

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION**

Dr. Shanele McGowan)	
)	
Plaintiff,)	Case No. 20 CV 1145
)	
v.)	Honorable Robert M. Dow, Jr.
)	
Integrated Pain Management, S.C.))	
and Tian Xia, individually)	
and in his official capacity.)	
Defendants.)	

ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

Defendants, Integrated Pain Management, S.C. and Dr. Tian Xia, by and through their attorneys as their Answer, Affirmative Defenses and Counterclaims, state as follows:

1. This lawsuit is brought based on Defendant’s violation of the Fair Labor Standards Act (hereinafter “FLSA”), the Illinois Minimum Wage Law (hereinafter “IMWL”), common law breach of contract, the Illinois Wage Payment and Collection Act (Hereinafter “IWPCA”) and Section 7434 of the Internal Revenue Code.

ANSWER: Defendants lack sufficient information to admit or deny Plaintiff’s allegation regarding the basis for the filing of this lawsuit but deny that Plaintiff is entitled to any relief.

2. This case is filed under the Fair Labor Standards Act (“FLSA”), to recover unpaid wages for unpaid minimum wage and/or overtime work performed for which McGowan was not paid, liquidated damages, interest and attorney fees and costs and all other relief due and just.

ANSWER: Defendants lack sufficient information to admit or deny Plaintiff’s allegation regarding the basis for the filing of this lawsuit but deny that Plaintiff is entitled to any relief.

3. McGowan performed as an employee of Defendants until November 13, 2018.

ANSWER: Defendants deny the allegations of this paragraph.

4. Throughout McGowan’s employment, the McGowan performed work for the benefit of the employer and the employer failed to compensate the McGowan for her labors and benefits provided to the Defendants.

ANSWER: Defendants deny the allegations of this paragraph.

5. McGowan's request includes payment of compensation and credit for all uncompensated work required, suffered, and/or permitted by Defendants, liquidated and/or other damages as permitted by applicable law, restitution and payment of all benefits Defendants obtained from their unlawful business practices, and attorneys' fees and costs.

ANSWER: Defendants lack sufficient information to admit or deny Plaintiff's allegation regarding the basis for the filing of this lawsuit but deny that Plaintiff is entitled to any relief.

6. Plaintiff also presents claims of misclassification pursuant to the FLSA, IMWL and IWPCA.

ANSWER: Defendants lack sufficient information to admit or deny Plaintiff's allegation regarding the basis for the filing of this lawsuit but deny that Plaintiff is entitled to any relief.

7. The Plaintiff, Dr. Shanele McGowan ("McGowan"), is a resident of the State of Illinois who performed work for the Defendant.

ANSWER: Defendants lack sufficient information to admit or deny Plaintiff's allegation regarding Defendant's current resident status.

8. The Defendant, Integrated Pain Management, S.C. ("Integrated"), is an Illinois corporation which at all relevant times conducted business in the State of Illinois.

ANSWER: Defendants admit the allegations of this paragraph.

9. The Defendant, Tian Xia (Xia), was McGowan's direct supervisor and owner of Integrated and is named individually and in his official capacity as an "employer" as defined under Illinois wage law and/or the FLSA.

ANSWER: Defendants deny the allegations of this paragraph.

JURISDICTION AND VENUE

10. Jurisdiction over the causes of action contained in this Complaint is conferred by 28 U.S.C. § 1331, as same arises under the laws of the United States. This action is brought pursuant to the Fair Labor Standards Act (FLSA).

ANSWER: Defendants deny the allegations of this paragraph.

11. Venue is proper in this judicial district under 28 U.S.C. § 1391(b), in that Defendants employed McGowan in this judicial district, Defendants do business in this judicial district, and all or a substantial part of the events or omissions giving rise to the claims occurred within this judicial district.

ANSWER: Defendants admit the allegations of this paragraph.

FACTS APPLICABLE TO ALL COUNTS

12. McGowan is a licensed physician who is trained in neurology and concentrates her practice in the area of pain management.

