the agreement was entered. As explained above, April's conduct is even more extreme and outrageous in this situation because the Release Agreement was a contract that settled all claims that were pending before the court in a previous lawsuit between April and Vianna. April's conduct was an "extreme deviation from reasonable standards of conduct" and was performed with "a disregard for its likely consequences." As such, punitive damages are appropriate in this case. The Court awards Vianna \$50,000.00 in punitive damages.

d. Injunction

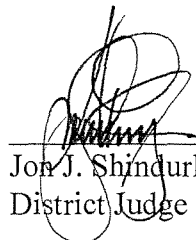
Vianna requests that an injunction be issued "permanently preventing April from any of the things she promised not to do or she will face a contempt action that could result in jail, fines, or both." The Release Agreement signed by April and Vianna remains in effect and both parties are required to comply with it. The Court will not issue an injunction at this time.

**IV.
CONCLUSION AND ORDER**

For the foregoing reasons, it is the determination of this Court that Defendant April Fano breached the Release Agreement and Plaintiffs are entitled to \$6,250.00 for the breach. It is the further determination of this Court that Plaintiffs are entitled to \$50,000.00 in punitive damages as a result of Defendant April Fano's conduct. Attorney fees for this matter will be determined at a later time upon proper motion to the Court.

IT IS SO ORDERED.

Dated this 20 day of September, 2012.



Jon J. Shindurling
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 20 day of September, 2012, the foregoing OPINION AND ORDER ON PLAINTIFF'S MOTION TO AMEND COMPLAINT TO INCLUDE PUNITIVE DAMAGES was entered and a true and correct copy was served upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be delivered to their courthouse boxes.

Attorney for Plaintiff

Stephen A. Meikle
Advantage Legal Services
Idaho Professional Building
482 Constitution Way – Suite 203
P.O. Box 51137
Idaho Falls, Idaho 83405

Attorneys for Defendant

James C. Herndon
Alan Johnston
Pike Herndon Stosich & Johnston, P.A.
O.E. Bell Center
151 N. Ridge, Suite 210
P.O. Box 2949
Idaho Falls, Idaho 83403

Ronald Longmore
Clerk of the District Court
Bonneville County, Idaho

by Glenn Watson
Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

VIANNA STIBAL, et al,)
)
 Plaintiffs,)
)
 vs.)
)
 APRIL FANO, et al,)
)
 Defendants,)
)
 _____)

Case No. CV-2011-1287

JUDGMENT

12 SEP 20 P 3:23


7TH JUDICIAL DISTRICT COURT
BONNEVILLE COUNTY, IDAHO

The Court having been fully advised in the premises and good cause appearing therefore:

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff Vianna Stibal, individually, d/b/a Thetahealing Institute of Knowledge, Inc., and Nature's Path have and recover against Defendants April Fano and Right Way Publishing, LLC, judgment as follows:

1. Plaintiffs are entitled to \$6,250.00 for Defendant April Fano's breach of the Release Agreement. Plaintiffs are entitled to \$50,000.00 in punitive damages as a result of the Defendant's conduct. Total amount of the judgment is \$56,250.00 in favor of the plaintiffs.
2. Interest on said judgment amount at the legal rate of 5.25% per annum until said judgment amount is paid in full.

DATED this 20 day of September 2012.



 JON L. SHINDURLING
 District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 20 day of September 2012, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

Stephen Meikle
Courthouse Box

Alan Johnston
Courthouse Box

RONALD LONGMORE
Clerk of the District Court

By: Grace Walton
Deputy Clerk

12 OCT 17 PM 3: 41

James C. Herndon
Alan Johnston
PIKE HERNDON STOSICH & JOHNSTON, P.A.
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ISB #1083 & 7709

Attorneys for Defendant/Appellant April Fano

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

VIANNA STIBAL, individually, d/b/a/)
THETAHEALING INSTITUE OF)
KNOWLEDGE, INC., and NATURES) Case No. CV-11-1287
PATH ,)
) **NOTICE OF APPEAL**
Plaintiffs/ Respondents,)
)
vs.)
)
APRIL FANO,)
)
Defendant/Appellant)
)
And RIGHT WAY PUBLISHING, LLC.)
)
Defendant.)

