

14-13-00036-CV

NO. 14-12-01155-CV

ACCEPTED
234EFJ017273503
FOURTEENTH COURT OF APPEALS
HOUSTON, TEXAS
13 January 15 P5:27
Christopher Prine
CLERK

**IN THE COURT OF APPEALS
FOR THE FOURTEENTH JUDICIAL DISTRICT OF TEXAS
HOUSTON, TEXAS**

FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS
JAN 15 2015 5:15 PM
CHRISTOPHER A. PRINE
Clerk

LasikPlus of Texas, P.A. and LCA-Vision, Inc., Relators, Appellants

v.

**Federico Mattioli, M.D., and
Mattioli Vision Professionals, P.A., Respondent, Appellee**

**On Appeal from the 80th Judicial District Court
of Harris County
Cause No. 2012-68429**

**LASIKPLUS OF TEXAS, P.A. AND LCA-VISION INC.'S PETITION FOR
WRIT OF INJUNCTION, OR ALTERNATIVELY, MOTION FOR
APPELLATE RULE 29.3 RELIEF**

Scott B. Novak

SBN: 24051124

sbn@lorancethompson.com

Ryan T. Hand

SBN: 24012777

rth@lorancethompson.com

LORANCE & THOMPSON, P.C.

2900 North Loop West, Suite 500

Houston, Texas 77092

713/868-5560

713/864-4671 (fax)

COUNSEL FOR RELATORS

LASIKPLUS OF TEXAS, P.A. AND

LCA-VISION, INC.

ORAL ARGUMENT REQUESTED

IDENTITY OF PARTIES & COUNSEL

Pursuant to Texas Rule of Appellate Procedure 52.3(a), Relators LasikPlus of Texas, P.A. and LCA-Vision, Inc. provides the following list of all parties and the names and addresses of all counsel for said parties:

1. LasikPlus of Texas, P.A. and LCA-Vision, Inc. Relators/Appellants/Plaintiffs

Scott B Novak
SBN: 24051124
sbn@lorancethompson.com
Ryan T. Hand
SBN: 2401277
rth@lorancethompson.com
Counsel for Defendants/Appellants
LORANCE & THOMPSON, P.C.
2900 North Loop West, Suite 500
Houston, Texas 77092
713/868-5560
713/864-4671 (fax)

2. Federico Mattioli, M.D. and Mattioli Vision Professionals, P.A. Respondent/Appellee/Defendant

Mr. George W. Vie, III
SBN: 20579310
MILLS SHIRLEY LLP
1021 Main Street, Suite 1950
Houston, TX 77002
713/571-4218
713/622-6334 (fax)

Gary M. Polland
SBN: 16095800
Valeria Lee Brock
SBN: 12074610
2211 Norfolk Street, Suite 920
Houston, TX 77098
713/621-6335
713/893-6095 (fax)

David A. Jones
SBN: 10869500
733 West 43rd Street
Houston, TX 77018
713/504-8188
713/861-1406 (fax)

/s/ Scott B. Novak

Scott B. Novak

REQUEST FOR ORAL ARGUMENT

Appellants, LasikPlus of Texas, P.A. and LCA-Vision, Inc. respectfully request oral argument in this case.

TABLE OF CONTENTS

IDENTITY OF PARTIES & COUNSEL	iii
REQUEST FOR ORAL ARGUMENT.....	v
TABLE OF CONTENTS	vi
INDEX OF AUTHORITIES	viii
STATEMENT OF THE CASE	2
STATEMENT OF JURISDICTION	6
ISSUES PRESENTED	7
RECORD AND APPENDIX IN SUPPORT OF PETITION	7
STATEMENT OF FACTS.....	9
SUMMARY OF THE ARGUMENTS	17
ARGUMENT	19
A. Standard for Issuing a Writ of Injunction.....	19
B. Texas Rule of Appellate Procedure 29.3 Allows this Court to Issue Writs to Protect the Subject Matter of a Pending Appeal	25
C. A Writ of Injunction Should Issue to Protect This Court’s Subject Matter Jurisdiction Over the Pending Appeal	26
CONCLUSION AND PRAYER.....	30
CERTIFICATE OF SERVICE.....	32
CERTIFICATE OF COMPLIANCE.....	32

AFFIDAVIT AUTHENTICATING APPENDIX AND RECORD.....33
APPENDIX.....35

INDEX OF AUTHORITIES

CASES

- Beall v. Strake*,
602 S.W.2d 394 (Tex. Civ. App.—Austin 1980, no writ)..... 19, 22
- Deer Valley Ranch, Inc. v. Adair*,
1978 Tex. App. LEXIS 3773 (Tex. Civ. App. San Antonio Nov. 1 1978) .22
- EMW Mfg. Co. v. Lemons*,
724 S.W.2d 425 (Tex. App.—Fort Worth 1987, orig. proceeding) 21
- Gordon v. Lake*,
163 Tex. 392, S.W.2d 138, 5 Tex. Sup. Ct. J. 325 (1962).....20
- Greathouse Ins. Agency v. Tropical Investments, Inc.*,
718 S.W.2d 821 (Tex. App.—Houston [14th Dist.] 1986, no writ) 6
- Holloway v. Fifth Court of Appeals*,
767 S.W.2d 680, 683 (Tex.1989) (orig. proceeding)..... 19
- In re Autonation*,
No. 14-05-00362-CV, 2005 Tex. App. LEXIS 3017, 2005 WL 914182, at *1
(Tex. App.—Houston [14th Dist.] Apr. 15, 2005, orig. proceeding) (mem.
op.), mand. granted on other grounds, 228 S.W.3d 663 (Tex. 2007)..... 26
- In re Holland*,
No. 14-09-00656-CV, 2009 Tex. App. LEXIS 7635, 2009 WL 3154479, at
*2 (Tex. App.—Houston [14th Dist.] Oct. 1, 2009, orig. proceeding)..... 25
- In re Olson*,
252 S.W.3d 747 (Tex. App.— Houston [14th Dist.] 2008, no pet..... 19
- In re Sheshtawy*,
161 S.W.3d 1 (Tex. App.—Houston [14th Dist.] 2003, orig. proceeding) .19
- In re Shields*,
190 S.W.3d 717, 2005 Tex. App. LEXIS 9541 (Tex. App. Dallas 2005)...23

<i>In re Teague</i> , No. 02-06-033-CV, 2006 WL 302123, *1 (Tex. App.—Fort Worth Feb. 6, 2006)	22
<i>In re In re Texas Association of Sports Officials</i> , No. 03-10-00029-CV, 2010 WL 392342, (Tex. App.—Austin Feb. 5, 2010) (mem. op.)	19, 22
<i>In re Wyatt</i> , 110 S.W.3d 511 (Tex. App.—Waco 2003, orig. proceeding)	19
<i>Irving Bank & Trust Co. v. Second Land Corp.</i> , 544 S.W.2d 684, 1976 Tex. App. LEXIS 3250 (Tex. Civ. App. Dallas 1976).....	21
<i>James v. City of Round Rock</i> , 630 S.W.2d 466 (Tex. App. -- Austin 1982, no writ)	20
<i>Lamar Builders, Inc. v. Guardian Sav. & Loan Ass'n</i> , 1990 Tex. App. LEXIS 605 (Tex. App. Houston [1st Dist.] Mar. 14, 1990)	21, 23
<i>Madison v. Martinez</i> , 42 S.W.2d 84 (Tex. Civ. App.—Dallas 1931, writ ref'd)	19, 20
<i>Malakoff Gin Co. v. Riddlesperger</i> , 108 Tex. 273 (Tex. 1917).....	24
<i>Martin v. Linen Sys. for Hosps, Inc.</i> , 671 S.W.2d 706 (Tex. App.—Houston [1st Dist.] 1984, no writ).....	24
<i>Orkin Exterminating Co. v. Veal</i> , 355 S.W.2d 831 (Tex. Civ. App. —Fort Worth, writ ref'd n.r.e.)	23
<i>Reyes v. Atkins</i> , 619 S.W.2d 26 (Tex. Civ. App.—Fort Worth 1981, orig. proceeding).....	21
<i>See Valley Baptist Med. Ctr. v. Gonzalez</i> , 33 S.W.3d 821, 44 Tex. Sup. Ct. J. 41 (Tex. 2000).....	20

<i>Shelby Operating Co. v. City of Waskom</i> , 964 S.W.2d 75 (Tex. App.—Texarkana 1997, writ denied).....	20
<i>Sonny Arnold, Inc. v. Sentry Sav. Ass'n</i> , 602 S.W.2d 90, 1980 Tex. App. LEXIS 3559 (Tex. Civ. App. Amarillo 1980)	21
<i>State v. Gibson Prods. Co.</i> , 699 S.W.2d 640 (Tex. App.—Waco 1985, no writ).....	20
<i>Swank v. Sharp</i> , 358 S.W.2d 950 (Tex. Civ. App.—Dallas 1962, no writ)	20
<i>T-N-T Motorsports</i> , 965 S.W.2d at 24.....	24
<i>Unitel Corp. v. Decker</i> , 731 S.W.2d 636, 641 (Tex. App.—Houston [14th Dist.] 1987, no writ)....	24

STATUTES

Tex. Civ. Prac. & Rem. Code § 51.014(a)(4).....	27
Tex. Civ. Prac. & Rem. Code Ann. § 65.011 (West 2008).....	24
Tex. Const. art. V, § 6; Tex. Gov. Code Ann. § 22.221(a).....	6, 19, 23, 29
Tex. R. App. P. 29.3	25, 29
Tex. Rev. Civ. Stat. Ann. art. 1823 (now Tex. Gov't Code Ann. § 22.221).....	21

NO. 14-12-01155-CV

**IN THE COURT OF APPEALS
FOR THE FOURTEENTH JUDICIAL DISTRICT OF TEXAS
HOUSTON, TEXAS**

LasikPlus of Texas, P.A. and LCA-Vision, Inc., Relators, Appellants

v.

