

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-  
DADE COUNTY, FLORIDA

**IN RE: MATTER OF:**

CIVIL DIVISION  
Case No.: 2014-005737-CC26

DENISE M. SCANZIANI, ESQ. P.A.,  
Plaintiff,

vs.

MARIO JIMENEZ  
Defendant.

\_\_\_\_\_ /

**ANSWER, AFFIRMATIVE DEFENSES, AND COUNTER-CLAIM**

Defendant, MARIO JIMENEZ, answers the complaint of Plaintiff, DENISE M. SCANZIANI, ESQ. P.A., responding to each numbered paragraph thereof, counterclaiming, and stating as follows:

1. Admitted for jurisdictional purposes only.
2. Admitted for jurisdictional purposes only.
3. Without knowledge.
4. Admitted.
5. Admitted.
6. Denied.
7. Denied.
8. Without knowledge.

**COUNT I**  
**BREACH OF CONTRACT**

9. Admitted.
10. Denied.
11. Denied.
12. Denied.

13. Denied.

**COUNT II**  
**ACCOUNT STATED**

14. Admitted.

15. Denied.

16. Denied.

17. Denied.

**COUNT III**  
**OPEN ACCOUNT**

18. Admitted.

19. Denied.

**COUNT IV**  
**UNJUST ENRICHMENT**

20. Admitted.

21. Denied.

22. Denied.

**COUNT V**  
**QUANTUM MERUIT**

23. Admitted.

24. Denied.

25. Denied.

**AFFIRMATIVE DEFENSES**

26. Failure of Consideration: A contract is only enforceable by Plaintiff if Plaintiff performs his part of the bargain, which Plaintiff did not do by misrepresenting information both in writing and verbally.

27. Equitable Estoppel: The defendant asserts that the Plaintiff specifically represented to the defendant the following on the third paragraph of second page of

retainer agreement which stated: "The firm [Plaintiff] will bill you [Defendant] on a monthly basis." This never occurred, except for the final bill, in clear breach of written contract, and verbal agreement to keep Defendant informed of when retainer was approaching the minimum balance, as it is also customary in any such cases. The defendant reasonably relied upon this representation to his detriment and now asks the court to decide this case if this representation were true.

28. Unjust Enrichment: The defendant asserts that the Plaintiff is seeking to recover more than Plaintiff is entitled to recover in this case, and award of the judgment sought by the Plaintiff would unjustly enrich the Plaintiff.

29. Satisfaction: The Defendant asserts that the account, debt, or contract has already been satisfied, the Plaintiff having received full satisfaction as the Defendant has paid all that is owed under the agreement, as attested by Billing Details provided by Plaintiff.

30. Laches: For an unreasonable time before filing suit, Plaintiff knew the alleged facts giving rise to her claim. Plaintiff had a reasonable opportunity to file sooner, but Plaintiff unreasonably delayed letting the statute of limitation run out to deliberately prevent Defendant from filing a malpractice lawsuit. Furthermore, Plaintiff had already obtained an order dated September 3<sup>rd</sup> 2014, Exhibit A, wrongly granting her to charge a lien for the same charges she is filing suit for here. Defendant did not know Plaintiff would file suit sooner or later, and Defendant would be prejudiced if Plaintiff is allowed to proceed.

31. Unclean Hands: The Defendant asserts that the Plaintiff has committed a wrongdoing, and this lawsuit is attempting to benefit this wrongdoing.

32. Breach of Contract by Plaintiff : The Defendant asserts that the Plaintiff failed to comply with the terms of the contract by not complying with third paragraph of second page of retainer agreement which stated that "The firm [Plaintiff] will bill you

[Defendant] on a monthly basis," which Plaintiff never did, except for the final bill, in clear breach of written contract, and in further violation of verbal agreement and mutual understanding to keep Defendant informed of when the retainer was approaching a minimum balance, as it is also common practice in such legal cases. As soon as Defendant found out about excessive charges, he objected, not only verbally but in writing, Exhibit B.

33. No Breach by Defendant: The defendant asserts that he performed all duties owed under the contract other than any duties which were prevented or excused, and therefore never breached the agreement.

### **COUNTER-CLAIM**

34. On or around January 3, 2013 the Defendant, MARIO JIMENEZ, entered into a retainer agreement (hereinafter the "Contract") with the Plaintiff, DENISE M. SCANZIANI, ESQ. P.A., in Miami-Dade County, Florida wherein the Defendant hired the Plaintiff as his attorney.

35. The third paragraph of second page of retainer agreement states: "The firm will bill you on a monthly basis."

36. The firm refers to Plaintiff, DENISE M. SCANZIANI, ESQ. P.A.

37. The firm did not bill Defendant on a monthly basis.

38. Plaintiff had a verbal agreement and a mutual understanding to keep Defendant informed of when the retainer was approaching a minimum balance.

39. It is common practice to keep clients abreast of billings, especially when a retainer amount approaches a minimum balance.

40. Plaintiff obtained an order dated September 3<sup>rd</sup> 2014, Exhibit A, granting her to charge a lien for the same services she is filing lawsuit for here.

