

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. \_\_\_\_\_

H.E.R.O., Inc., a Tennessee corporation,  
And PROMISECARE PHARMACY, LLC,  
a Tennessee limited liability company,

Plaintiffs

v.

IDA C. SELF, an individual

Defendant.

\_\_\_\_\_ /

**COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF**

Plaintiffs, H.E.R.O., Inc. (“Hero”) and PromiseCare Pharmacy, LLC (“PromsieCare”) (collectively, “Plaintiffs”) hereby sue Defendant IDA C. SELF (“Self” or “Defendant”), and allege:

**NATURE OF THE ACTION**

1. This is an action seeking a declaration under 28 U.S.C. § 2201 that Plaintiffs are the owner of, and have the right to use, their highly successful “H.E.R.O.” diabetes management education program in the face of claims and allegations made by a former employee. This is also an action for injunctive relief and tortious interference.

**THE PARTIES**

2. Plaintiff Hero is a corporation duly organized under the laws of the State of Tennessee, having an office at 1930 Harrison Street, Suite #606, Hollywood, FL 33020.

3. Plaintiff PromiseCare is a corporation duly organized under the laws of the State of Tennessee, having an office at 605 Bakertown Rd., Antioch, TN 37013.

4. Upon information and belief, Defendant is an individual residing in the State of Tennessee with an address 3435 Hamberton Circle, Murfreesboro, TN 37128, and has been *sui juris* at all times relevant hereto.

### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202, as a declaratory judgment action arising under the copyright laws of the United States as set forth in the Copyright Act, 17 U.S.C. § 101, *et seq.* This Court has subject matter jurisdiction to the related claims pursuant to the doctrine of supplemental jurisdiction, as codified in 28 U.S.C. § 1367, as they are so related to the claims in this action over which the Court has subject matter jurisdiction that they form part of the same case and controversy.

6. This Court has personal jurisdiction over Defendant, upon information and belief, because Defendant has engaged in substantial and not isolated activities within this State, including activities in this State related to her employment with Plaintiff Hero, which is headquartered in this State. Defendant had made numerous trips to this State in her capacity as an employee of Plaintiffs and directed communications giving rise to this action into this State.

7. Venue is proper in this district under 28 U.S.C. §§1391(b), 1391(c) because Defendant is subject to personal jurisdiction in this District and/or because a substantial part of the acts and events giving rise to the controversy occur in this District.

## **GENERAL ALLEGATIONS**

8. Hero provides healthcare education services to the public, including educational services relating to the management of diabetes by patients and their caregivers.

9. On or about March 2010, Hero, in partnership with PromiseCare, began development of a new curriculum for training patients and service providers in methods of proper diabetes management.

10. On or about April 16, 2010, Plaintiffs hired Defendant, who had prior experience as a diabetes educator, as a Diabetic Program Director. The employment contract, signed by Defendant and an officer of Plaintiffs, clearly spelled out that “[a]ll programs, products and services developed” during Defendant’s employment would be the property of Plaintiffs.

11. Plaintiffs went on to develop a highly successfully diabetes education program (“the Program”), including written materials, lessons plans, PowerPoint slides, multimedia presentations, methodologies, and the standards and procedures which are required for a program of this kind to become certified. Numerous employees of Plaintiffs, including Defendant, worked on the development of the Program and its constituent components as part of their job duties.

12. On October 31, 2011, Defendant gave notice of her resignation, effective November 30, 2011, and did ultimately terminate her employment on that date.

13. Subsequent to Defendant’s departure, disputes have arisen between Defendant and Plaintiffs with regards to monies owed to Defendant.

14. In the midst of discussions of this dispute, Defendant has recently taken the position that the Program is comprised of work created by her prior to her employment with Plaintiffs and that such work belongs to Defendant.

15. Upon information and belief, Defendant has contacted Plaintiffs' business associates and has made unwarranted claims disparaging Plaintiffs and their ownership of the Program.

16. All conditions precedent to the institution of this action have been waived, performed, or have occurred.

17. Plaintiffs have retained the undersigned counsel to represent them in this action and they are obligated to pay them a reasonable fee for their services.

**COUNT I**  
**DECLARATORY RELIEF UNDER 28 U.S.C. § 2201**

18. Plaintiffs reallege the allegations set forth in paragraphs 1 through 17 above as if fully set forth herein.

19. This is an action for declaratory relief under 28 U.S.C. § 2201.

20. Plaintiffs are the owners of the Program and the copyrights in all works of authorship related thereto. Plaintiffs own the copyright to, and have the right to use, any Program works of which Defendant is an author by virtue of the work-made-for-hire-doctrine and/or the express provisions of their contract with Defendant.

21. As a result of the Defendant's allegations, an actual case or controversy exists between the parties as to whether Plaintiffs are the owners to the copyrights of the works that comprise the Program, and as to whether they may use their own Program.

22. Based on the Defendant's written allegations, Plaintiffs have a reasonable apprehension that they will be sued for copyright infringement and related claims, and that Plaintiffs' rights to the Program and the copyrights thereto will be furthered injured.

23. If this Court declares that Plaintiffs own and have the right to use the Program and its constituent works, then Defendant should be enjoined from further threats or public statements to the contrary.

**COUNT II**  
**TORTIOUS INTERFERENCE**

24. Plaintiffs reallege the allegations set forth in paragraphs 1 through 17 above as if fully set forth herein.

25. This is an action for tortious interference.

26. Contracts and advantageous business relationships exist between Plaintiffs and their associates.

27. Upon information and belief, Defendant had knowledge of these contracts and advantageous business relationships.

28. Upon information and belief, Defendant, without justification or privilege, has intentionally and unjustifiably interfered with these contracts and relationships by disparaging Plaintiffs and claiming ownership of Plaintiffs' Program.

29. As a direct and proximate result, Plaintiffs have suffered damages in an amount to be proven at trial and are threatened with irreparable injury.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs demand judgment against Defendant, and the Court's entry of an order:

a. declaring that Plaintiffs are the owners of the Program and the copyrights in the constituent works of the Program;

b. declaring that Plaintiffs have the exclusive right to use the Program and its constituent works;

c. enjoining Defendant from disparaging, threatening or taking any other action to harm Plaintiffs or to interfere with their rightful use of the Program and its constituent works, or with their registration of such works, or from tortiously interfering with Plaintiffs contractual or advantageous relationships, or from claiming ownership over the Program or its constituent works;

d. awarding Plaintiffs damages;

e. awarding Plaintiffs' reasonable attorneys' fees, costs and expenses in this action;

f. requiring Defendant to disclose all actions they have taken adverse to Plaintiffs;

g. retaining jurisdiction to award further damages for all additional adverse conduct thereby disclosed, and

h. granting Plaintiffs such other and further relief as this Court deems just and proper.

Dated: January 9, 2012

Respectfully submitted,

**ESPINOSA | TRUEBA, PL**

By: s/ Michael E. Tschupp

Jorge Espinosa, Esq.  
Florida Bar No. 779032  
[jespinosa@etlaw.com](mailto:jespinosa@etlaw.com)  
3001 S.W. 3<sup>rd</sup> Avenue  
Miami, FL 33129  
Michael Tschupp, Esq.  
Florida Bar No. 34656  
[mtschupp@etlaw.com](mailto:mtschupp@etlaw.com)  
Tel: 305-854-0900  
Fax: 305-285-5555  
*Counsel for Plaintiffs*