

COMPLAINT

TO THE HONORABLE COURT:

COMES NOW, the plaintiff Edwin J. Prado Galarza (hereinafter “Mr. Prado” or “the plaintiff”), represented by the undersigned counsel and respectfully states, alleges, and requests as follows:

JURISDICTION AND VENUE

1. The Honorable Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) as the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and is wholly between citizens of different states.
2. The Honorable Court has personal jurisdiction over the known defendant because it is a Delaware corporation authorized to conduct business in the State of Florida and has conducted business within the State of Florida.
3. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because the events or omissions giving rise to the plaintiff’s claims occurred within this judicial district.

DEMAND FOR JURY TRIAL

4. The plaintiff invokes his Seventh Amendment right to a jury trial on all issues triable by a jury as the value in controversy exceeds \$20. See U.S. Const. amend. VII (“In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.”); see *a/so* Fed. R. Civ. P. 38.

THE PARTIES

5. The plaintiff, Edwin J. Prado Galarza, is a resident and citizen of Puerto Rico. His postal address is as follows: 403 Calle Del Parque, Suite 8, San Juan, Puerto Rico 00912.

8. The unknown defendant, insurer A, is an insurance company with the capacity to sue and be sued that issued a policy with insurance coverage for ExamSoft and whose name and principal place of business is currently unknown to the plaintiff.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

9. Mr. Prado is a well-known attorney in Puerto Rico and has practiced law for twenty-eight (28) years primarily in New York and Puerto Rico, and more recently in the State of Florida. He is the managing partner of Prado, Núñez and Associates, C.S.P. and has worked as an Associate Professor at the University of Puerto Rico for twenty-eight (28) years. He is currently the President of the Puerto Rico Bar Association for the State of Florida. Mr. Prado has represented high-profile clients in the entertainment industry and his name and reputation have been highlighted by the media and legal peers.
10. Mr. Prado paid ExamSoft money to download and use their software to take the essay portion of the Florida Bar's admissions test administered in July of 2017 in Tampa, Florida.
11. Mr. Prado completed the essay portion of the examination within the 3-hour time frame permitted by the Florida Board of Bar Examiners (hereinafter "FBE").
12. On August 11, 2017, Mr. Prado received a letter from the FBE notifying him that ExamSoft had notified it that the recorded time on Mr. Prado's exam platform exceeded the time limit by 1 minute and 4 seconds.
13. The FBE requested an explanation for the alleged transgression and notified Mr. Prado that his grades could be impounded pending the result of the investigation pursuant to Rule 4-62.1 of the Rules of the Supreme Court Relating to Admissions to The Bar.

notified Mr. Prado that the ExamSoft activity log showed that he added 42 characters on the essay portion of the examination after the time to complete the examination had elapsed. The FBE letter further directed Mr. Prado to appear at the FBE's October 2017 hearing.

16. The allegations raised by the FBE based on the ExamSoft records caused Mr. Prado grave consternation despite his categorical denial of any impropriety or unethical conduct on his part.
17. The mere allegation of dishonesty in an examination of this nature entails serious predicaments for the applicant that could derail attempts to obtain licenses to practice law in Florida and other states and possibly lead to disciplinary action in those jurisdictions where the applicant is already licensed.
18. The essence of the allegations suggested by the ExamSoft activity records was that Mr. Prado, who has enjoyed an unblemished legal career for the past 28 years, cheated on the Florida Bar Examination.
19. The frivolous allegations leveled against Mr. Prado as a result of the ExamSoft records put his professional certifications, professional career, and reputation in the legal community and with his clients in jeopardy.
20. As previously alluded to, Mr. Prado has been an associate professor for the University of Puerto Rico for 28 years and will be retiring soon. Yet, the accusation by ExamSoft equates to academic dishonesty that would have resulted in his firing.
21. As a result of the flawed report issued by ExamSoft, Mr. Prado was precluded from having access to his examination results and was required to undergo an investigation that would focus on the allegation that he cheated on the examination by exceeding the applicable time constraints for the essay portion.

- Forensics (hereinafter "the expert") who prepared an expert report. Exhibit 1.
24. In order to prepare the report, the expert examined the laptop computer Mr. Prado used for the exam. See *Id.* at p. 2. The laptop computer ran on a Windows operating system.
25. The expert found that the ExamSoft software caused two crashes of one of the laptop's native software programs "that manages multiple Windows processes and services including network connections and Windows Time Service. Once [said program] crashes, Windows become unstable. That instability can cause other components to fail in unpredictable manners. Once [said program] crashes, information from the System time and Clock cannot be relied upon." *Id.*
26. "ExamSoft has a 'Time Limit' enforcement function built in, but that function was set to be OFF by default /test administrator. That function should be set to 'ON' for timed tests such as Bar Exam. This setting is ONLY configurable by the Test Administrator, not by the user." *Id.* (emphasis in original).
27. As it turns out, the computer went into "suspend mode" on two separate occasions at the exact same times that the program crashed. *Id.* at pp. 2-3. The ExamSoft software "was the most likely cause as it was active right before the . . . crash." *Id.*
28. "Because the Suspend/Sleep function is heavily dependent on the system time/clock, the accuracy of the system time/clock is no longer valid as evidenced by the random triggering of system Suspend/Sleep." *Id.* at p. 3.
29. "Given what the logs indicate, it is highly probable that the some combination of ExamSoft algorithms and/or use of system resources (time API, system interrupt, etc.) are flawed or faulty, or misconfigured." *Id.*
30. As it was ExamSoft that created the system instability and caused Mr. Prado's computer to become unstable, it was impossible to guarantee the correct amount

or the Ethics Committee of the Florida Bar that would tend to suggest that Mr. Prado may have cheated on the exam.

33. Despite there being thousands of other test takers and dozens of proctors present during this examination, there is not a single person who witnessed Mr. Prado cheat on the exam.

34. Moreover, it would be illogical for Mr. Prado to jeopardize his already prominent career and reputation over an extra minute on a 2-day exam.

35. Although Mr. Prado prevailed before the Ethics Committee of the Florida Bar, this unfortunate process delayed his admission to the practice of law in the State of Florida for more than 9 months, caused him grave emotional distress and suffering, required the investment of substantial financial resources, and resulted in him missing out on many potentially lucrative opportunities in Florida.

FIRST CLAIM FOR RELIEF

Negligence

36. The allegations in all preceding paragraphs are realleged as if fully incorporated herein.

37. By accepting payment from Mr. Prado, the defendants assumed a duty to deliver to the Florida Board of Bar Examiners the answers provided by him during the examination and to correctly record the time expended by Mr. Prado in completing the essay portion of the examination.

38. The defendants owed a duty to Mr. Prado to use and exercise reasonable and due care in the creation and maintenance of the infrastructure for ExamSoft's software, including the website, servers, and other components necessary to obtain the correct time spent by Mr. Prado during the exam. They also had the responsibility to examine the results of their activity software to ensure their accuracy prior to leveling claims that Mr. Prado had exceeded the allotted time for the completion of the essay portion.

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