

IN THE CIRCUIT COURT OF THE
15th JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

SMOLINSKI AND ASSOCIATES, INC.
d/b/a PALM COAST TRAVEL,

Plaintiff,

-against-

CHRISTOPHER J. ELLIOTT and PETER LAY,

Defendants.

50 2009 CA 043673 XXXXMB
CASE NO. _____

CIVIL ACTION SUMMONS

Carissa Kent
01/09/10 8:30pm
2008-1220-1620

Ad

THE STATE OF FLORIDA
To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and a copy of the Complaint on:

Christopher J. Elliott
760 Sybilwood Circle
Winter Springs, FL 32708-3735

Each Defendant is required to serve written defenses to the complaint or petition on Plaintiff's Attorneys, whose names and address are as follows: **Daniel S. Newman, P.A., Broad and Cassel, 2 South Biscayne Boulevard, Suite 2100, Miami, Florida 33131** within 20 days after service of this summons on that Defendant(s), exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that Defendant(s) for the relief demanded in the complaint or petition.

DEC 29 2009

DATED on _____, 2009

Sharon R. Bock
As Clerk of the Court

NAKIA WILSON

By: _____
As Deputy Clerk

SHARON R. BOCK
Clerk & Comptroller
P.O. Box 488
West Palm Beach, Florida
33402

IMPORTANT

A lawsuit has been filed against you. You have 20 calendar days after this Summons is served on you to file a written response to the attached Complaint with the Clerk of the Court. A phone call will not protect you; your written response, including the case number given above and the names of the parties, must be filed if you want the Court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money and property may thereafter be taken without further warning from the Court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or legal aid office (listed in the phone book).

If you choose to file a written response yourself, at the same time you file your written response to the Court, located at:

Circuit Court, 15th Judicial Circuit
Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, FL 33401

You must also mail or take a copy of your written responses to the "Plaintiff/Plaintiff's Attorney".

IMPORTANTE

Usted ha sido demandado legalmente. Tiene 20 días, contados a partir del recibo de esta notificación, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefónica no lo protegerá. Si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el número del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, podría perder el caso y podría ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guía telefónica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, deberá usted enviar por correo o entregar una copia de su respuesta a la persona denominada abajo como "Plaintiff/Plaintiff's Attorney" (Demandante o Abogado del Demandante).

IMPORTANT

Des poursuites judiciaires ont été entreprises contre vous. Vous avez 20 jours consécutifs à partir de la date de l'assignation de cette citation pour déposer une réponse écrite à la plainte ci-jointe auprès de ce tribunal. Un simple coup de téléphone est insuffisant pour vous protéger. Vous êtes obligé de déposer votre réponse écrite, avec mention du numéro de dossier ci-dessus et du nom des parties nommées ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne déposez pas votre réponse écrite dans le délai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent être saisis par la suite, sans aucun préavis ultérieur du tribunal. Il y a d'autres obligations juridiques et vous pouvez requérir les services immédiats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez téléphoner à un service de référence d'avocats ou à un bureau d'assistance juridique (figurant à l'annuaire de téléphones).

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

SMOLINSKI AND ASSOCIATES, Inc., d/b/a
PALM COAST TRAVEL,

Plaintiff,

50 2009 GA 043673 XXXX

v.

GENERAL DIVISION

CHRISTOPHER J. ELLIOTT and PETER LAY

AJ

Defendants.

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COMPLAINT

SEP 28 2009

Plaintiff, Smolinski and Associates, Inc. d/b/a Palm Coast Travel (Palm Coast"), sues
Defendants Christopher J. Elliott ("Elliott") and Peter Lay ("Lay"), and for its complaint states:

SHARON R. BOCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

PARTIES

1. Plaintiff Palm Coast is a Florida Corporation, with its office located in Palm Beach County, Florida. Palm Coast has been in the travel business since 1987.
2. Defendant Elliott, an individual, upon information a belief is a Florida resident.
3. Defendant Lay, an individual, is a resident of California who committed torts against Plaintiff Palm Coast which accrued in Palm Beach County Florida.