**Federico Mattioli, M.D., and
Mattioli Vision Professionals, P.A., Respondent, Appellee**

**On Appeal from the 80th Judicial District Court
of Harris County
Cause No. 2012-68429**

**LASIKPLUS OF TEXAS, P.A. AND LCA-VISION INC.'S PETITION FOR
WRIT OF INJUNCTION, OR ALTERNATIVELY, MOTION FOR
APPELLATE RULE 29.3 RELIEF**

TO THE HONORABLE FOURTEENTH COURT OF APPEALS:

Relators *LasikPlus* of Texas, P.A. and LCA-Vision, Inc. (hereinafter "*LasikPlus*" or "Relators"), petition this Court to issue a writ of injunction prohibiting Respondent, Federico Mattioli, M.D. and Mattioli Vision Professionals, P.A. (hereinafter "Dr. Mattioli" or "Respondent"), from proceeding with certain actions previously restricted, or alternatively, pursuant to Rule 29 of the Texas

Rules of Appellate Procedure, order injunctive relief incorporating the terms of the previously granted Temporary Restraining Order. Relators submit this Petition for Writ of Injunction and Appendix, as well as its Record in Support (filed contemporaneously with the Petition), in compliance with rule 52 of the Texas Rules of Appellate Procedure In support of its Petition, Relators respectfully assert and allege as follows:

I.

Statement of the Case

Relators in this Original Proceeding are *LasikPlus of Texas, P.A. and LCA-Vision Inc.*, hereinafter referred to as *LasikPlus*.¹ The Respondent is Federico Mattioli, M.D.² This Original Proceeding emanates from *LasikPlus of Texas, P.A. and LCA-Vision Inc. v. Federico Mattioli, MD*, Cause No. 2012-68429, filed in the 80th Judicial District Court of Harris County, Texas.³ See Plaintiffs' Original

¹ Relator can be contacted through their counsel, Ryan Hand and Scott Novak, Lorange & Thompson, P.C., 2900 North Loop West, Ste. 500, Houston, Texas 77092.

² Respondent can be contacted through their counsel Gary M. Polland and Valeria Lee Brock, 2211 Norfolk Street, Suite 920, Houston, Texas 77098, George W. Vie III, Mills Shirley LLP, 1021 Main Street, Suite 1950 Houston, Texas 77002, and David A. Jones, 733 West 43rd Street, Houston, Texas 770018.

³ Citation to pleadings, orders or materials admitted into evidence will be referred to by their Appendix Tab number. For example, "see Employment Agreement, attached hereto at Tab ____." References to the Reporter's Record will be referred to as RR followed by the respective page number. References to Exhibits referred to in the Reporter's Record and admitted into evidence at the December 7, 2012 Temporary Injunction Hearing will be referred to by their number and by the party's designation that offered same and the Appendix Tab number when applicable - for example: "Plaintiff's Exhibit 1 at Tab ____."

Petition, Request for Declaratory Judgment, Application for Temporary Restraining Order, Temporary Injunction and Permanent Injunction at Tab 1. In brief, Relators sued Dr. Federico Mattioli for breach of contract and sought to enjoin certain aspects of his medical practice as prohibited under that contract. *See* Plaintiffs' First Amended Original Petition, Request for Declaratory Judgment, Application for Temporary Restraining Order, Temporary Injunction and Permanent Injunction at Tab 2. Dr. Mattioli, who was involved in a joint venture with LCA-Vision Inc. vis-à-vis its subsidiary LasikPlus of Texas, P.A. breached both a covenant not to compete, which restricted his ability to perform Lasik laser eye surgery and RPK surgery within a 20-mile radius of LasikPlus of Texas, P.A.'s clinic for 18-months following termination of his employment, as well as a 120-day termination notice provision contained in the subject contract. *Id.*

Relators requested relief from the Trial Court attendant to Dr. Mattioli's obligations under the subject agreements in an effort to secure and protect their goodwill. On November 19, 2012, the Honorable Larry Weiman of the 80th Judicial District Court issued a Temporary Restraining Order restricting Dr. Federico Mattioli from providing medical services including, but not limited to, laser eye surgery and refractive surgeries within a 20 mile radius of LasikPlus' clinic, located at 3700 Buffalo Speedway, Ste. 325, Houston, Texas 77098. *See* Temporary Restraining Order and Order Setting Hearing for Temporary Injunction

at Tab 3. On December 6, 2012, the Trial Court signed an order modifying the temporary injunction by restricting the subject activity to only Lasik laser surgery and RPK surgery and extending same until 3:00 pm on December 7, 2012 when the Court was set to entertain Relators' Motion for Temporary Injunction. *See* Agreed Order Extending Temporary Restraining Order and Setting Hearing for Temporary Injunction at Tab 4. The Order stated, in relevant part, as follows:

Defendant, Dr. Federico Mattioli, is prohibited from providing Lasik or RPK laser eye surgery at 2200 Southwest Freeway #500, Houston, TX 77098 or any other location within a 20 mile radius of 3700 Buffalo Speedway, Ste. 325, Houston, Texas 77098 and/or in any contiguous county to Harris County, Texas.

Id.

On December 7, 2012, the Trial Court considered Relators' Motion for Temporary Injunction, as well as the testimony of Dave Thomas, the Co-CEO and CFO of LCA-Vision Inc. *See generally* RR. Though post-hearing briefing was provided, the Trial Court denied Relators' requested temporary injunction, which sought to prohibit the same activity as that of the prior Temporary Restraining Order. *See* Plaintiffs' Brief on Reformation of Covenant Not to Compete Made in Concert with Plaintiffs' Request for Injunctive Relief at Tab 5; *see also* Order of December 12, 2012 Denying Injunctive Relief at Tab 6. The Trial Court further denied Relators' request for a temporary injunction predicated on Dr. Mattioli's breach of the termination notice provision contained in the subject Employment

Agreement. *See* December 31, 2012 Order Denying Request for Ruling on Injunctive Relief on Alternative Theory of Breach of the Contractual Notice Provision of the Employment Contract at Tab 7.

Relators have brought an interlocutory appeal challenging the Trial Court's denial of their request for temporary injunction on grounds that the Trial Court exceeded its discretion when it went beyond the saliency of the injunctive relief sought and erroneously based its ruling on the ultimate issue of whether the subject covenant not to compete was enforceable. *See* Plaintiffs' Notice of Accelerated Interlocutory Appeal Pursuant to CPRC §51.014(a)(4) at Tab 8. Relators further predicate their interlocutory appeal on the fact that the Trial Court disregarded Dr. Mattioli's stipulated breach of the notice provision of his employment agreement.

Relators now seek a writ of injunction from this Court to protect this Court's subject matter jurisdiction in Relators' interlocutory appeal, or, alternatively, through Rule 29.3 of the Texas Rules of Appellate Procedure, an order incorporating the terms of the temporary restraining order to protect Relators' rights during the pendency of the Appeal. Relators' Petition is based on the fact that Dr. Mattioli's practice of Lasik and RPK procedures a mere 1.2 miles from Relators' clinic in derogation of his contractual obligations is systematically eroding the value and goodwill of Relators' business such that a failure to act by this Court will necessarily strip this Court of its jurisdiction by rendering any

subsequent action on appeal meaningless. In addition, Relators believe immediate injunctive relief is required at this stage due to the fact that the 120-day termination notice provision made basis of Relators' interlocutory appeal will likely expire before this Court rules on the Trial Court's denial of Relators' injunctive relief which, again, will deprive this Court of jurisdiction. Lastly, Relators ask for injunctive relief from this Court to protect the subject matter of this case – namely, their business worth, market share and goodwill – from further amelioration by Dr. Mattioli's competition.

II.

Statement of Jurisdiction

This Court has jurisdiction to consider this Original Proceeding in that it is brought in conjunction with an interlocutory appeal from the denial of a request for temporary injunction per Tex. Civ. Prac. & Rem. Code § 51.014(a)(4). *See Greathouse Ins. Agency v. Tropical Investments, Inc.*, 718 S.W.2d 821, 822 (Tex. App.—Houston [14th Dist.] 1986, no writ). This Court has jurisdiction to issue a writ of injunction necessary to enforce its jurisdiction over an appeal pending in this Court. Tex. Const. art. V, § 6; Tex. Gov. Code Ann. § 22.221(a).

III.

Issues Presented

1. Whether Dr. Federico Mattioli should be enjoined under terms of the revised temporary restraining order of December 7, 2012 to preserve this Court's subject matter jurisdiction in the Relators' interlocutory appeal from the denial of its request for injunction?
2. Alternatively, whether under Texas Rule of Appellate Procedure 29.3, an order incorporating the terms of the December 6, 2012 revision of the Temporary Restraining Order should issue to protect the parties rights during the pendency of the Relators' interlocutory appeal?