**TO: Plaintiffs VIANNA STIBAL, VIANNA STIBAL d/b/a/ THETAHEALING
INSTITUTE OF KNOWLEDGE, INC., and NATURES PATH, Attorney STEVEN
A. MEIKLE, and THE CLERK OF THE ABOVE-ENTITLED COURT:**

NOTICE IS HEREBY GIVEN, pursuant to Rule 11 of the Idaho Appellate Rules:

1. The above named Appellant, April Fano appeals against the above named Respondents to the Idaho Supreme Court from the Judgment entered in the above-entitled matter on September 20, 2012, District Judge Jon J. Shindurling presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the above stated Judgment on Appeal was a final judgment pursuant to Idaho Rule of Civil Procedure 54(b).

3. The preliminary issues on appeal are:

- a. Did the District Court err when it determined that Defendant April Fano had breached the contract between the parties?
- b. Did the District Court err in finding \$6,250.00 in contract damages against Defendant April Fano?
- c. Did the District Court err when it assessed punitive damages against Defendant April Fano?
- d. Were the punitive damages assessed against Defendant April Fano unjust or excessive under the prevailing law?

4. No order has been entered sealing any portion of the record.

5. A Reporter's transcript is requested.

6. Documents which need to be included in the Clerk's record in addition to those automatically included under I.A.R. 28 include the following:

- a. Plaintiff's Second Motion to Amend Complaint to Include Fraud Claim and Dismiss Defendant's Claim, dated April 23, 2012.
- b. Objection to Plaintiffs' Second Motion to Amend Complaint, dated May 3, 2012.

- c. Minute Entry for May 14, 2012.
- d. Stipulation to Withdraw Claims, filed June 1, 2012.
- e. All exhibits, other than depositions.

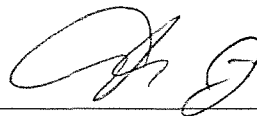
7. I certify:

- a. A copy of this Notice of Appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

David Marlow
P.O. Box 1671
Idaho Falls, ID 83403

- b. That the clerk of the district court or administrative agency has been paid the estimated fee for preparing of the reporter's transcript.
- c. That the estimated fee for preparation of the clerk's or agency's record has been paid.
- d. That the appellate filing fee has been paid.
- e. That the service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 17 day of October, 2012.



Alan Johnston
Pike Herndon Stosich & Johnston, P.A.
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of October, 2012, I caused a true and correct copy of the foregoing document to be served by first class U.S. mail, postage prepaid to the following:

Stephen A. Meikle
P.O. Box 51137
Idaho Falls, ID 83405-1137
Facsimile: (208)524-6199

U.S. Mail
 Fax
 Hand Delivered

David Marlow
P.O. Box 1671
Idaho Falls, ID 83403

U.S. Mail
 Fax
 Hand Delivered



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

VIANNA STIBAL, individually, d/b/a
THETAHEALING INSTITUTE OF
KNOWLEDGE, INC., and NATURE'S
PATH,

Plaintiffs,

v.

APRIL FANO, RIGHT WAY
PUBLISHING, LLC,

Defendants.

Case No. CV-2011-1287

OPINION AND ORDER ON MOTIONS
FOR ATTORNEY FEES

12 NOV 29 PM 2:26

7TH JUDICIAL DISTRICT COURT
BONNEVILLE COUNTY, IDAHO

I.

FACTUAL AND PROCEDURAL BACKGROUND

A Court trial was held in this matter on June 11, 2012 and June 12, 2012. This Court entered its Findings of Fact, Conclusions of Law and Order Following Bench Trial on September 20, 2012. Plaintiffs filed a Verified Memorandum of Fees and Costs on October 3, 2012. Defendant Right Way Publishing, LLC filed a Motion for Attorney's Fees on October 12, 2012. The motions for attorney fees came on for hearing before this Court on October 29, 2012 and were taken under advisement at that time.