JURISDICTION AND VENUE

4. Jurisdiction is proper in this Court because this is an action that seeks, among other remedies, equitable relief, and Plaintiff's claim for damages exceeds \$15,000, exclusive of interests and costs, as a result of Defendants' tortious actions directed against Palm Coast in this Circuit.

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5. Personal jurisdiction over Elliott is proper because he is a Florida resident.

6. Personal jurisdiction over Lay is proper because, as detailed in this Complaint, he committed tortious acts within this state. Lay willfully directed his actions toward this State, in seeking to harm Palm Coast, a Florida corporation. In addition, Lay's communications were purposefully directed at Palm Coast in Florida, and were intended to harm Palm Coast's business in Florida, by among other goals, influencing persons in Florida to take adverse action against Palm Coast.

7. Venue is proper in this Court because Palm Coast's principal place of business is located in this Circuit, and Defendants' tortious conduct resulted in harm to Palm Coast in this Circuit. As a result, the causes of actions asserted in the Complaint accrued in this Circuit.

FACTS COMMON TO ALL COUNTS

Palm Coast has been in the travel business for over two decades

8. Palm Coast is a seller of travel, and therefore, its business relies primarily upon bookings of, among other things travel packages and cruises. Palm Coast customers may utilize its services primarily by making travel arrangements online through its website, Smartcruiser.com, which was established in 1999.

9. Palm Coast has been in business since 1987. Throughout those twenty-two years, Palm Coast, through the efforts of its Chief Executive Officer and shareholder Lee Smolinski, cultivated relationships in the travel industry with, among other entities, cruise lines. Palm Coast also maintains relationships with other major travel providers.

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10. Palm Coast has cultivated such relationships through continuous, high-quality customer service and sales efforts, which have resulted in substantial bookings and repeat business.

11. Palm Coast is one of the largest sellers of cruises in the United States.

12. Until Defendant Lay started his efforts against Palm Coast relating to his dissatisfaction with Palm Coast's attempts to accommodate him, Palm Coast had an "A-" rating with the Better Business Bureau. The rating is now a "B+."

13. Consistent with industry practice, Palm Coast includes travel protection among the options a booking customer may include when purchasing a cruise. When purchasing a cruise, a customer may, at his or her option, choose to acquire travel protection provided by a third party, against the risk that a trip is cancelled or interrupted.

Travel Protection

14. If a covered event causes a customer's travel to be interrupted or cancelled, the travel protection provides for reimbursement of covered expenses, such as non-refundable trip payments.

15. Because the travel protection compensation, in the event of interruption or cancellation, is provided by a third-party, that third-party provider is responsible to pay legitimate claims. Palm Coast is not responsible to, nor does it ordinarily, reimburse customers in the event they assert a claim on their travel protection.

16. Palm Coast does not draft the terms of the travel protection policies or have any role in enforcing the policies' terms.

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Prime Travel Protection: A Third Party Travel Protection Provider that is not affiliated with Palm Coast

17. Around December 2007, Prime Travel Protection, a purported travel protection provider, was introduced to Palm Coast. Prime Travel Protection was headed by Jerry Watson, a well-known figure in the travel industry. Among his company's memberships were the Cruise Lines International Association, Inc. (CLIA) and the American Society of Travel Agents (ASTA) on whose website Prime Travel Protection was endorsed. In addition, a former senior vice president for one of the largest cruise lines in the world, was the V.P. of Sales for Prime Travel Protection, and served as the primary contact at Prime Travel Protection with whom Palm Coast dealt.

18. Watson represented to Palm Coast that he was properly underwritten and re-insured. Watson also represented he was "licensed in all fifty states." Watson was also well-known and highly regarded in the travel industry, and in addition, his extensive interaction with travel executives and agents of all levels gave Palm Coast confidence in the validity of his assertions regarding the products he sold.

