

**CAUSE NO. 2022-68307**

**MARK BURKE**

**Plaintiff**

**vs.**

**HCA HOUSTON HEALTHCARE  
KINGWOOD**

**Defendant**

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**IN THE DISTRICT COURT OF**

**HARRIS COUNTY, TEXAS**

**234<sup>TH</sup> JUDICIAL DISTRICT**

**ORIGINAL COUNTERCLAIM AND APPLICATION FOR TEMPORARY  
INJUNCTION AND PERMANENT INJUNCTION**

Defendant and Counter-Plaintiff HCA Houston Healthcare Kingwood (“HCA Kingwood”) files this Original Counterclaim and Application for Temporary Injunction and Permanent Injunction against Mark Burke.

**I. DISCOVERY CONTROL PLAN**

1. Plaintiff intends to conduct discovery under a Level 2 Discovery Control Plan as set forth in Rule 190.3 of the Texas Rules of Civil Procedure.

**II. PARTIES**

2. Counter-Plaintiff, HCA Houston Kingwood, is a domestic corporation doing business in Texas.

3. Counter-Defendant, Mark Burke (“Burke”), is an individual residing at 46 Kingwood Greens Drive, Kingwood, Texas, 77339. Burke has already appeared in this lawsuit and no further service is required.

**III. JURISDICTION AND VENUE**

4. The Court has jurisdiction over this counterclaim as it arises out of the same occurrence that is the subject matter of Burke’s claims and does not require the presence of

additional parties over whom the Court cannot acquire jurisdiction for its adjudication. Counter-Plaintiff seeks equitable relief and potentially monetary relief, which is within the jurisdictional limits of the Court.

5. This Court also has subject matter jurisdiction over this matter because the Counter-Plaintiff's application for injunctive relief invokes the Court's equity jurisdiction under the Texas Constitution, Texas statutory law, and common law. TEX. CONST. ART. 5 § 8; TEX. CIV. PRAC. & REM. CODE ANN. § 65.021(a); *In re Gamble*, 71 S.W.3d 313, 317 (Tex. 2002); *Public Util. Comm'n v. Houston Lighting & Power Co.*, 778 S.W.2d 195, 197 (Tex. App.—Austin 1989, no writ). Subject matter jurisdiction is also proper in this Court because the amount in controversy exceeds the Court's minimum jurisdictional requirements.

6. Venue is proper in Harris County, Texas because Plaintiff is domiciled in Harris County, and injunctive relief is the primary relief sought in this lawsuit. TEX. CIV. PRAC. & REM. CODE ANN. § 65.023(a); *In re Continental Airlines, Inc.*, 988 S.W.2d 733, 736 (Tex. 1998).

#### IV. BACKGROUND

7. HCA Houston Healthcare Kingwood is a 457-bed, acute care facility in Harris County, Texas that employs hundreds of healthcare professionals. On August 9, 2022, Burke sought medical care at HCA Kingwood's emergency department for upper abdominal pain, nausea, vomiting and jaundice. Providers initiated care and ordered consultations. Ultimately, however, Burke chose to leave the facility against medical advice on August 13, 2022.

8. Following his admission, Burke began sending letters and emails to HCA Kingwood's administration, complaining about his care and treatment. See *Exhibit A*, *Spoilation Letter to HCA Kingwood*; *Exhibit B*, *Spoilation Letter II to HCA Kingwood*; *Exhibit C*, *Response to HCA Kingwood's Contemptuous General Denials re Spoilation Letter I*; *Exhibit D*, *Email*

*Reminder to HCA Kingwood re Spoilation Letters, adding Known Counsel for HCA, Nicole Andrews.* Specifically, Burke alleges health care liability claims related to his pain management, care provided by various healthcare providers, including an “Imposter Physician,” and treatment offered during his August 2022 admission to HCA Kingwood. Further, Burke complains that HCA Kingwood is responsible for the recent death of his father, due to the “freezing room temperatures” in the hospital.

9. Upon receipt of Burke’s complaints, HCA Kingwood promptly initiated an investigation into the medical care and alleged impersonation of a physician claim and communicated their findings to Burke, which revealed that the providers rendered appropriate medical care and treatment.