After considering the submitted briefs and the arguments of counsel, the Court renders the following opinion.

II.

ANALYSIS

Plaintiffs argue they were the prevailing party at trial and are entitled to attorney fees pursuant to the Release Agreement which was at issue at trial. Plaintiffs request \$27,670.00 in attorney fees for 138.35 hours of work done by their counsel at an hourly rate of \$200.00. Plaintiffs further request \$1,601.70 in costs.

Defendant Right Way Publishing, LLC argues that Plaintiffs did not prevail on any counts against it and therefore Right Way Publishing is a prevailing party. Defendants argue they agreed to be joint and severally liable for one half of the attorney's fees and costs in this matter. The Defendants allege they incurred costs in this matter in the amount of \$1,264.25 and attorney fees in the amount of \$14,507.50. Therefore, Right Way Publishing requests \$7,764.24 in attorney fees and costs for this matter.

Defendants additionally argue that Plaintiffs were not the prevailing party because they only prevailed on punitive damages and one of six pled issues. Defendants further argue that Plaintiffs' requested attorney fees are unreasonable and not adequately recorded.

The determination of prevailing party is committed to the discretion of the trial court. I.R.C.P. 54(d)(1)(B); *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 718-19, 117 P.3d 130, 132-33 (2005). "[T]he prevailing party question is examined and determined from an overall view, not a claim-by-claim analysis." *Eighteen Mile Ranch, LLC*, 141 Idaho at 719, 117 P.3d at 133. Despite Defendants' arguments to the contrary, it is clear to the Court that Plaintiff was the prevailing party at trial from an overall view. The essential claim by the Plaintiffs was that

Defendant April Fano breached the Release Agreement entered into by the parties. Although the Court did not award the amount sought by Plaintiffs, Plaintiffs prevailed on that issue. The Court has reviewed Plaintiffs' requested attorney fees and finds they are reasonable. However, as Plaintiffs provide no explanation for their request, the Court will not award Plaintiffs their requested cost of \$1,085.00 for a trial transcript. Such costs do not fall under Rule 54(d)(1)(C) of the Idaho Rules of Civil Procedure as a cost as a matter of right, and Plaintiffs have not made a showing that such costs are "necessary and exceptional costs reasonably incurred" as required by Rule 54(d)(1)(D). The remaining costs requested by Plaintiffs, the filing fee and two depositions, will be awarded as costs as a matter of right pursuant to Rule 54(d)(1)(C).

In this Court's order following bench trial, the Court stated that "[i]n making this determination, it is not necessary for this Court to analyze the arguments made by Vianna regarding a breach of the implied covenant of good faith and fair dealing or any alter ego arguments regarding April and Right Way Publishing, LLC." The Court further stated that "[t]he Court simply cannot allow April to fraudulently enter into a release agreement and agree not to make certain comments or disclose certain documents when she knows that a book she helped publish and paid to print would soon be for sale to the public doing those same things." For the same reasons, this Court cannot allow Defendant April Fano to avoid attorney fees in this matter. Therefore, Defendant Right Way Publishing's request for attorney fees is denied.

III.


CONCLUSION AND ORDER

For the foregoing reasons, Plaintiff's Verified Memorandum of Fees and Costs is GRANTED in the amount of \$516.70 for costs and \$27,670.00 in attorney fees for a total of \$28,186.70. Defendant Right Way Publishing, LLC's Motion for Attorney's Fees is DENIED. Counsel for

Plaintiff shall prepare a final form of judgment.

IT IS SO ORDERED.

Dated this 14 day of November, 2012.



Jon J. Shindurling
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 30 day of November, 2012, the foregoing OPINION AND ORDER ON MOTIONS FOR ATTORNEY FEES was entered and a true and correct copy was served upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be delivered to their courthouse boxes.