IV.

Record and Appendix in Support of Petition

Relators include the following documents from the Record to its Petition for Writ of Injunction, pursuant to rule 52.7 of the Texas Rules of Appellate Procedure, which Relators file contemporaneously with this Petition. Relators specifically incorporate the following documents by reference as if fully set forth herein:

- Tab 1 - Plaintiffs' Original Petition, Request for Declaratory Judgment, Application for Temporary Restraining Order, Temporary Injunction and Permanent Injunction

- Tab 2 - Plaintiffs' First Amended Original Petition, Request for Declaratory Judgment, Application for Temporary Restraining Order, Temporary Injunction and Permanent Injunction
- Tab 3 - Temporary Restraining Order and Order Setting Hearing for Temporary Injunction
- Tab 4 - Agreed Order Extending Temporary Restraining Order and Setting Hearing for Temporary Injunction
- Tab 5 - Plaintiffs' Brief on Reformation of Covenant Not to Compete Made in Concert with Plaintiffs' Request for Injunctive Relief
- Tab 6 - Order of December 12, 2012 Denying Injunctive Relief
- Tab 7 - December 31, 2012 Order Denying Request for Ruling on Injunctive Relief on Alternative Theory of Breach of the Contractual Notice Provision of the Employment Contract
- Tab 8 - Plaintiffs' Notice of Accelerated Interlocutory Appeal Pursuant to CPRC §51.014(a)(4)
- Tab 9 - Management Agreement
- Tab 10 - LPT Employment Agreement
- Tab 11 - Mattioli's Resignation (October 16, 2012)
- Tab 12 - "Dr. Mattioli Houston" Google Search, admitted into evidence as Plaintiffs' Exhibit 8 to Plaintiffs' Request for Temporary Injunction December 7, 2012
- Tab 13 - "*LasikPlus* Houston" Google Search, admitted into evidence as Plaintiffs' Exhibit 9 to Plaintiffs' Request for Temporary Injunction

V.

Statement of Facts

LasikPlus of Texas and LCA-Vision Inc. (Relators) operate vision correction clinics that provide ophthalmology services Lasik laser eye surgery and other refractive surgeries. See Management Agreement at Tab 9; see also LPT Employment Agreement at Tab 10. LCA-Vision Inc. manages and provides non-medical personnel to LasikPlus of Texas and is engaged in a joint enterprise and/or partnership with LasikPlus, a professional association which employs medical personnel to provide ophthalmic services. See Management Agreement at Tab 9.

The Management Agreement provides as follows:

1. LCA-Vision Inc. agreed to sublease an office suite to LasikPlus of Texas, P.A. for use as a laser eye clinic;
2. LasikPlus of Texas, P.A. agreed to provide LCA-Vision Inc. physicians to perform ophthalmologic treatment using LasikPlus of Texas, P.A.'s laser vision equipment at the clinic;
3. At LCA-Vision Inc.'s expense, LCA-Vision Inc. agreed to furnish the medical supplies, medical equipment, office equipment and office furnishings at the clinic;
4. At LCA-Vision Inc.'s expense, LCA-Vision Inc. agreed to provide all utilities;
5. At LCA-Vision Inc.'s expense, LCA-Vision Inc. agreed to provide all non-medical personnel, nurses and technicians to conduct the laser eye services at the clinic;
6. At LCA-Vision Inc.'s expense, LCA-Vision Inc. agreed to bill for and collect all the health care and ancillary services rendered to patients at the clinic, including the physician's services;

7. At L LCA-Vision Inc.'s expense, LCA-Vision Inc. agreed to provide all marketing and advertising for LasikPlus of Texas, P.A.;
8. LasikPlus of Texas, P.A. agreed to pay LCA-Vision Inc. a management fee for LCA-Vision Inc.'s services;
9. LasikPlus of Texas, P.A. agreed to require each of LCA-Vision Inc.'s physicians to enter into a written employment agreement with LasikPlus of Texas, P.A. that would include a covenant not to compete with LPT and LCA-Vision Inc.. LasikPlus of Texas, P.A. agreed to strictly and consistently enforce the employment agreements with the physicians.
10. LasikPlus of Texas, P.A. agreed to indemnify and hold harmless LCA-Vision Inc.'s from and against any and all claims and damages resulting from any act or omission of LasikPlus of Texas, P.A. or its physicians.
11. LasikPlus of Texas, P.A. and LCA-Vision Inc. agreed that Defendant would be the primary ophthalmologist at the clinic.
12. LasikPlus of Texas, P.A. agreed to assign to LCA-Vision Inc. all net practice revenue and accounts receivable of LasikPlus of Texas, P.A..
13. LPT agreed to compensate physicians and optometrists from LasikPlus of Texas, P.A.'s payroll account.
14. LasikPlus of Texas, P.A. agreed not to compete against LCA-Vision Inc.'s.

Id.

On December 15, 2003, Federico Mattioli, M.D. entered into an employment contract with LasikPlus of Texas, P.A. to provide ophthalmic services at the LasikPlus of Texas, P.A./LCA-Vision Inc. clinic, which is located at 3700 Buffalo Speedway, Ste. 325, Houston, Texas. See Employment Agreement at Tab 9. Per the Employment Agreement between Dr. Mattioli and LasikPlus of Texas, P.A.,

LCA-Vision was identified as a third party beneficiary to same. *See Id.* at Section 23; *see also* LPT Employment Agreement at Tab 10 at Page 22, No. 7.

The LPT Employment Agreement contained an eighteen (18) month Covenant Not to Compete prohibiting Mattioli from delivering laser vision correction services (other than as an employee of LasikPlus of Texas, P.A.) within a restricted geographic area set forth within same. *See* Section 8 of the LPT Employment Agreement at Tab 10. Additionally, the Employment Agreement contained a notice provision requiring Dr. Mattioli to provide 120-days' notice before terminating employment with LasikPlus. *See Id.* at Section 4.3.

On October 16, 2012, Mattioli notified LasikPlus of Texas, P.A. that his last day of employment would be November 16, 2012. *See* Mattioli's Resignation, dated October 16, 2012, at Tab 11. Mattioli later changed his last day to November 17, 2012. This was far less notice than is required under the Employment Agreement. *See* LPT Employment Agreement at Section 4.3 at Tab 10.

A few days before his last scheduled day of work, Dr. Mattioli advised LasikPlus of Texas, P.A. that he was opening a new clinic located at 2200 Southwest Freeway #500, Houston, TX 77098. This fact is undisputed. Also undisputed is the fact that Dr. Mattioli's new clinic is less than two miles from LasikPlus of Texas, P.A.'s vision center. *See* RR 20; 5-14.

Relators sued Dr. Mattioli in an effort to enjoin his marketing and performance of laser vision correction procedures within 20 miles of Lasik*Plus* of Texas, P.A.'s Houston clinic per the covenant not to compete and notice provisions contained in the subject Employment Agreement. On November 19, 2012, the 80th Judicial District Court, the Honorable Larry Weiman Presiding, issued a Temporary Restraining Order restricting Dr. Federico Mattioli from providing medical services including, but not limited to, laser eye surgery and refractive surgeries within a 20 mile radius of Lasik*Plus*' clinic, located at 3700 Buffalo Speedway, Ste. 325, Houston, Texas 77098. *See* Temporary Restraining Order and Order Setting Hearing for Temporary Injunction at Tab 3. On December 6, 2012, the Trial Court signed an order modifying the temporary injunction by restricting the subject activity to only Lasik laser surgery and RPK surgery and extending same until 3:00 pm on December 7, 2012 when the Court was set to entertain Relator's Motion for Temporary Injunction covering the same activity. *See* Agreed Order Extending Temporary Restraining Order and Setting Hearing for Temporary Injunction at Tab 4.

On December 7, 2012, the Trial Court considered Relators' Motion for Temporary Injunction, as well as the testimony of Dave Thomas, the Co-CEO and CFO of LCA-Vision Inc. Though post-hearing briefing was provided, the Trial Court denied Relators requested temporary injunction, which sought to prohibit the

same activity as that of the prior Temporary Restraining Order. Order of December 12, 2012 Denying Injunctive Relief at Tab 6.

At the December 7, 2012 temporary injunction hearing, counsel for Dr. Mattioli made the following relevant stipulations to the Trial Court:

1. Dr. Mattioli stipulated that, while he did not concede as to the enforceability of the covenant not to compete, it was ancillary to an otherwise enforceable agreement. *See* RR 20; 14-16.
2. Dr. Mattioli stipulated he did sign the employment agreement containing the notice provision and the subject covenant not to compete. *See* RR 20; 23-24.
3. Dr. Mattioli stipulated he did not provide the termination notice as required under the Employment Agreement. *See* RR 20; 20-22.