Peter Lay Cancels His Cruise and Palm Coast Tries to Accommodate Him

19. Lay booked an Alaskan cruise through Palm Coast's website for travel from May 18, 2008 through May 25, 2008. Lay booked the cruise in November, 2007, and purchased travel protection coverage at that time.

20. In late February, 2008, Mr. Lay called Palm Coast and wanted to transfer his cruise booking from May 2008 to September 2008. However, a cruise cannot be transferred, and thus, Lay's first cruise had to be cancelled, but because he was outside the applicable penalty

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period, his deposit could have been refunded. Instead, Lay chose to book another cruise and the deposit was transferred to the new booking.

21. At Mr. Lay's request Palm Coast booked Mr. Lay on a second cruise. The re-booked cruise was to be on Holland America Line, based out of Seattle, Washington, and the ship would sail from September 21, 2008 through September 28, 2008 (the "Alaskan Cruise").

22. In late February, 2008, Mr. Lay also inquired about "transferring" the travel protection that he booked for the initial May 2008 cruise for use on the new September 2008 cruise. The travel protection purchased for the May 2008 cruise was non-refundable, however Palm Coast made an exception for Mr. Lay and provided a new policy at no cost to Mr. Lay for the September 2008 cruise.

23. On March 2, 2008, Mr. Lay directed that Palm Coast "cancel our current booking," "transfer our deposit to [the Alaskan Cruise]," and "transfer our insurance to the new cruise." The total cost of Lay's new Alaskan cruise was \$4,012.06.

24. On March 4, 2008, Mr. Lay received confirmation that travel protection coverage was confirmed at no additional charge. Mr. Lay did not take the Alaskan Cruise.

25. Lay cancelled his second Alaskan Cruise booking on September 17, 2008. At such time, the cruise line imposed a cancellation penalty of 100% of the cruise fare. However, taxes and fees were refunded to Lay's credit card account in the amount of \$323.76 and therefore, the total penalty was \$3,688.30.

26. Lay submitted a claim to Prime Travel Protection in October, 2008 in the amount of \$3,923.30 which was actually \$235 more than the cruise line imposed penalty. The claim was denied because the circumstances of his claim were deemed outside the coverage.

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Lay retaliated against Palm Coast for Prime Travel Protection's actions

27. On November 9, 2008, Mr. Lay wrote Palm Coast, stating "please pay our full costs within 7 days." Mr. Lay further stated "unless by liaison with Mr. J. Watson you can get our claim accepted and paid I will bring action against you and your firms as responsible partners in the contract and in the courts of Florida and California."

28. Mr. Lay did not stop at threats of abusive legal process to extract payment from Palm Coast. When his claim was denied because it was facially deficient, he participated in an internet campaign to tarnish Palm Coast's reputation. Without fully disclosing the details of his interactions with Palm Coast, he regularly accused Palm Coast of a "scam." Mr. Lay's actions were improper and in bad faith.

Lay's reckless falsehoods were communicated to the State of Florida

29. Lay also recounted his incomplete and/or false statements to the State of Florida Department of Financial Services, in support of a customer complaint against Palm Coast. At the time of that complaint, there was no pending judicial or administrative proceeding against Palm Coast.

30. Lay also filed a claim with the State of Florida, which contained false, and/or reckless inaccurate allegations, including that he paid "\$4012.06," for "travel insurance" on November 16, 2007, and March 6, 2008.

31. Lay falsely told the State of Florida that he spent over \$4000 for travel protection, in a malicious attempt to exaggerate the losses he alleges Palm Coast caused him. He only spent \$309 on travel protection coverage that covered his cancelled May 2008 cruise. His claim

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related only to travel protection coverage, for which he paid \$309, on November 18, 2007. The \$309 premium was non-refundable, a fact that Palm Coast never concealed from Lay.

32. Lay failed to inform the State of Florida that he received a full refund of his deposit in connection with the initial May 18-25, 2008 cruise, and that Lay chose to apply the refunded deposit to a second cruise for travel for September 21-28, 2008. Thus, Lay omitted that Palm Coast twice sold him valid tickets for travel on a luxury cruise to Alaska, which he chose not to use.