Attorney for Plaintiff

Stephen A. Meikle
Advantage Legal Services
Idaho Professional Building
482 Constitution Way – Suite 203
P.O. Box 51137
Idaho Falls, Idaho 83405

Attorneys for Defendant

James C. Herndon
Alan Johnston
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O.E. Bell Center
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P.O. Box 2949
Idaho Falls, Idaho 83403

Ronald Longmore
Clerk of the District Court
Bonneville County, Idaho

by Grace Wooten
Deputy Clerk

12 OCT 25 PM 4: 1

James C. Herndon
Alan Johnston
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Idaho Falls, ID 83403-2949
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Facsimile: (208) 528-6447
ISB #1083 & 7709

Attorneys for Defendant/Appellant April Fano

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

VIANNA STIBAL, individually, d/b/a/
THETAHEALING INSTITUE OF
KNOWLEDGE, INC., and NATURES
PATH ,
Plaintiffs/ Respondents,
vs.
APRIL FANO,
Defendant/Appellant
And RIGHT WAY PUBLISHING, LLC.
Defendant.

Case No. CV-11-1287

AMENDED NOTICE OF APPEAL

**TO: Plaintiffs VIANNA STIBAL, VIANNA STIBAL d/b/a/ THETAHEALING
INSTITUTE OF KNOWLEDGE, INC., and NATURES PATH, Attorney STEVEN
A. MEIKLE, and THE CLERK OF THE ABOVE-ENTITLED COURT:**

NOTICE IS HEREBY GIVEN, pursuant to Rule 11 of the Idaho Appellate Rules:

1. The above named Appellant, April Fano appeals against the above named Respondents to the Idaho Supreme Court from the Judgment entered in the above-entitled matter on September 20, 2012, District Judge Jon J. Shindurling presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the above stated Judgment on Appeal was a final judgment pursuant to Idaho Rule of Civil Procedure 54(b).

3. The preliminary issues on appeal are:

- a. Did the District Court err when it determined that Defendant April Fano had breached the contract between the parties?
- b. Did the District Court err in finding \$6,250.00 in contract damages against Defendant April Fano?
- c. Did the District Court err when it assessed punitive damages against Defendant April Fano?
- d. Were the punitive damages assessed against Defendant April Fano unjust or excessive under the prevailing law?

4. No order has been entered sealing any portion of the record.

5. A Reporter's transcript is requested. Appellant requests the reporter's standard transcript as defined in Rule 25(c), I.A.R. Appellant requests his copy to be in electronic format.

6. Documents which need to be included in the Clerk's record in addition to those automatically included under I.A.R. 28 include the following:

- a. Plaintiff's Second Motion to Amend Complaint to Include Fraud Claim and Dismiss Defendant's Claim, dated April 23, 2012.

- b. Objection to Plaintiffs' Second Motion to Amend Complaint, dated May 3, 2012.
- c. Minute Entry for May 14, 2012.
- d. Stipulation to Withdraw Claims, filed June 1, 2012.
- e. All exhibits, other than depositions.

7. I certify:

- a. A copy of this Notice of Appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

David Marlow
P.O. Box 1671
Idaho Falls, ID 83403

- b. That the clerk of the district court or administrative agency has been paid the estimated fee for preparing of the reporter's transcript.
- c. That the estimated fee for preparation of the clerk's or agency's record has been paid.
- d. That the appellate filing fee has been paid.
- e. That the service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 25 day of October, 2012.