The evidence and testimony presented to the Trial Court, combined with the stipulations of Dr. Mattioli's counsel detailed, corroborated the claimed harm which Relators were, and continue to be, subjected to due to Dr. Mattioli's breach. To wit, the Trial Court was presented with the following support for Relators' requested injunctive relief through testimony by Dave Thomas, Co-CEO and CFO of LCA-Vision Inc., as well as documentary evidence:

1. During Dr. Mattioli's employment, Relators spent approximately \$1.3 million on advertising and target marketing to brand Dr. Mattioli with the *LasikPlus* name in the subject market. *See* RR 55; 18-25.
2. Over the course of Dr. Mattioli's relationship with the Relators, immeasurable goodwill was established by virtue of the co-branding of the *LasikPlus* name with Dr. Mattioli. *See* RR 66; 5-9.
3. Dr. Mattioli's competitive practice in the same market area of *LasikPlus*' clinic threatens *LasikPlus* of Texas, P.A.'s goodwill by confusing patients

into believing Dr. Mattioli's post-termination services are associated with *LasikPlus* by virtue of the ongoing effects of Relators' targeted marketing and advertising efforts to brand Dr. Mattioli with Relators' business. *See* RR 67; 10-16.

4. The effect of Relators' targeted marketing and advertising efforts to brand Dr. Mattioli with Relators' business was demonstrated to the Trial Court through a showing that internet searches for "Dr. Mattioli Houston" continued to evidence a connection between the Respondent and the Relators despite his opening a competitive practice. *See* RR 67; 17 – 69; 13; *see also* "Dr. Mattioli Houston" Google Search, admitted into evidence as Plaintiffs' Exhibit 8 to Plaintiffs' Request for Temporary Injunction, attached hereto at Tab 12.
5. Evidence presented to the Trial Court revealed that an internet search for "Dr. Mattioli Houston" revealed a video interview associating Dr. Mattioli with *LasikPlus*, further demonstrating a present perceived relationship between Relators and Dr. Mattioli. *See* RR 68; 14-21; *see also* "Dr. Mattioli Houston" Google Search, admitted into evidence as Plaintiffs' Exhibit 8 to Plaintiffs' Request for Temporary Injunction, attached hereto at Tab 12.
6. Testimony and evidence presented to the Trial Court further revealed that internet searches for "*LasikPlus* Houston" was associated with Dr. Federico Mattioli despite the fact he had ceased working for *LasikPlus* and opened a competitive practice. *See* RR 69; 22 – 70; 5; *see also* "*LasikPlus* Houston" Google Search, admitted into evidence as Plaintiffs' Exhibit 9 to Plaintiffs' Request for Temporary Injunction, attached hereto at Tab 13.
7. Testimony from Dave Thomas further established that despite Dr. Mattioli ceasing his employment with *LasikPlus* of Texas, P.A., he would continue to benefit from Relators' marketing effort during the "tail" period wherein consumers would associated Dr. Mattioli with the *LasikPlus* of Texas brand be virtue of their marketing efforts made before Dr. Mattioli terminated his contract. *See* RR 70; 6-19.
8. Mr. Thomas further testified that *LasikPlus* of Texas, P.A.'s goodwill would be adversely affected if Dr. Mattioli was allowed to perform Lasik and/or RPK surgeries within the subject market area and that the value of the effect on the Relators' goodwill would be difficult quantify. *See* RR 70; 20 – 71; 1; RR 71; 18 – 72; 4.

Dr. Mattioli's primary defense to the injunctive relief requested was that the covenant not to compete contained in the Employment Agreement did not comport with the Covenant Not to Compete Act insofar as it did not contain a buy-out provision or arbitration provision. The Covenant, however, did contain a provision wherein Dr. Mattioli and Relators agreed that, if a court finds the subject Covenant not to Compete unenforceable, the parties consent to allow the court to reform the agreement and enforce accordingly. *See* LPT Employment Agreement at Section 8.4, attached hereto at Tab 2. In addition, Dr. Mattioli did not countermand the fact that he breached the 120-day notice provision of the employment contract and, in fact, stipulated to same. *See* RR 20; 20-22.

Following the subject December 7, 2012 hearing, the Trial Court requested briefing as to its ability to reform the Covenant Not to Compete, as well as the propriety of denying the requested injunctive relief on grounds that the Covenant Not to Compete Act does not expressly warrant reformation of the missing provisions. Briefing on the legislative history and common law was provided, as well as briefing on Dr. Mattioli's breach of the notice provision of the Employment Agreement. *See* Brief on Reformation of Covenant Not to Compete Made in Concert with Plaintiffs' Request for Injunctive Relief, attached hereto at Tab 5. Despite same, the Court denied Relators' requested injunctive relief. *See* Order of December 12, 2012 Denying Injunctive Relief at Tab 6. Further, the Trial Court

denied Relators' request for injunctive relief on grounds that Dr. Mattioli breached the notice provision of the subject Employment Agreement. December 31, 2012 Order Denying Request for Ruling on Injunctive Relief on Alternative Theory of Breach of the Contractual Notice Provision of the Employment Contract at Tab 7.

Since December 7, 2012, Dr. Mattioli has started offering Lasik and RPK laser eye surgeries at his new clinic. For all intents and purposes, and as shown to the Trial Court through documentary evidence and the testimony of Mr. Thomas, Dr. Mattioli will continue to benefit from Relators' advertising and marketing efforts, the deleterious effect of which on Relators' business value, market share and goodwill would have been avoided had Dr. Mattioli abided by the covenant not to compete and/or the notice provision in the subject employment agreement. It is Relators' position the Trial Court erred in denying the injunctive relief sought; to wit, Relators are pursuing interlocutory review of that ruling.

Dr. Mattioli's practice of Lasik and RPK procedures 1.2 miles from Relators' clinic during the term of the pending interlocutory appeal threatens to ameliorate the subject matter of the appeal and, by extension, this Court's jurisdiction, by eroding the value of any favorable ruling by this Court. More specifically, the remaining notice period under the Employment Agreement will continue to dissolve daily and the deleterious effects of Dr. Mattioli's breach on Relators' market share and goodwill will have already taken its toll. Consequently,

Relators are compelled to ask this Court to enjoin Dr. Mattioli from providing Lasik and RPK surgery during the pendency of their concomitant appeal so as to maintain this Court's jurisdiction and to prevent further damage to the subject of the pending interlocutory appeal.

VI.

Summary of the Arguments

To preserve the subject matter jurisdiction of this Court in Relators' interlocutory appeal from the denial of its request for temporary injunction by the Trial Court, this Court should grant Relators' request for a writ of injunction, enjoining the Dr. Federico Mattioli from certain conduct as set forth in the terms of the December 7, 2012 Temporary Restraining Order.

This Court has the power to issue a writ of injunction to preserve its subject matter jurisdiction, which is required here. Because the Trial Court denied Relators' request to temporarily enjoin Dr. Federico Mattioli from performing Lasik and RPK procedures in his clinic 1.2 miles from the *LasikPlus* clinic, Dr. Mattioli's performance of those procedures in derogation of his noncompetition agreement, as well as his breach of the notice provision contained in his employment contract, are systematically eroding Relators' good will and market presence while simultaneously permitting Dr. Mattioli to become unjustly enriched by virtue of Relators' enterprise and industriousness. Because the Relators' good

will is eroding precipitously and in concert with Dr. Mattioli's growing presence in the market predicated on same and the fact the subject contract's notice term, though breached on November 17, 2012, will expire on February 13, 2012 (120-days after he notified Relators' of his termination of the subject employment agreement), the failure to grant the injunctive relief requested herein would result in any judgment favorable to the Relators' appeal to become moot. Indeed, if Dr. Mattioli is allowed to proceed and practice in derogation of his agreements, Relators' contractual and extracontractual claims seeking relief based on the intangible and incalculable erosion of their goodwill be mooted by Dr. Mattioli's continued operation in violation of his contractual agreements.

This Court should exercise its writ powers here and issue a temporary injunction incorporating the terms of the December 7, 2012 Temporary Restraining Order during the pendency of the Relators' appeal. Alternatively, this Court should issue temporary orders under Rule of Appellate Procedure 29.3, and issue an order incorporating the terms of the December 7, 2012 restraining order to preserve the parties' rights until disposition of the Relators' appeal.

VII.

Argument

A. *Standard for Issuing a Writ of Injunction*

Texas Government Code § 22.221(a) provides: Each court of appeal or a justice of a court of appeal may issue a writ of mandamus and all other writs necessary to enforce the jurisdiction of the court. *See* Tex. Gov. Code Add. §22.221(a). This Court may “issue writs necessary to protect its jurisdiction by preserving the subject matter of the appeal pending a hearing on the appeal.” *Beall v. Strake*, 602 S.W.2d 394, 395 (Tex. Civ. App.—Austin 1980, no writ); *In re Tex. Ass'n of Sports Officials*, No. 03-10-00029-CV, 2010 WL 392342, (Tex. App.—Austin Feb. 5, 2010) (mem. op.); *Madison v. Martinez*, 42 S.W.2d 84, 86 (Tex. Civ. App.—Dallas 1931, writ ref'd).

The purpose of a writ of injunction is to enforce or protect the appellate court's jurisdiction. *See In re Olson*, 252 S.W.3d 747, 747 (Tex. App.—Houston [14th Dist.] 2008, no pet. (citing *Holloway v. Fifth Court of Appeals*, 767 S.W.2d 680, 683 (Tex.1989) (orig. proceeding)); *In re Sheshtawy*, 161 S.W.3d 1 (Tex. App.—Houston [14th Dist.] 2003, orig. proceeding). The use of a writ of injunction is limited to cases in which a court of appeals has actual jurisdiction of a pending proceeding. *See Olson* at 747 (citing *In re Wyatt*, 110 S.W.3d 511 (Tex. App.—Waco 2003, orig. proceeding)). Indeed, if the effect of the refusal to issue

the injunction is to destroy the subject matter of the appeal, and thereby prevent the effective operation of any judgment this Court might render, the jurisdiction of this Court would be unlawfully invaded and the power to issue the writ properly rests in this Court. *Madison*, 42 S.W.2d at 86. Stated another way, if an appeal pending before this Court becomes moot, it loses jurisdiction over same. *See Valley Baptist Med. Ctr. v. Gonzalez*, 33 S.W.3d 821, 822, 44 Tex. Sup. Ct. J. 41 (Tex. 2000).