ANSWER: Defendants admit the allegations of this paragraph.

13. Integrated is a medical practice which provides medical services, including pain management, to patients.

ANSWER: Defendants admit the allegations of this paragraph.

14. Integrated hired McGowan as a physician to provide pain management services to its existing and new patients.

ANSWER: Defendants deny the allegations of this paragraph.

15. Integrated provided medical malpractice insurance and health insurance to McGowan during her employment with Integrated.

ANSWER: Defendants deny the allegations of this paragraph.

16. Integrated directed McGowan to limit her services to provide medical care to Integrated's practice, McGowan was obligated to remit a percentage of revenue generated for any non-Integrated patient.

ANSWER: Defendants deny the allegations of this paragraph.

17. According to the terms of employment, any professional fees generated by McGowan belonged to Integrated. Further, the employment agreement specified McGowan must contract for and receive all professional fees through Integrated. Integrated directed that fees generated by McGowan must be accepted on behalf of, and in trust for, Integrated.

ANSWER: Defendants deny the allegations of this paragraph.

18. According to the employment agreement, McGowan "...shall devote all of [McGowan's] professional clinical time and efforts to [Integrated]"

ANSWER: Defendants admit the allegations of this paragraph.

19. McGowan's compensation was based on a percentage of her gross generated revenue. McGowan was compensated on a monthly basis which was "paid in a manner consistent with [Integrated's] customary payroll policies and procedures..."

ANSWER: Defendants deny the allegations of this paragraph.

20. Integrated employed McGowan from August 1, 2016 to November 13, 2018.

ANSWER: Defendants admit the allegations of this paragraph.

21. Upon terminating her employment with Integrated, McGowan demanded Integrated pay her for her services for up to and including November 13, 2018.

ANSWER: Defendants deny the allegations of this paragraph.

22. Integrated refused to pay McGowan for any worked performed in October and November, 2018 despite several demands for payment.

ANSWER: Defendants deny the allegations of this paragraph.

23. Despite not being paid for her last two months of employment, Integrated filed an IRS Form 1099 with the Internal Revenue Service for 2018, declaring Integrated paid McGowan \$33,282.48 in compensation. In fact, Integrated overstated McGowan's compensation for 2018 by \$33,282.48.

ANSWER: Defendants lack sufficient information to admit or deny this paragraph.

24. After receiving the Form 1099, McGowan's accountant contacted Integrated to advise Integrated of the false Form 1099. McGowan's accountant requested Integrated to correct the overstatement of income and to issue a corrected Form 1099.

ANSWER: Defendants lack sufficient information to admit or deny this paragraph.

25. Despite McGowan's attempts to correct the false report of income, Integrated refused to respond to McGowan or issue a corrected Form 1099. Consequently, McGowan's Year 2018 income was overstated by \$33,282.48.

ANSWER: Defendants lack sufficient information to admit or deny this paragraph but deny that McGowan is entitled to any relief on account thereof.

26. McGowan also alleges that Defendants failed to properly classify McGowan as an Employee, filed pursuant to the FLSA, IMWL and IWPCA.

ANSWER: Defendants lack sufficient information to admit or deny what Plaintiff intended to allege. Defendant denies that McGowan was ever an employee.

27. McGowan was paid via a 1099 and received at the end of the year a 1099 tax form as alleged above.

ANSWER: Defendants admit the allegations of this paragraph.

28. McGowan alleges that she should have been classified as an employee, not as a contractor under the FLSA, IMWL and IWPCA.

ANSWER: Defendants lack sufficient information to admit or deny what Plaintiff intended to allege. Defendant denies that McGowan was ever an employee.

29. McGowan had little control over her work environment.

ANSWER: Defendants deny the allegations of this paragraph.

30. Defendants set the rules and had complete control over the venue, and McGowan had to obey these rules or risk everything, including loss of her job. This is the very hallmark of the economic dependence and control of an employer-employee relationship.