10. Unsatisfied with their conclusion, Burke created a website, [www.kingwooddr.com](http://www.kingwooddr.com), designed to defame, intimidate, and harass HCA Kingwood and its employees, agents, representatives, and attorneys. Burke’s website also includes each filing related to his lawsuit against HCA Kingwood. See *Exhibit E, Burke v. KPH – Consolidation, Inc., DBA HCA Houston Healthcare Kingwood*; *Exhibit F, Request for Production and Inspection of HCA Kingwood Hospital Video Surveillance Footage*; *Exhibit G, You’ve Been Served HCA Kingwood Hospital and Now You Can No Longer Remain Silent*; *Exhibit H, Assisted by the Nifty Lone Star Legal Aid Online Tool to Prepare and Submit Initial Disclosures.*

11. Through his website, Burke continuously posts negative articles about HCA Healthcare, Inc. regarding allegations of kickbacks, excessive billing practices, and the necessity of structural reorganization. See *Exhibit I, HCA Holds the Record for the Largest Health Care Fraud in American History*; *Exhibit J, HCA Healthcare Accused of Excessive Billing Practices for Corporate Greed*; *Exhibit K, Department of Justice: HCA Healthcare Givin’ Doctors*

*Financial Kickbacks is a Violation of FCA; Exhibit L, DOJ: HCA Healthcare Houston Settles Kickbacks from Ambulance Services to Redirect Patients to HCA; Exhibit M, Report: HCA Has a Lengthy History of Fraud and Now Accused of Defrauding the Medicare System; Exhibit N, HCA Healthcare CEO Sam Hazen's 2021 Compensation was \$20.6 Million: Median Staff Pay is \$57K; Exhibit O, Short Staffing at HCA Hospitals Endangering Lives of Patients say Nurses in Union National Survey; Exhibit P, HCA Healthcare: Pay Billions in Fines under False Claims Act (FCA) Settlements; Exhibit Q, A Shakeup Necessary at HCA as CEO Sam Hazen Considers His Own Executive Lifespan.*

12. Burke has endeavored on a campaign to not only target HCA Kingwood, but also its retained counsel, Nicole Andrews and Madison Addicks of Serpe Andrews, PLLC. *See Exhibit R, Who is HCA Houston Kingwood's Counsel Nicole G. Andrews of Serpe Andrews PLLC in Houston, Texas?* Burke also published a Glassdoor article from a prior, disgruntled Serpe Andrews employee, with the words "How They Treat Staff," to portray the firm in a negative light. *Id.* Further, Burke posted the profile and corporate headshot of another Serpe Andrews attorney, Margaret Layrisson, showing yet another involvement of representation on HCA Kingwood's behalf in a separate litigation. *See Exhibit S, HCA Kingwood Hospital Sued for Negligence and Breaching Standards of Care Attributing to Patient Death.* While much of Burke's content is copied and pasted from public websites, the arrangement of his information provides a negative inference of Serpe Andrews' professionalism, qualifications, and reputation.

13. Further, Burke has targeted healthcare attorneys in Houston generally by posting their corporate headshots and resumes that previously have, and currently, represent both sides of HCA Kingwood cases, with a proposed intent to provide negative publicity of the facility, as well as its representatives. *See Exhibit T, HCA Kingwood Hospital: Nurse Administers Unauthorized*

*Dose of Potassium to Patient Which Killed Him; Exhibit U, No MRI: Patient Discharged in Wheelchair from HCA Kingwood ER Despite Severe Spinal Cord Injury.* Even the Honorable Judge Lauren Reeder's image has been included in Burke's blog post about filing a petition against HCA Kingwood for the allegations listed above. See *Exhibit V, Reply Letter II from John Doe at HCA Houston Healthcare Kingwood.*

14. Burke's publications on his website recently crossed a line in a post mentioning an attorney assigned to the matter, Madison Addicks, as well as her parents, who are irrelevant to the matter at hand. *Exhibit W, Who's Answered for HCA Kingwood Hospital? As Predicted, the Unethically Silent Serpe Andrews PLLC.* Not only did Burke post each of her parent's resumes, but he also created a video compiled from online images of their house, including their street address. Burke is clearly utilizing his website to intimidate and harass HCA Kingwood's counsel in a designed attempt to interfere with counsel's ability to represent HCA Kingwood in this lawsuit. Burke's targeting is unrelated to the case, troubling, and certainly not a matter of public concern.