A case becomes moot when it does not rest, or ceases to rest, on any existing right or fact. *Shelby Operating Co. v. City of Waskom*, 964 S.W.2d 75, 81 (Tex. App.—Texarkana 1997, writ denied). Several corollaries of this rule are that (1) a case is not moot if some issue is still in controversy; (2) a case becomes moot if it is impossible for the court to grant effectual relief for any reason; and (3) a case can become moot by reason of new legislation or acts that supersede existing legislation. *James v. City of Round Rock*, 630 S.W.2d 466, 468 (Tex. App.—Austin 1982, no writ) (citing *Swank v. Sharp*, 358 S.W.2d 950 (Tex. Civ. App.—Dallas 1962, no writ) and *Gordon v. Lake*, 163 Tex. 392, 356 S.W.2d 138, 5 Tex. Sup. Ct. J. 325 (1962)); *State v. Gibson Prods. Co.*, 699 S.W.2d 640, 641 (Tex. App.—Waco 1985, no writ).

In determining whether a writ should issue, an appellate court may not consider the likelihood the relator will prevail on the underlying appeal. *Lamar Builders, Inc. v. Guardian Sav. & Loan Ass'n*, 1990 Tex. App. LEXIS 605 (Tex.

App. Houston [1st Dist.] Mar. 14, 1990); *Reyes v. Atkins*, 619 S.W.2d 26, 27-28 (Tex. Civ. App.—Fort Worth 1981, orig. proceeding). Rather, where an original proceeding for a writ of injunction is brought pending the appeal of the trial court's denial of a similar injunction, the appellate court should issue the writ to protect its jurisdiction of the appeal. See *Lamar Builders, Inc. at Id.* (citing *EMW Mfg. Co. v. Lemons*, 724 S.W.2d 425, 426 (Tex. App.—Fort Worth 1987, orig. proceeding); *Reyes v. Atkins*, 619 S.W.2d 26, 27 (Tex. Civ. App.—Fort Worth 1981, orig. proceeding)).

Examples of injunctive relief issued by a court of superior jurisdiction are multiform, yet all such writs are fundamentally designed to ensure the continued jurisdiction of the court of appeals vis-à-vis ensuring the subject matter of the pending appeal is not ameliorated:

- In *Sonny Arnold, Inc. v. Sentry Sav. Ass'n*, the court of appeals was empowered to issue writs necessary to enforce its jurisdiction; former Tex. Rev. Civ. Stat. Ann. art. 1823 authorized the issuance of a writ of injunction to enjoin a trustee's sale of realty when necessary for the protection of the court's jurisdiction over the merits of a pending appeal, and particularly to prevent the invasion of jurisdiction through the destruction of the subject-matter of the appeal. 602 S.W.2d 90, 1980 Tex. App. LEXIS 3559 (Tex. Civ. App. Amarillo 1980);
- In *Irving Bank & Trust Co. v. Second Land Corp.*, the trial court had discretion to order a temporary injunction restraining trustee's sale of land in order to preserve the status quo until a trial on the merits; the appellate court had the authority to issue its own temporary injunction pending appeal under former Tex. Rev. Civ. Stat. Ann. art. 1823 (now Tex. Gov't Code Ann. § 22.221). 544 S.W.2d 684, 1976 Tex. App. LEXIS 3250 (Tex. Civ. App. Dallas 1976);

- In *Deer Valley Ranch, Inc. v. Adair*, a temporary injunction to bar the sale of land by mortgagee under a deed of trust executed by mortgagor pending appeal was appropriate under former Tex. Rev. Civ. Stat. Ann. art. 1823 because the sale would render meaningless any reversal on appeal. 1978 Tex. App. LEXIS 3773 (Tex. Civ. App. San Antonio Nov. 1 1978);
- In *In re Teague*, the relator sought to enjoin the respondent, the City of Jacksboro, Texas, from effectuating an order allowing the City to demolish the structure located on Teague's property during the pendency of Teague's appeal of the trial court's judgment dismissing his suit challenging the City's order through the grant of a plea to the jurisdiction. Despite that the subject of the appeal involved the propriety of the grant of the City's plea to the jurisdiction, the court of appeals recognized that if the City demolished the property pending appeal and relator prevailed on the merits of the appeal, that judgment would be moot, ameliorating the court of appeals subject matter jurisdiction over the appeal. *In re Teague*, No. 02-06-033-CV, 2006 WL 302123, *1 (Tex. App.—Fort Worth Feb. 6, 2006);
- In *In re Texas Association of Sports Officials*, the court issued a writ of injunction to preserve its jurisdiction in an appeal from the denial of a plea to the jurisdiction in a case challenging the authority of the University Interscholastic League (the "UIL") in attempting to regulate the officiating of high school varsity sports in Texas. The court recognized the stay triggered by the UIL's interlocutory appeal prevented the trial court from extending the temporary restraining order, so that once the order expired, the UIL would be free to implement its plan to regulate sports officials. In granting the injunction, the court explained that the subject matter of the appeal was the independent status of TASO, which would be ameliorated if the UIL implemented a plan to regulate the profession. In addition to protecting the independent status of TASO, the court recognized that the sporting events at which TASO officials sought to officiate would already occurred under UIL's control. 2010 WL 392342, *1;
- In *Beall v. Strake*, a writ of injunction issued enjoining the Secretary of State from filing articles of dissolution of a corporation, where the filing would moot a pending appeal addressing the validity of a shareholder's consent to dissolve the corporation. 602 S.W.2d 394, 395 (Tex. Civ. App.—Austin 1980, no writ);

- In *In re Shields*, where a trial court dissolved a temporary injunction against foreclosure of homestead property and a foreclosure was scheduled, a writ of injunction to preserve the subject matter of the appeal was a proper exercise of the appellate court's authority under Tex. Const. art. V, § 6 and Tex. Gov't Code Ann. § 22.221(a). 190 S.W.3d 717, 2005 Tex. App. LEXIS 9541 (Tex. App. Dallas 2005);
- In *Lamar Bldrs., Inc. v. Guardian Sav. & Loan Ass'n*, the appellate court issued writ of injunction and enjoined holder of letters of credit from presenting the letters and enjoined bank that issued the letters of credit from paying them where the builder was appealing from the trial court's denial of builder's request for a temporary injunction requesting the same relief because the issue would become moot upon presentment and payment, thereby destroying the subject matter of builder's appeal and the effectiveness of the appellate court's decision in the appeal should builder prevail. 1990 Tex. App. LEXIS 605 (Tex. App. Houston [1st Dist.] Mar. 14 1990).

As demonstrated above, the fundamental purpose of a writ of injunction is to maintain the court of appeals' jurisdiction through the maintenance of the underlying subject of a pending appeal while ensuring the effect of an appellate ruling may effectuate its intended purpose.

Not insignificantly, intangible assets, such as market share and goodwill have been deemed appropriate for protection through writs of injunction. In *Orkin Exterminating Co. v. Veal*, the Fort Worth Court of Appeals reversed the judgment of the trial court denying injunctive relief sought by exterminating company against ex-employee who, in derogation of his contract, started competing exterminating business which threatened to erode the plaintiff company's market share and goodwill. 355 S.W.2d 831, 832 (Tex. Civ. App. –Fort Worth, writ ref'd

n.r.e.). The Fort Worth Court of Appeals reversal ordering the issuance of an injunction specifically noted the restraints on the defendant ex-employee, which were to be determined on remand by the trial court, should consider the need to protect the plaintiff company's goodwill. *Id.*

The holding in *Orkin* is keeping with a litany of cases recognizing the intrinsic value of goodwill⁴ and market share and the permanence of its erosion as a result of improper competition. See *T-N-T Motorsports*, 965 S.W.2d at 24; *Unitel Corp. v. Decker*, 731 S.W.2d 636, 641 (Tex. App.—Houston [14th Dist.] 1987, no writ) (holding that, with respect to injunctive relief, proof of a continued breach of a non-competition agreement by a highly-trained employee constitutes prima facie proof of probable injury); *Martin v. Linen Sys. for Hosps, Inc.*, 671 S.W.2d 706, 709 (Tex. App.—Houston [1st Dist.] 1984, no writ) (same); see also Tex. Civ. Prac. & Rem. Code Ann. § 65.011 (West 2008) (providing that a writ of injunction may be granted if, among other things, "a party performs or is about to perform or is procuring or allowing the performance of an act relating to the subject of pending litigation in violation of the rights of the applicant, and the act would tend to render the judgment in that litigation ineffectual").

⁴ Good will, or an agreement to desist from business, especially when connected with an established business is now considered property, with a right of reconveyance, and it is the special province of a court of equity to enforce such an agreement. *Malakoff Gin Co. v. Riddlesperger*, 108 Tex. 273 (Tex. 1917).