33. Lay also omitted that Palm Coast arranged for him to receive a new policy, at no additional cost, to replace previously-purchased, non-refundable travel protection coverage. The new policy was to be for the Alaskan Cruise, after Lay changed his travel plans. The new cruise purchase required a new travel protection policy, which Palm Coast had provided without charging Mr. Lay.

34. Further, Lay improperly characterized the terms of his coverage alleging it should cover expenses incurred while not traveling.

35. Mr. Lay attempted to use Palm Coast's business dealings with Prime Travel Protection – not the merits of his claim – to coerce payment from Palm Coast of an amount significantly more than the cancellation penalty of \$3,688.30 imposed by the cruise line.

36. Although Mr. Lay's claim was denied by Prime Travel Protection, Palm Coast continued to work on Mr. Lay's behalf with the cruise supplier and as such was able to offer Lay full cash compensation on the cancellation penalty imposed in the amount of \$3,688.30. Lay categorically rejected this offer by Palm Coast.

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37. Lay has repeatedly sent to Palm Coast emails threatening to instigate further regulatory complaints, and encouraging allegedly dissatisfied consumers to take actions against Palm Coast if payment on his terms is not made.

Lay has stated to Palm Coast that:

I am your only official complainant in Florida.

We are two experienced international businessmen – we know the score; we can strike any deal we want

I will not accept your last offer but I am willing to make a fair settlement taking everything into consideration – I'll send it if you want

Lay portrays Palm Coast in a false light in communications to the public

38. Lay's falsehoods were directed at, among other aspects of Palm Coast's business, its reputation in the trade or industry of travel. Among other actions, Lay has written to Holland America Line, alleging that Palm Coast, through its website, has been part of "skirt[ing] the insurance state and federal overseers" and misrepresents the nature of travel protection offered through its website. In addition, Lay's communication to Holland America Line refers the cruise line to "much more detail" on Defendant Elliott's blog.

39. Lay is the author of emails circulated to members of the public that describe an investigation by the State of Florida, and purport that the recipients can expect "sparks to fly" in 2010. Among other allegations made in the emails, are statements suggesting that Palm Coast will be subject to "criminal charges," and that Palm Coast was "complicit" in criminal activities. Lay has also forwarded threatening and harassing correspondence to Palm Coast, seeking to coerce payment, upon pain of initiating a lawsuit to be tried before "seniors who will despise the bilking of millions of dollars in premiums from their peers" and who will blame Palm Coast for such alleged harms.

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Elliott Defames Palm Coast and Publishes Falsehoods

40. Elliott holds himself out to the world, via an internet publication called Elliott.org, as a travel journalist and advice columnist.

41. Elliott's site includes among its content video commentary and advice, as well as reports on developments in the travel industry. In 2008, Peter Lay began to post on Elliott's site his story of disagreement with Palm Coast.

42. In his postings and communications, Lay purported that Palm Coast had been complicit in violations of Florida law, and that Palm Coast's conduct also independently violated Florida law.

43. Elliott had been reporting on the travel protection coverage industry as part of his regular travel advice and reporting publications on Elliott.org.

44. Elliott included among his reporting recent regulatory investigations of customer complaints regarding Prime Travel Protection and Jerry Watson. Elliott's reporting included publication of false information regarding Palm Coast, which has and will continue to damage Palm Coast's business unless it is properly remedied.

45. Among the statements Elliott published were falsehoods that stated that Palm Coast had been ordered to cease doing business by the State of Florida. No such order exists, and therefore that report was false.

46. Elliott depicted Palm Coast in a false light, by stating and/or suggesting that Palm Coast had failed to properly investigate Prime Travel Protection.

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47. Further, Elliott, when purporting to “clarify” his deliberately false statement regarding the State of Florida’s investigation of travel insurance, did not fully remedy the false impression he fostered regarding Palm Coast’s role.