15. Most recently, Burke admitted his intent to "disqualify" Plaintiff's counsel, by filing a Motion for Sanctions, alleging Serpe Andrews as a "a suspected shell sham legal entity," that has failed to adequately respond to his filings and requests. *Exhibit X, Disqualifying HCA's In-House Counsel, a Suspected Shell Sham Legal Entity Known as Serpe Andrews, PLLC.* Burke even attempts to besmirch the reputation of HCA Kingwood's counsel by claiming they are "unethical." Burke's publications are not only false, but an attack on the reputation of the firm, and character of its attorneys.

16. To protect the reputation and safety of HCA Kingwood and its retained counsel and HCA Kingwood's ability to retain counsel to defend its interests, as well as prohibit Burke from

engaging in further prohibited conduct, HCA Kingwood requests the Court grant a Temporary Injunction and all further requested herein and as the Court deems appropriate.

## V. CAUSES OF ACTION

### A. Harassment

17. HCA Kingwood incorporates paragraphs 7-16 as if fully set forth in this section.

18. Through the use of his website, Burke published, and continues to publish, several statements that meet the threshold of Texas Penal Code Section 42.07(a)(8). Burke's sole intent in these posts is to harass, annoy, alarm, abuse, and/or torment HCA Kingwood, and its retained counsel. Burke continues to target HCA Kingwood's retained counsel, and most recently, family members. These posts, mentioned above, are in no way a matter of public concern.

### B. Stalking

19. HCA Kingwood incorporates paragraphs 7-18 as if fully set forth in this section.

20. The statements contained on Burke's website fall squarely within the statutory definition of stalking under Texas Penal Code Section 42.072. Specifically, Burke's recent stalking of counsel for HCA Kingwood, by posting their profiles, resumes, corporate headshots, prior cases in which they have, or currently are associated, and even a video of an attorney's parent's house, clearly rises to the level that would cause a "reasonable person" to feel "harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended." Tex. Pen. Code § 42.072(3)(D).

### C. Tortious Interference with Existing Contracts

21. HCA Kingwood incorporates paragraphs 7-20 as if fully set forth in this section.

22. HCA Kingwood has an existing, valid attorney-client relationship with Serpe Andrews, PLLC whereby Serpe Andrews, PLLC provides legal representation to HCA Kingwood in exchange for compensation. Burke is intentionally and willfully attempting to interfere with this

relationship by publishing statements designed to harass and intimidate Serpe Andrews, PLLC in hopes of Serpe Andrews, PLLC withdrawing as counsel. Burke's conduct has already proximately caused damages to HCA Kingwood by forcing HCA Kingwood to incur legal fees and expenses to address Burke's interference. However, if Burke's attempts to harass and intimidate HCA Kingwood's counsel is allowed to continue, HCA Kingwood would suffer irreparable injury by impeding its ability to retain counsel of its choosing. As a result, HCA Kingwood seeks injunctive relief.

## VI. APPLICATION FOR TEMPORARY INJUNCTION

23. HCA Kingwood re-alleges paragraphs 7-22 as if fully set forth in this section.

24. The purpose of the temporary injunction is to preserve the status quo of the subject matter of the litigation until a final hearing can be held on the merits of the case. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

25. HCA Kingwood is entitled to statutory injunctive relief pursuant to Chapter 65 of the Texas Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE § 65.011(1), (3), and (5).

26. To obtain injunctive relief, the applicant must show three specific elements: (1) a claim to some form of permanent relief—whether a cause of action or a permanent injunction; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002); *Walling v. Metcalfe*, 863 S.W.2d 56, 57 (Tex. 1993).