In the instant matter the need for immediate injunction of Dr. Federico Mattioli is manifest, as demonstrated by the testimony and evidence presented to the Trial Court in conjunction with the December 7, 2012 hearing on Relator's request for injunction. The intangible, yet nonetheless critical value of Relators' business value, market share and goodwill have been, and will continue to be negatively impacted by Dr. Mattioli's actions such that the value of this Court's power to resolve the Trial Court's ruling will be rendered moot as time goes by and Dr. Mattioli's foothold in the market continues to solidify. Furthermore, the 120-day notice provision to which Dr. Mattioli stipulated to breaching will expire imminently on February 13, 2013; awaiting this Court's judgment on Relators' pending interlocutory appeal will effectively moot their arguments attendant to the relevant notice provision and, again, ameliorate this Court's jurisdiction. To wit, immediate action is required.

B. Texas Rule of Appellate Procedure 29.3 Allows this Court to Issue Writs to Protect the Subject Matter of a Pending Appeal

Rule 29.3 of the Texas Rules of Appellate Procedure allows a party appealing interlocutory orders to seek temporary relief pending disposition of the accelerated appeal. *See* Tex. R. App. P. 29.3 ("When an appeal from an interlocutory order is perfected, the appellate court may make any temporary orders necessary to preserve the parties' rights until disposition of the appeal and may require appropriate security."); *see also In re Holland*, No. 14-09-00656-CV,

2009 Tex. App. LEXIS 7635, 2009 WL 3154479, at *2 (Tex. App.—Houston [14th Dist.] Oct. 1, 2009, orig. proceeding); *In re Autonation*, No. 14-05-00362-CV, 2005 Tex. App. LEXIS 3017, 2005 WL 914182, at *1 (Tex. App.—Houston [14th Dist.] Apr. 15, 2005, orig. proceeding) (mem. op.), mand. granted on other grounds, 228 S.W.3d 663 (Tex. 2007) ("Relators have not sought temporary relief under this rule, but the availability of temporary relief on [interlocutory] appeal is sufficient to establish that relator's remedy by appeal is adequate.").

As an alternative to protecting this Court's subject matter jurisdiction over the pending interlocutory appeal, Relators would alternatively argue that, per Tex. R. App. P. 29.3, this court is empowered to issue writs of injunction to shield the subject matter of the appeal – here, the business value, market share and goodwill of LasikPlus of Texas' Houston clinic – as a means of protecting the rights of the appellants. Relators, as described herein, believe there is ample basis to enjoin Dr. Mattioli in an effort to preserve the subject matter of the pending interlocutory appeal and ask this Court to consider Tex. R. App. P. 29.3 as an alternative basis for same.

C. A Writ of Injunction Should Issue to Protect This Court's Subject Matter Jurisdiction Over the Pending Appeal

The underlying matter involves the breach of an employment agreement by Dr. Federico Mattioli. Specifically, the subject Employment Agreement contained an eighteen (18) month Covenant Not to Compete prohibiting Mattioli from

delivering laser vision correction services (other than as an employee of LasikPlus of Texas, P.A.) within a restricted geographic area set forth within same. *See* LPT Employment Agreement at Section 8, attached hereto at Tab 10. Additionally, the Agreement contained a notice provision requiring Dr. Mattioli to give 120-days' notice before terminating his employment with LasikPlus of Texas, P.A. *See Id.* at Section 4.3. While Relators concede there is a question as to whether the Trial Court has the authority as vested in the Agreement to reform the subject Covenant Not to Compete with the Texas Covenants Not to Compete Act (the "Act"), it is inarguable that Dr. Mattioli breached the termination notice provision of the Agreement. *See* RR 20; 20-22. Despite same, the Trial Court denied injunctive relief predicated on both bases. *See* Order of December 12, 2012 Denying Injunctive Relief at Tab 6; *see also* December 31, 2012 Order Denying Request for Ruling on Injunctive Relief on Alternative Theory of Breach of the Contractual Notice Provision of the Employment Contract at Tab 7.

Insofar as the Trial Court denied Relators' request to enjoin Dr. Mattioli from practicing Lasik and RPK procedures in the subject geographic area as predicated by the Covenant not to Compete and the termination notice provision, Relators have brought an interlocutory appeal per Tex. Civ. Prac. & Rem. Code § 51.014(a)(4). During the pendency of that appeal, and as evidenced by the testimony of Dave Thomas summarized *supra* and evidence presented during the

December 7, 2012 temporary injunction hearing, Relators business value, market share and goodwill have been, and will continue to be, eroded as a result of Dr. Mattioli's competition in derogation of his agreements. While the extent of damage caused by Dr. Mattioli's actions will be difficult if not impossible to quantify, it is inarguable that injunctive relief from this Court will provide some degree of protection as to future erosion of Relators goodwill during the pendency of the interlocutory appeal.

It is Relators' position that Dr. Mattioli's practice of Lasik and RPK procedures a mere 1.2 miles from Lasik*Plus*' Houston clinic in derogation of his agreements will not only cause irreparable harm to Relators' business value, market share and goodwill during the pendency of Relators' interlocutory appeal, but that ongoing erosion, as well as the expiration of the 120-day termination notice time, will leave this Court without jurisdiction to effect a ruling on that subject. Stated another way, following the expiration of the notice period, this Court's ability to enjoin Dr. Mattioli's actions would be rendered moot. Even irrespective of the notice period, denying injunctive relief now would permit the further erosion of Relators' goodwill such that reversal of the Trial Court's denial of Relators' requested injunctive relief would be rendered effectively meaningless.

In an effort to avoid the loss of this Court's jurisdiction through the progressive mootness of the subject matter of Relators' pending interlocutory

appeal, as well as to protect the subject matter of the appeal, Relators ask this Court to enjoin Dr. Mattioli from providing Lasik and RPK procedures during the pendency of this appeal per Texas Government Code § 22.221 or, alternatively, per Tex. R. App. P. 29.3. As Mr. Thomas testified that LasikPlus' goodwill and market share will be adversely affected by Dr. Mattioli's offering of the subject procedures a mere 1.2 miles from Relators' clinic. See RR 70; 20 – 71; 1; RR 71; 18 – 72; 4. He further explained that Mattioli will benefit from LasikPlus' efforts during the "tail" period of LasikPlus' advertising campaign for Dr. Mattioli in which the public will continue to speciously associate Dr. Mattioli with LasikPlus due to those efforts, thereby allowing Dr. Mattioli the advantage of the Relators' marketing efforts for which the subject Covenant not to Compete and Notice provision were designed to avoid. See RR 70; 6-19. In other words, as Dr. Mattioli continues to profit from LasikPlus' marketing industriousness because of the lasting connection between he and LasikPlus as a result of those efforts, LasikPlus' business value, market share and goodwill precipitously erodes.

Denial of Relators' Petition would effectively sanction the ongoing amelioration of Relators' business value, market share and goodwill while concomitantly approving of Dr. Mattioli's actions. Moreover, as time goes by, a lack of judicial intervention to shield Relators' interests will effectively render any potential action on finality of Relators' pending interlocutory appeal meaningless.

Consequently, Relators ask this Court to enjoin Dr. Mattioli from conducting Lasik and RPK laser eye surgeries as previously enjoined by the Trial Court's December 6, 2012 Order⁵.

VIII.

Conclusion and Prayer

For the reasons stated above, Relators, Lasik*Plus* of Texas, P.A. and LCA-Vision, Inc., respectfully requests that this Court grant Relators' Petition for Writ of Injunction and issue a writ of injunction prohibiting Respondent, Dr. Federico Mattioli, from providing Lasik or RPK laser eye surgery at 2200 Southwest Freeway #500, Houston, TX 77098 or any other location within a 20 mile radius of 3700 Buffalo Speedway, Ste. 325, Houston, Texas 77098 and/or in any contiguous county to Harris County, Texas until such a time that any and all proceedings concerning the Trial Court's denial of Relators' request for injunctive relief in this, the 14th Court of Appeals of Harris County, Texas are concluded. Relators, Lasik*Plus* of Texas, P.A. and LCA-Vision, Inc., respectfully request this Court grant Lasik*Plus* of Texas, P.A. and LCA-Vision, Inc. any and all other relief to which they may be justly entitled.

⁵ The subject Temporary Injunction Order states as follows with respect to proscribed activity: Dr. Federico Mattioli is "prohibited from providing Lasik or RPK laser eye surgery at 2200 Southwest Freeway #500, Houston, TX 77098 or any other location within a 20 mile radius of 3700 Buffalo Speedway, Ste. 325, Houston, Texas 77098 and/or in any contiguous county to Harris County, Texas." See Order of December 6, 2012, attached hereto at Tab 7.

Respectfully submitted,

LORANCE & THOMPSON, P.C.