Alan Johnston
Pike Herndon Stosich & Johnston, P.A.
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 25 day of October, 2012, I caused a true and correct copy of the foregoing document to be served by first class U.S. mail, postage prepaid to the following:

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Facsimile: (208)524-6199

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 Fax
 Hand Delivered

David Marlow
P.O. Box 1671
Idaho Falls, ID 83403

U.S. Mail
 Fax
 Hand Delivered



**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

VIANNA STIBAL, individually, d/b/a)
 THETAHEALING INSTITUTE OF)
 KNOWLEDGE, INC., and NATURES)
 PATH,)
)
 Plaintiffs/Respondents,)
)
 vs.)
)
 APRIL FANO,)
)
 Defendant/Appellant.)
)
 and)
)
 RIGHT WAY PUBLISHING, LLC.,)
)
 Defendant.)
 _____)

Case No. CV-2011-1287

Docket No. 40427-2012

CLERK'S CERTIFICATE OF APPEAL

Appeal from: Seventh Judicial District, Bonneville County

Honorable Jon J. Shindurling, District Judge, presiding.

Case number from Court: CV-2011-1287

Order or Judgment appealed from: Judgment, entered September 20, 2012

Attorney for Appellant: Alan Johnston, Pike Herndon Stosich & Johnston
 PO Box 2949, Idaho Falls, ID 83403-2949

Attorney for Respondent: Steven A. Meikle
 PO Box 51137, Idaho Falls, ID 83405-1137

Appealed by: April Fano

Appealed against: Vianna Stibal and Natures Path

Notice of Appeal Filed: October 17, 2012

Appellate Fee Paid: Yes

Was District Court Reporter's Transcript requested? Yes – not specified

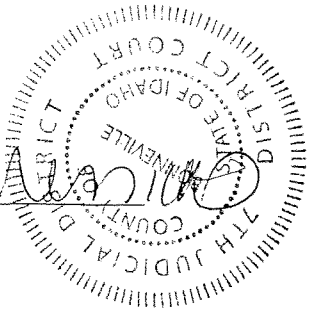
If so, name of reporter:

David Marlow

Dated: October 25, 2012

RONALD LONGMORE
Clerk of the District Court

By: 
Deputy Clerk



DISTRICT COURT
PLAINTIFF DIVISION
BOONEVILLE COUNTY, IDAHO
13 FEB 14 PM 4:09

James C. Herndon
Alan Johnston
PIKE HERNDON STOSICH & JOHNSTON, P.A.
O.E. Bell Center
151 N. Ridge, Suite 210
P.O. Box 2949
Idaho Falls, ID 83403-2949
Telephone: (208) 528-6444
Facsimile: (208) 528-6447
ISB #1083 & 7709

Attorneys for Defendant/Appellant April Fano

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

VIANNA STIBAL, individually, d/b/a/)
THETAHEALING INSTITUTE OF)
KNOWLEDGE, INC., and NATURES)
PATH,)
Plaintiffs/ Respondents,)
vs.)
APRIL FANO, RIGHT WAY)
PUBLISHING, LLC,)
Defendant/Appellant)
Case No. CV-11-1287
**SECOND AMENDED NOTICE OF
APPEAL**

**TO: Plaintiffs VIANNA STIBAL, VIANNA STIBAL d/b/a/ THETAHEALING
INSTITUTE OF KNOWLEDGE, INC., and NATURES PATH, Attorney STEVEN
A. MEIKLE, and THE CLERK OF THE ABOVE-ENTITLED COURT:**

NOTICE IS HEREBY GIVEN, pursuant to Rule 11 of the Idaho Appellate Rules:

1. The above-named Appellants, April Fano and Right Way Publishing, LLC
appeals against the above named Respondents to the Idaho Supreme Court from the Judgment

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entered in the above-entitled matter on February 12, 2013, District Judge Jon J. Shindurling presiding.

2. The above-named Appellants appeals against the above-named Respondents to the Idaho Supreme Court from the Final Judgment entered on or about February 12, 2013, District Judge Jon J. Shindurling presiding.

3. That the party has a right to appeal to the Idaho Supreme Court, and the above stated Judgment on appeal was a final judgment pursuant to Idaho Rule of Civil Procedure 54(b).

