

CAUSE NO. 2018-24328

TOMAS G. RIOS, M.D.	§	IN THE DISTRICT COURT OF
	§	
PLAINTIFF,	§	
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
INPATIENT CONSULTANTS OF TEXAS, PLLC	§	
D/B/A TEAMHEALTH	§	
	§	
DEFENDANT.	§	189TH JUDICIAL DISTRICT

**COUNTER-PLAINTIFF’S ORIGINAL COUNTERCLAIM AND APPLICATION FOR
TEMPORARY AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW Inpatient Consultants of Texas, PLLC (“IPC” or “Defendant/Counter-Plaintiff”) and files this, its Original Counterclaim, Application for Temporary and Permanent Injunction, and in support thereof would respectfully show the Court as follows:

I. DISCOVERY CONTROL PLAN

1. Defendant/Counter-Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3 and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rules of Civil Procedure 169 because Defendant/Counter-Plaintiff requests injunctive relief.

II. CLAIM FOR RELIEF

2. Defendant/Counter-Plaintiff seeks monetary relief over \$200,000 but not more than \$1,000,000.

III. PARTIES

3. Counter-Plaintiff, Inpatient Consultants of Texas, PLLC, is a Michigan professional limited liability with certain operations in Harris County, Texas.

4. Counter-Defendant Tomas G. Rios, M.D. is an individual residing in Harris County, Texas. As the Plaintiff in this case, he has already made a general appearance.

IV. JURISDICTION

5. The Court has subject-matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

V. VENUE

6. Venue is proper in Harris County, Texas under Texas Civil Practice & Remedies Code section 15.002(a)(1) and (3) because it is the county in which all or a substantial part of the events or omissions giving rise to the claims occurred and because Counter-Defendant resided in Harris County, Texas at the time the causes of action accrued.

VI. FACTS

7. IPC provides services to short-term and long-term acute care hospitals, skilled nursing facilities, nursing homes, assisted living facilities, adult care homes, and hospices, including providing hospitalist physicians to hospitals in the Houston, Texas area, specifically in the Houston Texas Medical Center.

8. IPC and Dr. Rios entered into an employment agreement in August 2014 (the "Agreement"). Pursuant to the Agreement, Dr. Rios was to provide Hospitalist Services in the Houston Texas Medical Center, specifically at Baylor St. Luke's Hospital and Kindred Hospital. During the term of the Agreement, IPC was informed about care and safety concerns relating to

Dr. Rios' services. IPC investigated the concerns and attempted to work to resolve the issues with Dr. Rios; however, Dr. Rios refused to participate in the resolution steps designed to address the aforementioned concerns.

9. As a result of Dr. Rios' refusal to do so, he voluntarily abandoned his employment with IPC and, thereby, terminated the Agreement.

10. The Agreement includes an Agreement Not to Compete (the "Non-Compete"), which continues one year following the termination of the Agreement. See Ex. A, the Agreement, § 3.4. The Non-Compete provides that Dr. Rios shall not directly or indirectly enter into, engage, participate or allow Dr. Rios' name to be used in or in connection with any business or activity, that is in competition in any manner whatsoever with the Hospitalist Operations of IPC in the Restricted Territory. *Id.* The Non-Compete further provides that Dr. Rios shall not promote or assist, financially or otherwise, manage, or invest in any person, firm, association, partnership, corporation or other entity engaged in any Hospitalist Operations for a period of one year after the termination of the Agreement in the Restricted Territory. *Id.* "Restricted Territory" is defined as (i) those Facilities in the Texas Med Center practice from or at which Dr. Rios has provided services on behalf of Company, (ii) any Facilities at which Company has paid or arranged for Employee to be credentialed, obtain privileges or join the medical staff. *Id.* at Schedule 1.1. The Non-Compete is supported by consideration and is ancillary to an otherwise enforceable agreement.

11. The term of the Agreement ended effective April 20, 2018, when Dr. Rios abandoned his employment. Thus, the Non-Compete is in effect until April 20, 2019, or until Dr. Rios' buys out of the Non-Compete. The Agreement provides for a Buy-Out of the Non-Compete, but Dr.