/s/ Scott B. Novak

Scott B. Novak

SBN: 24051124

sbn@lorancethompson.com

Ryan Hand

SBN: 24012777

rth@lorancethompson.com

2900 North Loop West, Suite 500

Houston, Texas 77092

Telephone: (713) 868-5560

Facsimile: (713) 864-4671

**ATTORNEYS FOR PLAINTIFFS,
LASIKPLUS OF TEXAS, P.A.
AND LCA-VISION, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of January, 2013, a true and correct copy of the foregoing instrument was served by Electronic filing, U.S. Mail (certified mail, return receipt requested) and/or facsimile to the following counsel of record:

George W. Vie, III
SBN: 20579310
MILLS SHIRLEY LLP
1021 Main Street, Suite 1950
Houston, TX 77002

Gary M. Polland
SBN: 16095800
Valeria Lee Brock
SBN: 12074610
2211 Norfolk Street, Suite 920
Houston, TX 77098

David A. Jones
SBN: 10869500
733 West 43rd Street
Houston, TX 77018

/s/ Scott B. Novak _____

Scott B. Novak

CERTIFICATE OF COMPLIANCE

I hereby certify that this petition complies with the word count limitation of Texas Rules of Appellate Procedure 9.4(3) because this Petition contains 9,120 words.

/s/ Scott B. Novak _____

Scott B. Novak

AFFIDAVIT AUTHENTICATING APPENDIX AND RECORD

STATE OF TEXAS §
 §
COUNTY OF Harris §


BEFORE ME, the undersigned authority, personally appeared Scott Benjamin Novak, counsel for Relators *LasikPlus* of Texas, P.A. and LCA-Vision Inc. who, being by me duly sworn, deposed as follows:

My name is Scott Benjamin Novak. I am one of the attorneys for Relators, *LasikPlus* of Texas, P.A. and LCA-Vision Inc., in the matter of *LasikPlus of Texas, P.C., et al v. Federico Mattioli, MD*, Cause No. 2012-68429, pending in the 80th Judicial District Court of Harris County, Texas. I am over the age of 18, have never been convicted of a felony or crime of moral turpitude, am of sound mind and suffer no legal disabilities. I am fully competent and duly qualified in all respects to make this Affidavit. I have personal knowledge of the factual matters set forth herein and they are true and correct.

This affidavit is submitted in support of Relators, *LasikPlus* of Texas, P.A. and LCA-Vision Inc.'s Petition for Writ of Injunction or, Alternatively, Motion for Appellate Rule 29.3 Relief. I have reviewed Relators' Petition, and I certify that every factual statement in the Petition is supported by competent evidence included in the Record to Relators' Petition for Writ of Injunction ("Record ").

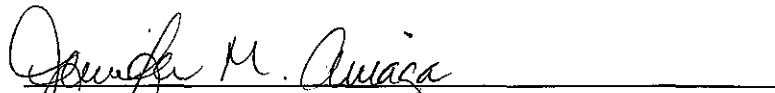
"I further attest that all the documents included in the Record and attached to Relators *LasikPlus* of Texas, P.A. and LCA-Vision Inc.'s Petition for Writ of Injunction or, Alternatively, Motion for Appellate Rule 29.3 Relief are material to Relators' claims and are either pleadings that are on file in the underlying suit, hearing transcripts in the underlying suit, exhibits admitted in conjunction with evidentiary hearings, or orders signed by the trial court in the underlying suit entitled *LasikPlus of Texas, P.C., et al v. Federico Mattioli, MD*, Cause No. 2012-68429, pending in the 80th Judicial District Court of Harris County, Texas.

Further, affiant sayeth naught.

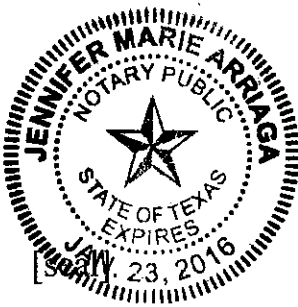


AFFELANT

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this the 15th day of January, 2013.



Notary Public in and for the State of Texas



**IN THE COURT OF APPEALS
FOR THE FOURTEENTH JUDICIAL DISTRICT OF TEXAS
HOUSTON, TEXAS**

LasikPlus of Texas, P.A. and LCA-Vision, Inc., Relators, Appellants
v.
Federico Mattioli, M.D., and
Mattioli Vision Professionals, P.A., Respondent, Appellee

**On Appeal from the 80th Judicial District Court
of Harris County
Cause No. 2012-68429**

APPENDIX

LIST OF DOCUMENTS

Plaintiffs' Original Petition, Request for Declaratory Judgment, Application for Temporary Restraining Order, Temporary Injunction and Permanent Injunction.....Tab 1

Plaintiffs' First Amended Original Petition, Request for Declaratory Judgment, Application for Temporary Restraining Order, Temporary Injunction and Permanent Injunction.....Tab 2

Temporary Restraining Order and Order Setting Hearing for Temporary Injunction.....Tab 3

Agreed Order Extending Temporary Restraining Order and Setting Hearing for Temporary Injunction.....Tab 4

Plaintiffs’ Brief on Reformation of Covenant Not to Compete Made in Concert with Plaintiffs’ Request for Injunctive Relief..... Tab 5

Order of December 12, 2012 Denying Injunctive Relief.....Tab 6

December 31, 2012 Order Denying Request for Ruling on Injunctive Relief on Alternative Theory of Breach of the Contractual Notice Provision of the Employment Contract.....Tab 7

Plaintiffs’ Notice of Accelerated Interlocutory Appeal Pursuant to CPRC §51.014(a)(4).....Tab 8

Management Agreement..... Tab 9

LPT Employment Agreement.....Tab 10

Mattioli’s Resignation (October 16, 2012).....Tab 11

“Dr. Mattioli Houston” Google Search, admitted into evidence as Plaintiffs’ Exhibit 8 to Plaintiffs’ Request for Temporary Injunction December 7, 2012.....Tab 12

“*LasikPlus* Houston” Google Search, admitted into evidence as Plaintiffs’ Exhibit 9 to Plaintiffs’ Request for Temporary Injunction.....Tab 13

2012-68429 / Court: 080

CAUSE NO. _____

LASIKPLUS OF TEXAS, P.C. AND
LCA-VISION INC.

vs.

FEDERICO MATTIOLI, MD

§
§
§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION, REQUEST FOR DECLARATORY JUDGMENT,
APPLICATION FOR TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs, LASIKPLUS OF TEXAS, P.C. AND LCA-VISION INC. file this Original Petition, Request for Declaratory Judgment, and Application for Temporary Restraining Order, Temporary Injunction and Permanent Injunction and state:

DISCOVERY PLAN

1. Discovery in this case is intended to be conducted under Level 3 in accordance with Texas Rules of Civil Procedure 190.1 and 190.4.

**II.
PARTIES**

2. Plaintiff, LASIKPLUS OF TEXAS, P.C. ("LPT") is a professional corporation organized under the laws of Texas and authorized to do business in the state of Texas.

3. LCA-VISION INC. ("LCA") is a foreign corporation organized under the laws of Delaware, and authorized to do business in the state of Texas.

4. Defendant, FEDERICO MATTIOLI, M.D. ("Mattioli") is a resident of Harris County, Texas. He resides and can be served at 3710 Bellefontaine St., Houston, TX 77025.

III.
VENUE

5. Venue of this action is proper in Harris County, Texas pursuant to Texas Civil Practice & Remedies Code Section 15.002(a)(1) and (2).

IV.
BACKGROUND

6. LPT operates vision correction clinics that provide ophthalmology services, including, but not limited to, laser eye surgery and other refractive surgeries. LCA manages and provides non-medical personnel to LPT's clinics. On December 15, 2003, Defendant, Federico Mattioli, M.D. entered into an employment contract with LPT to provide various ophthalmology services at LPT's clinic, located at 3700 Buffalo Speedway, Ste. 325, Houston, Texas. The employment contract, entitled "LPT Employment Agreement," is attached hereto as Exhibit "A." See the affidavit of David L. Thomas, attached hereto as Exhibit "B".

7. The LPT Employment Agreement contains an eighteen (18) month Covenant Not to Compete prohibiting Mattioli from delivering laser vision correction services (other than as an employee of LPT) within a restrict area set forth in the LPT Employment Agreement. Additionally, the LPT Employment Agreement prevents Mattioli from soliciting any of LPT's patients and/or employees, or employees of LCA.

8. On October 16, 2012, Mattioli notified LPT that his last day of employment would be November 16, 2012. Mattioli later changed his last day to November 17, 2012. A few days before his last scheduled day of work, Mattioli advised LPT that he was opening a new clinic located at 2200 Southwest Freeway #500, Houston, TX 77098. This clinic is less than two miles from LPT's vision center.

9. Since October, 2012, LCA has received notice from its employees in the Houston office advising of their resignation. These employees worked with Mattioli. Plaintiffs have reason to believe that these employees are leaving to work for Mattioli at his new practice. One of the employees gave the same resignation date as that given by Mattioli.

10. Over the years, Plaintiffs have spent substantial funds to promote and advertise Mattioli and his services at LPT. Plaintiffs have developed invaluable and immeasurable goodwill and name recognition in the Houston vision correction market utilizing Mattioli and LPT's names synonymously and in harmony with each other. Defendant, in violation of the LPT Employment Agreement, is now attempting to reap the benefits of this name recognition and goodwill developed at the expense of Plaintiffs.

11. Plaintiffs have notified Mattioli of his contractual obligations and breaches of the LPT Employment Agreement, including his obligations with notice and competition. Unfortunately, Mattioli has refused to honor his contractual obligations.

V.