41. Award of judgment sought by the Plaintiff will unjustly enrich the Plaintiff.

42. Not billing the Defendant on a monthly basis constituted a breach of contract.

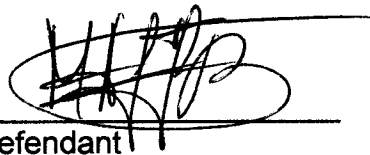
43. Defendant suffered substantial money damages as a direct result of Plaintiff's lien and filing of this lawsuit.

**WHEREFORE**, Defendant, MARIO JIMENEZ, demands judgment for money damages against Plaintiff, and requests reimbursement of attorney fees and cost, and time lost from work pursuing this lawsuit, together with such other and further relief as the Court may deem reasonable and just under the circumstances, and further Defendant demands a jury trial on all issues so triable.

**DATED** this 8<sup>th</sup> of December, 2014

Respectfully submitted,

By: \_\_\_\_\_



Signature of Defendant  
Mario Jimenez, M.D.

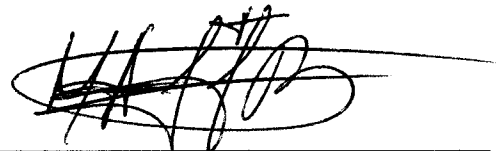
### CERTIFICATE OF SERVICE

I certify that a copy of this document was emailed to the person(s) listed below on December 8<sup>th</sup>, 2014.

DENISE MARTINEZ SCANZIANI, Esq.  
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DENISE M. SCANZIANI, ESQ., P.A.  
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Miami, Florida 33186  
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(T) (305) 274-9033 (F) (305) 274-9034



Signature of Defendant  
Mario Jimenez, M.D.

*Pro Se*

12901 SW 66 Terrace Drive, Miami, FL 33183

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY,  
FLORIDA

IN THE MATTER OF:  
MARIO JIMENEZ, Father

FAMILY DIVISION  
CASE NO: 11-21207 - FC-48

KAREN WIZEL, Mother

JUVENILE DIVISION  
CASE NO: D13-15193A-B (D048)

M. J-W, a Minor

DOMESTIC VIOLENCE DIVISION  
CASE NO: 12-17840 FC 48  
12-17838 FC 48  
11-10881 FC 48

K. J-W, a Minor

UNIFIED FAMILY COURT (48)

FILED FOR RECORD  
2013 SEP -3 PM 4:00  
HARVEY RUYIN  
CLERK, CIRCUIT COURT  
MIAMI-DADE COUNTY, FLORIDA

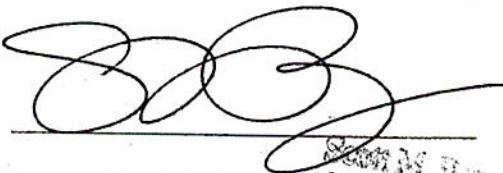
**ORDER ON NOTICE AND CLAIM OF ATTORNEY'S CHARGING LIEN**

THIS CAUSE having come before the Court upon the Notice and Claim of Attorney's Charging Lien, and the court having heard argument of counsel, being otherwise fully advised in the premises, it is hereupon:

ORDERED AND ADJUDGED that said Motion be, and the same is hereby:

1. Granted.
2. The Charging Lien in the amount of \$10,499.78 is granted in favor of Denise M. Scanziani, Esq., P.A.
3. The final judgment shall reserve jurisdiction to adjudicate the attorney's charging lien.

DONE AND ORDERED in Chambers at Miami Dade County, Florida this 3<sup>rd</sup> day of September, 2013.



Denise M. Scanziani  
Circuit Court Judge

cc: Denise M. Scanziani Esq.,  
Mario Jimenez, Father, 12901 SW 66 Terrace, Miami, FL 33186, [Marioj01@yahoo.com](mailto:Marioj01@yahoo.com)  
Ana Morales, Esq., [amorales@ramlawus.com](mailto:amorales@ramlawus.com), [receptionist@ramlawus.com](mailto:receptionist@ramlawus.com)

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**Subject:** Dear Denise,

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**From:** Mario Jimenez (marioaj01@yahoo.com)

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**To:** Denise@scanziani.com; jessica@scanziani.com; marie@scanziani.com;

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**Date:** Sunday, August 25, 2013 3:22 PM

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Dear Denise,

I am in receipt of an invoice dated 8/6/13. I was very surprised that your offices waited so long to send me a bill and that the bill was for such a large amount. I surely was not prepared for it. I believe that your offices were responsible to keep me abreast of these charges, and not let it accrue to the amount that it did. You very well know my current financial situation, and that I am not in a position to pay such a large amount of money at this time.

You also know the abuse my children have suffered, and that it is in your hands to help them. The attorneys who helped perpetuate the abuse of my children did it pro bono, but the ones that can save the them, refuse to do so because of Mammon. As the Bible teaches us, "the love of Mammon is the root of all evil" (1 Timothy 6:10).

I have gone through all my savings, and almost maxed out my credit card. I have given it all to protect my children. I have filled the jars with water to the rim, now, I will leave to Jesus to covert them into wine, at his time, "for my God shall supply all my needs according to his riches in glory by Christ Jesus" (Philippians 4:19).

Thank you for all your help. God bless you and your family.

Mario A. Jimenez Jerez, M.D., B.S.E.E.

<https://www.facebook.com/mario.jimenezjerez?fref=ts>