48. Elliott’s falsehoods were directed at, among other aspects of Palm Coast’s business, its reputation in the trade or industry of travel. Moreover, Elliott did not properly correct, clarify, or retract his falsehoods, despite proper notice.

49. All conditions precedent to bringing this action have occurred or have been waived.

COUNT I

DEFAMATION (ELLIOTT)

50. Palm Coast re-alleges and incorporates by reference paragraphs 1 through 49 above, as if fully set forth herein.

51. Elliott, with reckless disregard for the truth, published statements regarding Palm Coast on the internet, through his Elliot.org website.

52. Further, Elliott depicted Palm Coast in a false light.

53. Elliott’s recklessly inaccurate communications are manifestly malicious and actionable.

54. Elliott’s falsehoods were directed at, among other aspects of Palm Coast’s business, its reputation in the trade or industry of travel.

55. Elliott’s falsehoods have damaged, and continue to damage, Palm Coast’s business.

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WHEREFORE, Palm Coast respectfully requests, the Court order Elliott to fully retract his previous reports, remove the reports from his site and any appropriate archiving, enjoin further false publications regarding Palm Coast, and enter judgment for damages, including punitive damages, prejudgment interest, costs, and such other and further relief as the Court deems appropriate.

COUNT II

TORTIOUS INTERFERENCE (ELLIOTT)

56. Palm Coast re-alleges and incorporates paragraphs 1 through 49 above, as if fully set forth herein.

57. Upon information and belief, Elliott was aware that the audience of his Elliot.org reports included prospective and/or existing customers and business associates of Palm Coast.

58. Elliott willfully, and maliciously, published falsehoods and fostered the dissemination of disparaging remarks regarding Palm Coast's business, including, but not limited to, its business practices with regard to travel protection coverage. In doing so, Elliott interfered with Palm Coast's existing and prospective business relationships, with intent to harm Palm Coast's business.

59. Upon information and belief, Elliott encouraged and participated in inciting individuals to seek the initiation of regulatory action against Palm Coast, based on a knowingly, or recklessly obtained, understanding of Palm Coast's business relationship with Prime Travel Protection.

60. As a result, Elliott acted with malice, and without privilege, in furtherance of an intent to damage and interfere with Palm Coast's business.

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61. Elliott's dealings with Palm Coast, show he acted wantonly and with willful disregard of Palm Coast's rights, and therefore, his conduct warrants punitive damages at the appropriate stage of this proceeding.

62. Palm Coast has been damaged by Elliott's conduct.

WHEREFORE, Palm Coast respectfully requests that the Court enter judgment against Elliott for damages, including punitive damages, prejudgment interest, costs, and such other and further relief as the Court deems appropriate.

COUNT III

DEFAMATION (LAY)

63. Palm Coast re-alleges and incorporates by reference paragraphs 1 through 49 above, as if fully set forth herein.

64. Lay, with negligent and/or reckless disregard for the truth, published statements on the internet, regarding Palm Coast and its business or trade.

65. Among the statements Lay published were incomplete and/or false statements regarding his experience in purchasing travel protection through Palm Coast's website. In addition, Lay published statements suggesting that that Palm Coast and/or its CEO, Lee Smolinski, had willfully violated Florida law, including the state's criminal statutes.

66. Further, Lay depicted Palm Coast in a false light, by stating and/or suggesting that Palm Coast had failed to properly investigate Prime Travel Protection.

67. Lay's recklessly inaccurate communications are manifestly malicious and actionable.

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68. Lay's falsehoods were directed at, among other aspects of Palm Coast's business, its reputation in the trade or industry of travel.

69. Lay's falsehoods have damaged, and continue to damage, Palm Coast's business.

WHEREFORE, Palm Coast respectfully requests, the Court order Lay to fully retract his previous false statements, enjoin further false publications regarding Palm Coast, enter judgment for damages, including punitive damages, prejudgment interest, costs, and for such other and further relief as this Court deems appropriate.