27. HCA Kingwood satisfied the first element because in this Counterclaim, HCA Kingwood brings claims for Harassment, Stalking, and Tortious Interference with Existing

Contracts. HCA Kingwood also seeks a permanent injunction, which independently satisfies the first element. *Butnaru*, 84 S.W.3d 198 at 204; *Walling*, 863 S.W.2d at 57.

28. HCA Kingwood also has a probable right to the relief it seeks. As explained above, Burke's publications on his website are designed to harass and intimidate HCA Kingwood and its retained counsel. Burke's conduct not only violates various sections of the Texas Penal Code related to harassment and stalking, but his conduct also constitutes tortious interference with an existing contract. Accordingly, HCA Kingwood has satisfied the second element.

29. HCA Kingwood's probable injury is also imminent and irreparable, and HCA Kingwood does not have an adequate remedy at law. Specifically, as seen from Burke's continuous posts, he refuses to cease the disparaging, harassing, and threatening behavior. Burke's continued conduct will negatively impact HCA Kingwood's ability to retain counsel of its choosing to represent its interests.

30. Moreover, interference with HCA Kingwood's ability to retain counsel cannot be adequately compensated in damages, or damages cannot be measured by any certain pecuniary standard. Also, it is virtually impossible for HCA Kingwood to know how far Burke's harassing and threatening remarks have spread, in addition to account for all the business it is losing and will continue to lose as a result of Burke's actions.

31. For these same reasons, HCA Kingwood has no adequate remedy at law. It is impossible to calculate the full extent of HCA Kingwood's damages.

32. For the reasons discussed above, HCA Kingwood requests the Court to enter an injunctive order requiring Burke to remove all writings on his website that refer to HCA Kingwood and its counsel and enjoining Burke from publishing any further statements or information about HCA Kingwood and its counsel online.



33. HCA Kingwood is willing to post bond as ordered by the Court. HCA Kingwood believes a bond in the amount of \$500.00 would be appropriate.

34. HCA Kingwood requests the Court set its Application for Temporary Injunction for hearing and, after a hearing, issue a temporary injunction against Burke prohibiting and enjoining the actions listed in paragraph 33 until a final judgment can be rendered in this matter.

#### **VIII. APPLICATION FOR PERMANENT INJUNCTION**

35. HCA Kingwood re-alleges paragraphs 7-34 and incorporates by reference in this section.

36. HCA Kingwood requests the Court set its Application for Permanent Injunction for a full trial on the merits and, after the trial, issue a permanent injunction against Burke requiring him to remove the harassing and threatening statements and, similarly, prohibiting and enjoining him from re-publishing any similar remarks regarding HCA Kingwood and its retained counsel.

#### **IX. CONDITIONS PRECEDENT**

37. All conditions precedent to recovery have been performed.

#### **X. PRAYER & RELIEF**

38. Based on the foregoing, Defendant and Counter-Plaintiff HCA Houston Healthcare Kingwood seek the following relief:

- a. A temporary injunction as described in paragraphs 23-34;
- b. Permanent injunction as described in paragraphs 35-36;
- c. An award of actual and consequential damages within the jurisdictional limits of this Court;
- d. An award of exemplary damages and/or punitive damages for all claims for which such damages are authorized;
- e. An award of pre-and-post-judgment interest as permitted by law; and

- f. Such other and further relief as the Court may deem just, proper and/or necessary under the circumstances.

Respectfully submitted,

**SERPE ANDREWS, PLLC**

By: /s/ Nicole G. Andrews

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**ATTORNEYS FOR COUNTER-PLAINTIFF,  
HCA HOUSTON HEALTHCARE  
KINGWOOD**

**CERTIFICATE OF SERVICE**

This will certify that a true and correct copy of the foregoing document has been forwarded to Mr. Burke pursuant to the Texas Rules of Civil Procedure on the 23<sup>rd</sup> day of November, 2022.

Mark Burke  
46 Kingwood Greens Dr  
Kingwood, Texas 77339  
*Plaintiff Pro Se*

**via e-service**

/s/ Nicole G. Andrews

Nicole G. Andrews

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Amanda Johnson on behalf of Nicole Andrews  
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Status as of 11/23/2022 3:45 PM CST

#### Case Contacts

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