Rios has not bought out of the Non-Compete, nor even made an attempt to buy out of the Non-Compete.

12. Dr. Rios is currently in violation of the Non-Compete by working and/or being associated with IPC's competitors, including Baylor St. Luke's Hospital and Kindred Hospital Houston. Specifically, Dr. Rios formed a new entity, Rios Healthcare Associates, PLLC, and Dr. Rios announced that Rios Healthcare Associates is the "newest hospitalist services provider at St Luke's."

13. Further, IPC is informed and believes that Dr. Rios misrepresented to one of IPC's clients that IPC would no longer be seeing patients at the client's facility and told IPC's client that it should send all the unassigned and/or St. Luke Hospital patients to him.

14. The foregoing actions by Dr. Rios are in direct violation of his Non-Compete obligations. Therefore, IPC requests the Court to immediately issue a temporary restraining order, and then a temporary injunction, preventing Dr. Rios violation of the Non-Compete.

VII. COUNT 1 - BREACH OF CONTRACT

15. Defendant/Counter-Plaintiff incorporates paragraphs 1 through 14 herein by reference.

16. IPC and Dr. Rios entered into a valid and enforceable contract. Dr. Rios breached that contract by violating his Non-Compete obligations. The breach of the contract is a direct and proximate cause of injuries to IPC. IPC seeks recovery of its attorneys' fees as a result of having to bring this action.

VIII. APPLICATION FOR TEMPORARY RESTRAINING ORDER¹

17. IPC's application for temporary restraining order is authorized by Texas Civil Practice & Remedies Code § 65.011(1), (2), (3), and (5).

18. IPC is entitled to all of the relief requested and an injunction enforcing the Non-Compete.

19. IPC asks this Court to prevent Dr. Rios from violating the Non-Compete. Specifically, IPC asks this Court to prevent Dr. Rios from practicing or providing services at Baylor St. Luke's Hospital, Kindred Hospital, and any other facility where Dr. Rios provided services on behalf of IPC.

20. It is probable that IPC will recover from Dr. Rios after a trial on the merits because IPC possesses evidence that undisputedly establishes that Dr. Rios breached the Agreement and is in violation of the Non-Compete.

21. If IPC's application is not granted, harm is imminent because Dr. Rios will continue to violate the Non-Compete, interfering with IPC's business operations.

22. IPC has no adequate remedy at law because damages are irreparable and incalculable.

23. IPC is willing to post bond.

IX. REQUEST FOR TEMPORARY INJUNCTION

24. IPC asks the Court to set its application for temporary injunction for a hearing and, after the hearing, issue a temporary injunction against Dr. Rios.

¹ IPC has moved to compel arbitration of Dr. Rios' claims against IPC; however, the Agreement's arbitration provision specifically permits IPC to seek injunctive relief in this Court for Dr. Rios' violation of the Non-Compete. See Article 4, Section 4.2(iii).

25. IPC has joined all indispensable parties under Texas Rule of Civil Procedure 39.

X. REQUEST FOR A PERMANENT INJUNCTION

26. IPC asks the Court to set its request for a permanent injunction for a full trial on the merits and, after the trial, issue a permanent injunction against Dr. Rios.

XI. CONDITIONS PRECEDENT

27. All conditions precedent to IPC's claims for relief have been performed or have occurred.

PRAYER

For these reasons, Defendant/Counter-Plaintiff IPC asks that the Court issue citation for Tomas G. Rios, M.D. to appear and answer, and that IPC be awarded a judgment against Dr. Rios for the following:

- a. Temporary Injunction;
- b. Permanent Injunction;
- c. Actual Damages;
- d. Exemplary Damages;
- e. Prejudgment and post judgment interest;
- f. Court costs;
- g. Reasonable and necessary attorneys' fees; and
- h. All other relief to which IPC is entitled.

Respectfully submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ
A Professional Corporation

By: /s/ Kali M. Hyde

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Pro Hac Admission Pending

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on August 9, 2018, the foregoing was served on counsel for Plaintiff pursuant to the Texas Rules of Civil Procedure.

/s/ Kali M. Hyde

Kali M. Hyde

Unofficial Copy Office of Chris Daniel District Clerk