

IN THE CIRCUIT COURT OF THE  
SEVENTH JUDICIAL CIRCUIT,  
IN AND FOR FLAGLER COUNTY, FLORIDA

CASE NO: 2021 CA 000304

M.D.,

Plaintiff,

v.

GERARD ABATE, M.D.,

Defendant.

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**MOTION FOR DEFAULT FINAL JUDGMENT ON LIABILITY AND  
TO SET JURY TRIAL ON DAMAGES**

COMES NOW, Plaintiff, M.D., by and through her undersigned counsel, and pursuant to Fla. R. Civ. P. 1.500(e), hereby files this Motion for Default Final Judgment on Liability and to Set Jury Trial on Damages, and states as follows:

1. This case arises from egregious offenses committed by Defendant Gerard Abate, M.D., in connection with a dating relationship that he fraudulently-induced with Plaintiff. In the process, Dr. Abate committed sexual battery and aggravated battery against Plaintiff; exposed her to a sexually-transmitted disease without giving legally required notice to Plaintiff; poisoned her with date rape drugs; and committed rape and sexual assault by deception by lying to Plaintiff about his marital status, causing her to unwittingly participate in an adulterous relationship. *See generally*, Compl. ¶¶ 5, *et seq.*

2. Defendant Gerard Abate, M.D., was duly served with this lawsuit but has failed to respond timely to the Complaint with the filing of an answer or motion to dismiss, has failed to defend this action in any other manner, and has otherwise failed to appear in this action in any

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manner (whether personally or through counsel.) In accord, a Clerk's Default was entered against him on January 24, 2022.

3. Since entry of the Clerk's Default against him, Defendant Abate has still not appeared in this action personally or through counsel, nor has he attempt to defend himself from Plaintiff's claims in any manner.

4. The undersigned attorneys for Plaintiff have received no out-of-court communications from Defendant Abate or any attorney acting on his behalf regarding this litigation and the disputes from which it arises.

5. It is affirmatively known that Defendant Abate has, at all times, had the capacity to appear and participate in these proceedings. He participated with counsel in other litigation in this Circuit during the same time that the instant litigation has been pending. See, *In re: the Marriage of Gerard Abate and Lynda G. Abate*, In the Circuit Court of the Seventh Judicial Circuit, in and for Flagler County, Florida, Case No. 2021-DR-000567.

6. Rule 1.500(e), Florida Rules of Civil Procedure, authorizes this Court to enter a final judgment after default. "The effect of a default, such as the one entered against [the plaintiff] in this case, is that a defendant admits to all well-pleaded allegations of a complaint, including a plaintiff's entitlement to liquidated damages." *Ciotti v. Hubsch*, 302 So. 3d 497, 499 (Fla. 5<sup>th</sup> DCA 2020). Accordingly, the factual allegations in the Complaint, admitted by Defendant Abate via the default, conclusively establish Plaintiff's claims and warrant entry of a default judgment on liability against Defendant.

7. As appears on the face of the Complaint, Plaintiff is seeking non-liquidated damages, including emotional damage and mental health harm, pain and suffering, mental anguish, aggravation of pre-existing mental health conditions and harm, loss of capacity for the enjoyment of life, and past and future mental health and medical expenses. As such, Plaintiff is entitled to a jury trial to ascertain those damages. Fla. R. Civ. P. 1.500(e). *See also, DYC Fishing, Ltd. v. Martinez*, 994 So.2d 461 (Fla. 3d DCA 2020); *Specialty Solutions, Inc. v. Baxter Gypsum & Concrete, LLC*, 325 So. 3d 192 (Fla. 5th DCA 2021).

WHEREFORE, based on the foregoing and such other matters as may be adduced at a hearing on this motion, Plaintiff respectfully requests that this Court enter default judgment on liability against Defendant Gerard Abate, M.D., as to all counts of the Complaint and set a jury trial for determination of Plaintiff's damages.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 21, 2022, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court via the Florida Courts E-Filing Portal , which will serve a copy by email on all counsel of record. A copy of this motion was not sent to Defendant Gerard Abate, M.D., because he is in default and service upon him is not required.

*/s/ Michael Dolce*  
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