ANSWER: Defendants deny the allegations of this paragraph.

31. Evaluation of proper classification is a multiple part test, which the Defendants have not properly applied to McGowan in determination of her status, rather Defendants simply assumed incorrectly that the McGowan was an independent contractor, simply because the Defendants declared her to be.

ANSWER: Defendants deny the allegations of this paragraph.

32. The test for Employee/contractor is found in a US DOL Fact Sheet #13: Am I an Employee?: Employment Relationship Under the Fair Labor Standards Act (FLSA) (revised May 2014).

33. The elements of this test demonstrate that McGowan and the class are not properly classified. The elements are as follows:

- 1) the extent to which the work performed is an integral part of the employer's business.
- 2) Whether the worker's managerial skills affect his or her opportunity for profit and loss.
- 3) The relative investments in facilities and equipment by the worker and the employer
- 4) The worker's skill and initiative.
- 5) The permanency of the worker's relationship with the employer.
- 6) The nature and degree of control by the employer

34. Almost none of these factors are in Defendants' favor as alleged as follows:

- 1) the extent to which the work performed is an integral part of the employer's business.

The work of the Plaintiff is integral part of the employers' business. Defendants' business is medical services and the Plaintiff's work is solely related to that business: the Plaintiff provided medical services to the Defendants patients/customers which is the key of the

ANSWER: Defendants deny the allegations of this paragraph.

35. Whether the worker's managerial skills affect his or her opportunity for profit and loss. :

For the Plaintiff there was no opportunity for profit or loss, the Plaintiff was paid the same baseline pay, however none of the pay was classified as wages. While Plaintiff might have been able to earn commissions or bonuses, she did not have the opportunity to have a loss, thus showing she was not an independent contractor.

ANSWER: Defendants deny the allegations of this paragraph.

36. The relative investments in facilities and equipment by the worker and the employer

Here Plaintiff made no investment other than her time and efforts, while Defendant has made large investments.

ANSWER: Defendants deny the allegations of this paragraph.

37. The worker's skill and initiative:

Here, while Plaintiff was skilled in her work, this part of the test also favors Plaintiff.

ANSWER: Defendants deny the allegations of this paragraph.

38. The permanency of the worker's relationship with the employer. Plaintiff worked for Defendants for 26 months.

ANSWER: Defendants deny the allegations of this paragraph.

39. The nature and degree of control by the employer

Here Defendants have exerted strong and consistent control of Plaintiff, including requiring particular hours of work and scheduling hours of work.

ANSWER: Defendants deny the allegations of this paragraph.

40. Under the IWPCA the determination of employee status is different from the FLSA/IWML. Plaintiff was clearly an employee under the Illinois Wage Payment and Collection Act ("IWPCA"), 820 Ill. Com. Stat. 115/2.

ANSWER: Defendants deny the allegations of this paragraph.

41. The IWPCA creates a presumption that the Plaintiff is an employee, and to rebut that presumption Defendant bears the burden of establishing each of three specific criteria set forth in the IWPCA to rebut that presumption.

ANSWER: Defendants deny the allegations of this paragraph.

42. Specifically, Defendants must establish that 1) Plaintiff was free from Defendant's control; 2) the Plaintiff perform work outside of Defendants' usual course of business or outside all the places of the business of Defendants; and 3) Plaintiff was engaged in an independently established business. 820 Ill. Comp. Stat. 115/2.

ANSWER: Defendants deny the allegations of this paragraph.

43. The IWPCA defines an "employee" broadly to include "any individual permitted to work by an employer in an occupation," and excludes only an individual:

ANSWER: This answer calls for a legal conclusion regarding the provisions of a statute. Defendant denies any implied violation of the statute.

44. (1) who has been and will continue to be free from control and direction over the performance of his/her work.

ANSWER: This answer calls for a legal conclusion regarding the provisions of a statute. Defendant denies any implied violation of the statute.