4. The preliminary issues on appeal are:

- a. Did the District Court err when it determined that Defendant April Fano had breached the contract between the parties?
- b. Did the District Court err in finding \$6,250.00 in contract damages against Defendant April Fano?
- c. Did the District Court err when it assessed punitive damages against Defendant April Fano?
- d. Were the punitive damages assessed against Defendant April Fano unjust or excessive under the prevailing law?
- e. Did the District Court err in awarding attorney fees and costs to Plaintiffs/Respondents?
- f. Did the District Court err in refusing to award attorneys' fees and costs to Right Way Publishing, LLC?

5. No order has been entered sealing any portion of the record.

6. A Reporter's transcript is requested for the trial portion of the appeal. No transcript is requested for the hearings on the additional issues relating to attorney fees and final

judgment. Appellants request the reporter's standard transcript as defined in Rule 25(c), I.A.R. Appellants request their copy to be in electronic format.

7. Documents which need to be included in the Clerk's record in addition to those automatically included under I.A.R. 28 include the following:

- a. Plaintiff's Second Motion to Amend Complaint to Include Fraud Claim and Dismiss Defendant's Claim, dated April 23, 2012.
- b. Objection to Plaintiffs' Second Motion to Amend Complaint, dated May 3, 2012.
- c. Minute Entry for May 14, 2012.
- d. Stipulation to Withdraw Claims, filed June 1, 2012.
- e. Plaintiff's Verified Memorandum of Fees and Costs, filed October 3, 2012.
- f. Defendant Right Way Publishing, LLC's Motion for Attorney's Fees, filed October 12, 2012.
- g. Affidavit of Alan Johnston in Support of Defendant Right Way Publishing, LLC's Motion for Attorney's Fees and Costs, filed October 12, 2013.
- h. Memorandum in Objection to Plaintiff's Verified Memorandum of Fees and Costs and in Support of Right Way Publishing's Motion for Attorney's Fees, filed October 12, 2012.
- i. Right Way Publishing's Memorandum of Fees and Costs, filed October 12, 2012.
- j. Opinion and Order on Motions for Attorney Fees, dated November 30, 2012.
- k. Final Judgment, dated February 12, 2013.
- l. All exhibits, other than depositions.

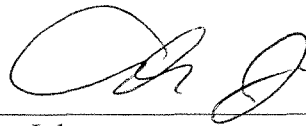
8. I certify:

- a. A copy of this Notice of Appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

David Marlow
P.O. Box 1671
Idaho Falls, ID 83403

- b. That the clerk of the district court or administrative agency has been paid the estimated fee for preparing of the reporter's transcript.
- c. That the estimated fee for preparation of the clerk's or agency's record has been paid.
- d. That the appellate filing fee has been paid.
- e. That the service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 13 day of February, 2013.



Alan Johnston
Pike Herndon Stosich & Johnston, P.A.
Attorneys for Appellant

CERTIFICATE OF SERVICE


I hereby certify that on this 13 day of February, 2013, I caused a true and correct copy of the foregoing document to be served by first class U.S. mail, postage prepaid to the following:

Stephen A. Meikle
P.O. Box 51137
Idaho Falls, ID 83405-1137
Facsimile: (208)524-6199

U.S. Mail
 Fax
 Hand Delivered

David Marlow
P.O. Box 1671
Idaho Falls, ID 83403

U.S. Mail
 Fax
 Hand Delivered



ADVANTAGE LEGAL SERVICES
Stephen A. Meikle, Attorney, P.A.
Idaho State Bar No. 2976
Idaho Professional Building
482 Constitution Way - Suite 203
Post Office Box 51137
Idaho Falls, Idaho 83405-1137
Telephone (208) 524-3333
Attorney for plaintiffs

7TH JUDICIAL DISTRICT COURT
BONNEVILLE COUNTY, IDAHO

13 MAR -5 10:58

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

VIANNA STIBAL, individually, d/b/a)
THETAHEALING INSTITUTE OF)
KNOWLEDGE, INC., and NATURES PATH,)
)
Plaintiff,)
)
vs.)
)
APRIL FANO, RIGHT WAY PUBLISHING,)
LLC,)
Defendant.)