COUNT IV

TORTIOUS INTERFERENCE (LAY)

70. Palm Coast re-alleges and incorporates paragraphs 1 through 49 above, as if fully set forth herein.

71. Lay published the inaccurate and/or false statements with intent to harm Palm Coast's business.

72. In addition, Lay published the statements, and undertook other efforts against Palm Coast, as a result of malice, because he had a business dispute with Palm Coast over the cruise he never took, and he was dissatisfied with Palm Coast's efforts to accommodate him.

73. Lay willfully interfered with Palm Coast's present and prospective business relationships with customers and cruise lines by publishing falsehoods regarding Palm Coast's dealings with Prime Travel Protection and its customers.

74. Lay also sought to damage Palm Coast's business relationships with current and prospective customers by seeking to have initiated regulatory action against Palm Coast based on

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a single, isolated, business disagreement he has with Palm Coast, and without providing full disclosure concerning his true and actual dealings with Palm Coast.

75. In addition, Lay has used publication of his dispute with Palm Coast to interfere with current and prospective business relationships, by furthering a false impression that Palm Coast was part of an alleged harm to him arising from Prime Travel Protection's conduct.

76. Lay's interference, because it was rooted in malice, and solely intended to damage Palm Coast, was intentional and unjustified.

77. Palm Coast has been damaged in an amount to be determined at trial by Lay's intentional and unjustified interference.

WHEREFORE, Palm Coast respectfully requests that the Court enter judgment against Lay and awarding damages, including punitive damages, prejudgment interest, costs, and such other and further relief as the Court deems appropriate.

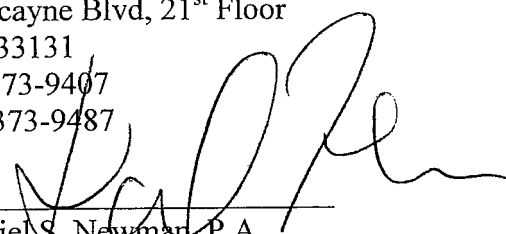
JURY DEMAND

Plaintiff hereby demands trial by jury of all issues so triable as a matter of right.

Respectfully submitted,

BROAD AND CASSEL
Attorneys for the Plaintiff
2 South Biscayne Blvd, 21st Floor
Miami, FL 33131
Tel: (305) 373-9407
Fax: (305) 373-9487

By: _____


Daniel S. Newman, P.A.
Florida Bar No. 962767
Jeffrey R. Geldens
Florida Bar No. 0673986

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CIVIL COVER SHEET

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statute 25.075. (See instructions on the reverse of the form.)

I. CASE STYLE

(Name of Court) Palm Beach County Circuit Court

SMOLINSKI AND ASSOCIATES, INC. d/b/a
PALM COAST TRAVEL,

Case #: _____

Plaintiffs,

Judge: _____

vs.

CHRISTOPHER J. ELLIOTT and PETER LAY,

Defendants.

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CLERK & COMPTROLLER

II. TYPE OF CASE

(Place an x in one box only. If the case fits more than one type of case, select the most definitive.)

Domestic Relations	Torts	Other Civil
<input type="checkbox"/> Simplified dissolution	<input type="checkbox"/> Professional Malpractice	<input type="checkbox"/> Contracts
<input type="checkbox"/> Dissolution	<input type="checkbox"/> Products liability	<input type="checkbox"/> Condominium
<input type="checkbox"/> Support – IV-D	<input type="checkbox"/> Auto negligence	<input type="checkbox"/> Real property/Mortgage foreclosure
<input type="checkbox"/> Support – Non IV-D	<input type="checkbox"/> Other negligence	<input type="checkbox"/> Eminent domain
<input type="checkbox"/> URESA – IV-D		<input checked="" type="checkbox"/> Other
<input type="checkbox"/> URESA – Non IV-D		
<input type="checkbox"/> Domestic violence		
<input type="checkbox"/> Other domestic relations		

III. Is Jury Trial Demanded in Complaint?

Yes

No

Dated: December 22, 2009

SIGNATURE FOR ATTORNEY FOR PARTY INITIATING ACTION