45. (2) who performs work which is either outside the usual course of business or is performed outside of all of the places of business of the employer unless the employer is in the business of contracting with third parties for the placement of employees; and

ANSWER: This answer calls for a legal conclusion regarding the provisions of a statute. Defendant denies any implied violation of the statute.

46. (3) who is in an independently established trade, occupation, profession, or business

ANSWER: This answer calls for a legal conclusion regarding the provisions of a statute. Defendant denies any implied violation of the statute.

47. In this case, none of these three support Defendant's burdens of proof to demonstrate the Plaintiff was an Independent Contractor.

ANSWER: Defendants deny the allegations of this paragraph.

COUNT I – Violation of the Fair Labor Standards Act (“FLSA”)

48. McGowan restates and realleges Paragraphs 1 through 47 as though fully set forth in Paragraph 48 of Count I of this Complaint.

ANSWER: Defendants restate their answers to the allegations of paragraphs 1 through 47.

49. At all relevant times, Defendant has been, and continues to be, an “employer” engaged in interstate commerce and/or in the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. § 203.

ANSWER: Defendants deny the allegations of this paragraph.

50. At all relevant times, Defendant has employed, and continues to employ, “employee[s],” including the McGowan, that have been, and continue to be, engaged in interstate “commerce” within the meaning of the FLSA, 29 U.S.C. § 203.

ANSWER: Defendants deny the allegations of this paragraph.

51. At all relevant times, Defendant has engaged, and continue to engage, in a willful policy, pattern, or practice of failing to pay owed salary compensation to McGowan.

ANSWER: Defendants deny the allegations of this paragraph.

52. McGowan makes a claim for all “Compensable Time” including all work suffered or permitted by employer, including all work allowed to occur or Defendants failed to prevent.

ANSWER: Defendants deny the allegations of this paragraph.

53. At all relevant times, the work performed by McGowan as for service to Defendants and were required or permitted by Defendants, for the benefit of Defendants, directly related to such employee’s principal employment with Defendants, and as an integral and indispensable part of such employees’ employment of Defendants.

ANSWER: Defendants deny the allegations of this paragraph.

54. As a result of the Defendants willful failure to record or compensate its employees, including McGowan, for all hours worked, Defendants have violated, and continue to violate, the records hours provision of the FLSA.

ANSWER: Defendants deny the allegations of this paragraph.

55. As a result of the Defendants’ willful failure to record, report, credit, and/or compensate its employees employed at Defendant, including McGowan Defendants have failed to make, keep and preserve records with respect to each of their employees sufficient to determine the wages, hours and other conditions and practices of employment in violation of the FLSA, including 29 U.S.C. §§211(c) and §§ 215(a).

ANSWER: Defendants deny the allegations of this paragraph.

56. The foregoing conduct, as alleged, violates the FLSA, 29 U.S.C. §§ 201 et. seq. McGowan seeks damages in the amount of her respective unpaid compensation, plus liquidated damages, as provided by the FLSA, 29 U.S.C. § 216(b), and such other legal and equitable relief as the Court deems just and proper.

ANSWER: Defendants deny the allegations of this paragraph.

57. McGowan seeks recovery of attorneys’ fees and costs of action to be paid by Defendant, as provided by the FLSA, 29 U.S.C. § 216(b).

ANSWER: This lacks sufficient knowledge to admit or deny what Plaintiff seeks, but denies she entitled to any relief.

58. McGowan has consented to be a party to this action, pursuant to 29 U.S.C. § 216(b).

59. At all times relevant to this action McGowan was employed by Defendants within the meaning of the FLSA.

ANSWER: Defendants deny the allegations of this paragraph.

60. At all times relevant to this action, Integrated was engaged in commerce and/or the production of goods for commerce and/or Integrated was an enterprise engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

ANSWER: Defendants deny the allegations of this paragraph.