Case No: CV-2011-1287

ORDER TO AUGMENT
RECORD TO INCLUDE
FINAL JUDGMENT

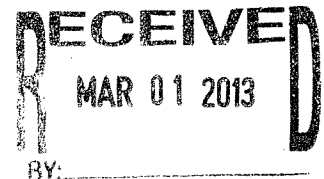
Based upon the above Stipulation and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the record be augmented to include the final judgment entered against the defendant on February 12th, 2013 in the sum of \$84,436.70.

DATED this 5 day of March, 2013.



Honorable Jon J. Shindurling
District Judge



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NOTICE OF ENTRY

I CERTIFY that I am a clerk in the above-entitled Court and that I mailed a true copy of the foregoing documents on the 5 day of March, 2013, to the following attorneys of record and/or parties;

Stephen A. Meikle
Advantage Legal Services, P.A.
P.O. Box 51137
Idaho Falls, ID 83405-1137

Alan Johnston
PIKE HERNDON STOSICH & JOHNSTON, P.A.
PO Box 2949
Idaho Falls, ID 83403-2949

Ronald Longmore
Clerk of the Court

By: Grace Walter
Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

VIANNA STIBAL, individually, d/b/a)
 THETAHEALING INSTITUTE OF)
 KNOWLEDGE, INC., and NATURES PATH,)
)
 Plaintiffs/Respondent,)
)
 vs.)
)
 APRIL FANO,)
)
 Defendant/Appellant.)
)
)
 and)
)
 RIGHT WAY PUBLISHING, INC.,)
)
 Defendant.)
 _____)

CLERK'S CERTIFICATION OF EXHIBITS

Case No. CV-2011-1287

Docket No. 40427-2012

STATE OF IDAHO)
)
 County of Bonneville)

I, Ronald Longmore, Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville, do hereby certify that the foregoing Exhibits were marked for identification and offered in evidence, admitted, and used and considered by the Court in its determination:
 please see attached sheets

- Release Agreement dated July 30, 2010
- Cashier's Check No. 0659403276 dated July 30, 2010
- Shady Healing by Lindsey R. Stock
- Articles of Organization or Right Way Publishing date July 22, 2010
- Findings of Fact/Conclusions of Law (Judge Blower)
- Printout from Webpage from Wealth of Health Website
- Estimate of costs from Sunrise Publishing
- Billing from Sunrise Publishing
- Articles of Organization of Right Way Publishing, LLC
- Printout from Vianna Stibal's Facebook page of medical records

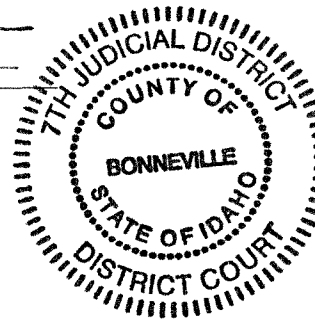
Bank records from Right Way Publishing
Reporter's Transcript from Trial June 11 & 12, 2012 (304 pages)

And I further certify that all of said Exhibits are on file in my office and are part of this record on
Appeal in this cause, and are hereby transmitted to the Supreme Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the District Court
this 1st day of February, 2013.

RONALD LONGMORE
Clerk of the District Court

Ronald Longmore
By *Linda Jackson*
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF IDAHO

VIANNA STIBAL, individually, d/b/a)	
THETAHEALING INSTITUTE OF)	
KNOWLEDGE, INC., and NATURES PATH,)	
)	
Plaintiffs/Respondent,	)	Case No. CV-2011-1287
)	
vs.	)	Docket No. 40427-2012
)	
APRIL FANO,)	
)	
Defendant/Appellant.)	
)	
and)	
)	
RIGHT WAY PUBLISHING, INC.,)	
)	
Defendant.)	
_____)	

CLERK'S CERTIFICATE

STATE OF IDAHO)
)
County of Bonneville)

I, Ronald Longmore, Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville, do hereby certify that the above and foregoing Record in the above-entitled cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules.