61. Due to Defendants' FLSA violations, McGowan is entitled to recover from Defendants her unpaid compensation, an additional equal amount as liquidated damages, additional liquidated damages for unreasonably delayed payment of wages, reasonable attorneys' fees, and costs of the action, pursuant to 29 U.S.C. § 216(b).

ANSWER: Defendants deny the allegations of this paragraph.

62. And Plaintiff was misclassified as a Contractor, as alleged above.

ANSWER: Defendants deny the allegations of this paragraph.

COUNT II – Violation of the Illinois Wage Payment and Collections Act

63. McGowan restates and realleges Paragraphs 1 through 47 as though fully set forth in Paragraph 63 of Count II of this Complaint.

ANSWER: Defendants restate their answers to the allegations of paragraphs 1 through 47.

64. This cause of action arises out of employment contracts and/or IWPCA Agreements, written and oral.

ANSWER: Defendants deny the allegations of this paragraph.

65. McGowan worked for and was employed by Defendants.

ANSWER: Defendants deny the allegations of this paragraph.

66. McGowan was hired and employed under an oral and/or written contract.

ANSWER: Defendants deny the allegations of this paragraph. McGowan was hired as an independent contractor on an agreement negotiated by McGowan with the benefit of her own attorney.

67. McGowan worked for Defendants for approximately 26 months.

ANSWER: Defendants admit the allegations of this paragraph.

68. Defendants failed to pay any owed compensation and benefits as alleged in this Complaint.

ANSWER: Defendants deny the allegations of this paragraph.

69. For public policy reasons, ‘an employee shall receive all benefits upon leaving his/her employer’

ANSWER: Defendants neither admit not deny the legal conclusion but deny the allegations of this paragraph that Defendant was an employee.

70. The Illinois Wage Act 820 ILCS 115/1 et seq. (West 2002), section 5 states: “Every Employer shall pay the final compensation of separated employees in full, at the time of separation, if possible, but in no case later than the next regularly scheduled payday for such employee.”

ANSWER: Defendants neither admit not deny the legal conclusion but deny the allegations of this paragraph that Defendant was an employee.

71. McGowan was under the control and direction of Individual Defendant Xia and Corporate Defendant Integrated and/or its agents during the period of the McGowan’s employment under his contracts of service and in fact.

ANSWER: Defendants deny the allegations of this paragraph.

72. McGowan was not an independent contractor, rather was an employee of the Defendants by oral agreement and/or written contract.

ANSWER: Defendants deny the allegations of this paragraph.

73. McGowan’s employment was in the usual course of business for which such service is performed.

ANSWER: Defendants deny the allegations of this paragraph.

74. McGowan did not have a proprietary interest in the Defendants.

ANSWER: Defendants deny the allegations of this paragraph. Plaintiff had a vested option to purchase shares of the Corporation. Dr. Xia is a human being to which no person is entitled to a proprietary interest.

75. The Defendants are “employers” under the terms of the IWPCA.

ANSWER: Defendants deny the allegations of this paragraph as related to the Plaintiff.

76. In accordance with IWPCA, an employer is also defined as: “any officer of a

corporation or agents of an employer who knowingly permit such employer to violate the provisions of this Act shall be deemed to be the employers of the employees of the corporation.” Therefore, Individual Defendant Xia is an employer under the definition of employer in the IWPCA, because Individual Defendant Xia knowingly permitted and directed the violation of the Act (IWPCA).

ANSWER: Defendants neither admit nor deny the legal conclusion but deny any violation of law or liability to Plaintiff.

77. Individual Defendant Xia is an officer and agent of the Integrated who knowingly permitted such employer to violate the provisions of this Act, therefore should be deemed to be the employers of the employee of the corporation.

ANSWER: Defendants deny the allegations of this paragraph as related to the Plaintiff.

78. McGowan’s demand’s for compensation is for a sum not exceeding the amount due and owed.

ANSWER: Defendants deny the allegations of this paragraph.

79. And Plaintiff was misclassified as a Contractor, as alleged above.

ANSWER: Defendants deny the allegations of this paragraph.

COUNT III – Violation of the Illinois Minimum Wage Act

80. McGowan restates and realleges Paragraphs 1 through 47 as though fully set forth in Paragraph 80 of Count III of this Complaint.

ANSWER: Defendants restate their answers to the allegations of paragraphs 1 through 47.

81. McGowan is an employee of the Defendant pursuant to the IMWL.

ANSWER: Defendants deny the allegations of this paragraph as related to the Plaintiff.

82. McGowan is employed by Defendants as an employee.

ANSWER: Defendants deny the allegations of this paragraph as related to the Plaintiff.

83. Defendant derived benefits by McGowan’s work.

ANSWER: Defendants deny the allegations of this paragraph.

84. As a result of the foregoing, McGowan has been damaged in an amount to be determined at trial.

ANSWER: Defendants deny the allegations of this paragraph as related to the Plaintiff.

85. Illinois law contains a three-year statute of limitations regardless of whether the violation was willful. 820 ILCS 105/12(a).

86. And Plaintiff was misclassified as a Contractor, as alleged above.

ANSWER: Defendants deny the allegations of this paragraph as related to the Plaintiff.

COUNT IV – Violation of Internal Revenue Code Section 7434

87. McGowan restates and realleges Paragraphs 1 through 47 as though fully set forth in Paragraph 87 of Count IV of this Complaint.

88. The Internal Revenue Code, Section 7434, 26 U.S. §7434, prohibits a person from willfully filing a fraudulent information return with respect to payments made to another person.

89. A person may bring a civil action for damages against the person who filed a fraudulent return. Upon a finding of liability, the defendant shall pay the greater sum of \$5,000.00 or damages actually incurred by McGowan.

90. Defendants, Xia and Integrated, knowingly filed a fraudulent Form 1099 which grossly overstated McGowan's income. Defendants refused to issue a corrected Form 1099 after being requested on several occasions.

ANSWER: Defendants deny the allegations of this paragraph as related to the Plaintiff.

COUNT V – Breach of Contract

91. McGowan restates and realleges Paragraphs 1 through 47 as though fully set forth in Paragraph 91 of Count V of this Complaint.

92. The Defendants tendered a written offer of employment to McGowan to provide services to wit: medical treatment for Integrated's patients.

ANSWER: Defendants deny the allegations of this paragraph, Defendant was offered an independent physician contract.

93. McGowan accepted Integrated's offer of employment and did, in fact, provide medical services to Integrated's patients.

ANSWER: Defendants deny the allegations of this paragraph, Defendant was offered an independent physician contract.

94. Defendants compensated McGowan by paying McGowan a percentage of the income produced by McGowan.

ANSWER: Defendants deny the allegations of this paragraph, Defendant was compensated a base minimum draw and bonus structure.

95. Defendants promised to pay McGowan a portion of the revenue produced by McGowan for the duration of the written and oral agreement for the duration of McGowan's

employment with Integrated.

ANSWER: Defendants deny the allegations of this paragraph, Defendant was offered an independent physician contract.

96. Defendants breached its contract of employment with McGowan by refusing to pay McGowan a portion of the revenues generated by McGowan.

ANSWER: Defendants deny the allegations of this paragraph.

97. McGowan suffered damages resulting from Integrated's refusal to remit earned income and wages to McGowan.

ANSWER: Defendants deny the allegations of this paragraph.

WHEREFORE, Integrated Pain Management and Tian Xia respectfully requests that this Honorable Court deny Plaintiff the relief sought in each count of her Complaint and enter judgment in their favor against Plaintiff.

AFFIRMATIVE DEFENSES

Defendants restate their answers to all paragraphs of the Second Amended Complaint in support of their affirmative defenses.

FIRST DEFENSE

Plaintiff's claims are barred in whole or in part by virtue of the fact that Plaintiff agreed to the terms of his payments.