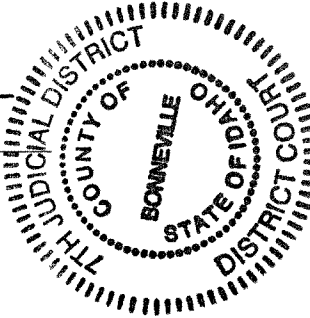
I do further certify that all exhibits, offered or admitted in the above-entitled cause, will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript (if requested) and the Clerk's Record as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand affixed the seal of the District Court this

1st day of February, 2013.

RONALD LONGMORE
Clerk of the District Court

Ronald Longmore
By: *Linda Jackson*
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF IDAHO

VIANNA STIBAL, individually, d/b/a)
 THETAHEALING INSTITUTE OF)
 KNOWLEDGE, INC., and NATURES PATH,)
)
 Plaintiffs/Respondent,)
)
 vs.)
)
 APRIL FANO,)
)
 Defendant/Appellant.)
)
 and)
)
 RIGHT WAY PUBLISHING, INC.,)
)
 Defendant.)
 _____)

CERTIFICATE OF SERVICE

Case No. CV-2011-1287

Docket No. 40427-2012

I HEREBY CERTIFY that on the 1st day of February, 2013, I served a copy of the Reporter's Transcript (if requested) and the Clerk's Record in the Appeal to the Supreme Court in the above entitled cause upon the following attorneys:

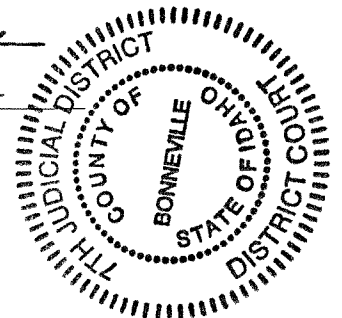
Alan Johnston
 PIKE HERNDON STOSICH JOHNSTON
 PO Box 2949
 Idaho Falls, ID 83403-2949

Stephen A. Meikle
 ADVANTAGE LEGAL SERVICES
 PO Box 51137
 Idaho Falls, ID 83405-1137

by depositing a copy of each thereof in the United States mail, postage prepaid, in an envelope addressed to said attorneys at the foregoing address, which is the last address of said attorneys known to me.

RONALD LONGMORE
 Clerk of the District Court

By: *Linda J. Peterson*
 Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF IDAHO

VIANNA STIBAL, individually, d/b/a)
 THETAHEALING INSTITUTE OF)
 KNOWLEDGE, INC., and NATURES PATH,)
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 Plaintiffs/Respondent,)
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 vs.)
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 Defendant/Appellant.)
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 RIGHT WAY PUBLISHING, INC.,)
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 Defendant.)
)
 _____)

CERTIFICATE OF SERVICE

Case No. CV-2011-1287
 Docket No. 40427-2012

I HEREBY CERTIFY that on the 1st day of February, 2013, I served a copy of the Reporter's Transcript (if requested) and the Clerk's Record in the Appeal to the Supreme Court in the above entitled cause upon the following attorneys:

Alan Johnston
 PIKE HERNDON STOSICH JOHNSTON
 PO Box 2949
 Idaho Falls, ID 83403-2949

Stephen A. Meikle
 ADVANTAGE LEGAL SERVICES
 PO Box 51137
 Idaho Falls, ID 83405-1137

by depositing a copy of each thereof in the United States mail, postage prepaid, in an envelope addressed to said attorneys at the foregoing address, which is the last address of said attorneys known to me.

RONALD LONGMORE
 Clerk of the District Court
Ronald Longmore
 By: *Linda J. DeLoe*
 Deputy Clerk