SECOND DEFENSE

Plaintiff's claims are barred in whole or in part by virtue of the fact that Plaintiff breached the contract via her termination without notice in violation of the terms of the parties' contract.

Plaintiff's claims are barred in whole or in part by virtue of the fact that Plaintiff breached the contract via her breach of the non-compete provisions of the parties' contract.

THIRD DEFENSE

Plaintiff fails to state a claim upon which relief may be granted.

COUNTERCLAIM
Breach of Contract

1. On or about August 1, 2016, McGowan entered into a contract entitled “Physician Agreement” between herself and Integrated Pain Management (“IPM”). (“Physician Agreement”)

2. The Physician Agreement was negotiated between McGowan and IPM through their respective attorneys.

3. McGowan through her attorneys made several revisions to the agreement before reaching a form that she was willing to accept the retention as an independent contractor.

4. Pursuant to the Physician Agreement, McGowan entered into certain restrictive covenants including, non-competition non-solicitation.

5. Pursuant to the Physician Agreement, McGowan was provided with access to IPM’s facilities, its support staff, including, nurses, medical aides, administration and billing and marketing services.

6. IPM provided billing and collection services on behalf of McGowan.

7. Pursuant to the Physician Agreement, McGowan was provided with regular reporting on the revenues generated via the Physician Agreement and received payment in accordance with the fee sharing agreements provided therein.

8. On or about November 14, 2018, McGowan terminated the Physician Agreement without notice to IPM or Dr. Tian Xia.

9. McGowan’s Termination of the Physician Agreement was timed in order to effectuate the maximum level of chaos and damage to Practice and Tian Xia.

10. McGowan times her termination without notice while Tian Xia was abroad to the detriment and disadvantage of IPM’s patients in order to induce them to switch to McGowan as

their health care provider.

11. Immediately upon resignation, McGowan began to practice in conjunction with a Dr Valentino Botti, a chiropractic physician who was a partner with Dr. Xia.

12. McGowan's association with Dr. Botti constituted a breach of the Physician Agreement.

13. McGowan relocated her practice to Dr. Botti's facilities in Oak Lawn, Illinois.

14. On November 15, 2018, McGowan was put on notice of her breach of the restrictive covenants of the agreement.

15. Despite such notice McGowan continued to recruit patients away from IPM and continued to practice in the Oak Law, Illinois facility in violation of the restrictive covenant.

16. Defendant competed against IPM during the course of the agreement including providing medical services to third parties in violation of the restrictive covenants of Section 6 of the Agreement.

17. McGowan directly profited from the breach of the non-compete by, among other things, receiving direct payment for services which should have been provided and billed by IPM.

18. As an example, on or about, June 21, 2019, IPM discovered that McGowan had performed services for Advocate Physician Partners during the term of her employment for which a check in the amount of \$4,136.55 was errantly delivered to IPM.

19. IPM deposited the check having received it in the ordinary course of its billing.

20. McGowan sent her husband to retrieve the check from Tian Xia, whereupon, he physically attacked Dr. Xia, without provocation leaving him bloodied in his office.

21. The Physician Agreement constitutes a valid and enforceable contract.

22. McGowan has breached the Physician Agreement by
 - a. surreptitiously competing against IPM in providing medical services outside the terms of the agreement;
 - b. Terminating the contract without due notice as required under the terms of the Physician Agreement;
 - c. Practicing in a joint practice with Dr. Valentino Botti in violation of the restrictive covenants
 - d. Such other violations as may be discovered in the course of discovery in this cause.

23. As a direct and proximate result of these breaches, IPM has suffered damages for which McGowan is liable to IPM.

WHEREFORE, Integrated Pain Management, respectfully requests that this Honorable Court enter judgement in its favor and against Shanelle McGowan, in an amount to be determined at trial and in excess of \$75,000.00

Respectfully submitted,

Integrated Pain Management and Tian Xia

BY: Bernard A Henry

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