COUNT ONE: BREACH OF CONTRACT

12. Plaintiffs reallege and incorporate by reference the allegations made in the above paragraphs.

13. Plaintiffs and Mattioli have a valid and enforceable written contract of employment. The contract states that Mattioli, for a period of eighteen (18) months after termination of his employment, shall not "engage in any manner in the delivery of laser vision correction services (other than as an employee of LPT) in the Restricted Area." See Ex. "A", Section 8.1.1 of the LPT Employment Agreement.

14. The contract further provides that Mattioli, for a period of two (2) years after termination of his employment, shall not "directly or indirectly, solicit, induce, recruit, hire,

encourage or influence” any and all staff employed by Plaintiffs to terminate his or her employment with Plaintiffs. See Ex. “A”, Section 8.2 of the LPT Employment Agreement.

15. The contract further provides that Mattioli must provide “120 days advance written notice to LPT” of termination of his employment. See Ex. “A”, Section 4.3 of the LPT Employment Agreement.

16. Mattioli breached, and continues to breach, the employment contract by:
- a. opening a new office and competing in violation of Section 8.1.1 of the LPT Employment Agreement.
 - b. inducing Plaintiffs’ employees to leave their employ and work for Mattioli in violation of Section 8.2 of the LPT Employment Agreement.
 - d. failing to provide proper notice of his resignation in violation of Section 4.3 of the LPT Employment Agreement.

17. Plaintiffs have performed all the conditions precedent required pursuant to their contract with Defendant.

18. As a result of Mattioli’s breach, Plaintiffs have been damaged. Plaintiffs seek to recover actual damages, attorney’s fees, pre and post judgment interest and court costs. In addition to these damages, Plaintiffs are also entitled to and request a temporary restraining order, temporary injunction and permanent injunction to prevent additional damage as a result of this conduct by Mattioli.

VI.

COUNT TWO: TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIPS

19. Plaintiffs reallege and incorporate by reference the allegations made in the above paragraphs.

20. The acts and conduct of Mattioli have tortuously interfered with the contractual and/or employment relationships between Plaintiffs and their employees.

21. Plaintiffs have been substantially damaged by this tortious interference, which actual damages are not subject to precise calculation at this time but are in excess of the jurisdictional limits of this Court. To the extent Plaintiffs can prove such damages, or any part of such damages, with the degree of reasonable certainty required by law, Plaintiffs are entitled to recover actual damages, exemplary damages, pre and post judgment interest and costs of court as a result of Defendant's tortious interference. Plaintiffs are also entitled to and request a temporary restraining order, temporary injunction and permanent injunction to prevent additional damage as a result of this conduct by Defendant.

COUNT THREE: DECLARATORY JUDGMENT ACTION

22. Pursuant Chapter 37 of the Texas Civil Practice & Remedies Code, Plaintiffs file this request for a Declaratory Judgment against Defendant and in support thereof would respectfully show the Court as follows:

23. Plaintiffs reallege and incorporate by reference the allegations made in the above paragraphs.

24. Plaintiffs seek one or more of the following declarations:

- a. That Defendant's business, new office location and efforts to compete are in violation of the LPT Employment Agreement.
- b. That Defendant's efforts to induce Plaintiffs' employees to leave Plaintiffs' employ and/or hire Plaintiffs' employees are in violation of the LPT Employment Agreement.

c. That Defendant violated the LPT Employment Agreement by terminating the contract without giving proper notice.

25. Plaintiffs seek declaratory judgment and costs as allowed by Chapter 37 of the Texas Civil Practice & Remedies Code.

VIII.
REQUEST FOR TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

26. Plaintiffs reallege and incorporate by reference the allegations made in the above paragraphs.

27. Section 8.3 of the LPT Employment Agreement provides as follows:

8.3. Remedies. Physician [Mattioli] agrees that LPT would suffer immediate and irreparable harm by a breach of Section 8.1 or 8.2. In the event of Physician's actual or threatened breach of the provisions of 8.1 or 8.2, LPT shall be entitled to an injunction against said breach by Physician, and Physician hereby consents to such injunction by a court in accordance with the laws of the State of Texas...

See Ex. "A", Section 8.3 of the LPT Employment Agreement.

28. As allowed by law and the LPT Employment Agreement, Plaintiffs request a temporary restraining order, temporary injunction, and permanent injunction enjoining Defendant from breaching contractual, statutory and/or common law duties as set forth above. Harm is imminent because, in violation of the LPT Employment Agreement, Mattioli is competing within less than two (2) miles from Plaintiffs' vision center, stands to gain and/or divert significant business from Plaintiffs while utilizing Plaintiffs' goodwill and name recognition, and is inducing Plaintiffs' employees to leave their employment and work for Mattioli.

29. Unless the Court intervenes, irreparable injury, harm and damages will continue because of Mattioli's actions.

30. Section 65.011 of the Texas Civil Practices and Remedies Code authorizes the granting of a writ of injunction. All indispensable parties have been joined pursuant to Texas Rule of Civil Procedure 39.

A. Probable Right to Relief

31. Plaintiffs will succeed in establishing that Defendant has violated the restrictive covenant set forth in Section 8.1 of the LPT Employment Agreement, and the No Solicitation of Employees provision found in Section 8.2 of the LPT Employment Agreement.

32. It is essential that the Court restrain Defendant and all parties working in concert with him from violating the parties' employment contract.

B. No Adequate Remedy at Law and Immediate Irreparable Injury

33. Plaintiffs have no adequate remedy at law. Even if a monetary value could be attributed to Plaintiffs' goodwill and name recognition, Defendant has wrongfully used same for his benefit in unfairly competing against Plaintiffs, and Plaintiffs would be unable to access the lost value to a particular degree of certainty such that it would be fully compensated for the loss of value, or, alternatively, Defendant would be unable to make remuneration for the damages assessed against him. Therefore, unless the Court intervenes, Plaintiffs are threatened with imminent and irreparable harm for which they have no adequate remedy at law.

IX.
REFORMATION

34. Plaintiffs reallege and incorporate by reference the allegations made in the above paragraphs.

35. Per Section 8.4 of the LPT Employment Agreement and Texas Business and Commerce Code § 15.51(c), to the extent the restrictive covenant is found to be unenforceable, unreasonable and/or invalid, in part or in its entirety, Plaintiffs ask that the covenant be reformed.

X.
RELIEF REQUESTED

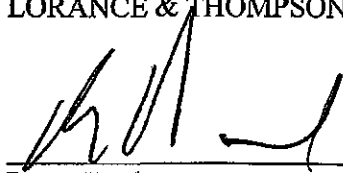
WHEREFORE, Plaintiffs respectfully request that Defendant, Federico Mattioli, M.D. be cited to appear and answer herein and that, upon trial of this cause, that they have relief as follows:

- a. grant Plaintiffs' request for a declaratory judgment;
- b. grant Plaintiffs' application for a temporary restraining order;
- c. schedule an evidentiary hearing on Plaintiffs' application for temporary injunction;
- d. after a hearing, grant Plaintiffs' application for temporary injunction;
- e. after trial, enter a final judgment containing a permanent injunction and awarding Plaintiffs damages, as requested above, in an amount in excess of the jurisdictional limits of this Court, according to the proof at the time of trial.

Plaintiffs pray that the above damages be awarded, and respectfully request any or other such further relief as they may be entitled.

Respectfully submitted,

LORANCE & THOMPSON, P.C.



Ryan Hand

SBN: 24012777

2900 North Loop West, Suite 500

Houston, Texas 77092

Telephone: (713) 868-5560

Facsimile: (713) 864-4671

**ATTORNEYS FOR PLAINTIFFS,
LASIKPLUS OF TEXAS, P.C. AND
LCA-VISION INC.**

CAUSE NO. 2012-68429

<p>LASIKPLUS OF TEXAS, P.C. AND LCA-VISION INC.</p> <p>vs.</p> <p>FEDERICO MATTIOLI, MD</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>IN THE DISTRICT COURT OF</p> <p>HARRIS COUNTY, TEXAS</p> <p>80th JUDICIAL DISTRICT</p>
---	---	---

PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION, REQUEST FOR DECLARATORY JUDGMENT, APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs, LASIKPLUS OF TEXAS, P.A. (mistakenly named in the caption as LASIKPLUS OF TEXAS, P.C.) AND LCA-VISION INC., file this, their First Amended Original Petition, Request for Declaratory Judgment, and Application for Temporary Restraining Order, Temporary Injunction and Permanent Injunction and state:

I.
DISCOVERY PLAN

1. Discovery in this case is intended to be conducted under Level 3 in accordance with Texas Rules of Civil Procedure 190.1 and 190.4.

II.
PARTIES

2. Plaintiff, LASIKPLUS OF TEXAS, P.A. (mistakenly named in the caption and in Plaintiffs' Original Petition as LASIKPLUS OF TEXAS, P.C.) ("LPT") is a professional association organized under the laws of Texas and authorized to do business in the state of Texas.

3. LCA-VISION INC. ("LCA") is a foreign corporation organized under the laws of Delaware, and authorized to do business in the state of Texas.

4. Defendant, FEDERICO MATTIOLI, M.D. ("Mattioli") is a resident of Harris County, Texas. He resides and can be served at 3710 Bellefontaine St., Houston, TX 77025.

III.
VENUE

5. Venue of this action is proper in Harris County, Texas pursuant to Texas Civil Practice & Remedies Code Section 15.002(a)(1) and (2).

IV.
BACKGROUND

6. LPT and LCA operate vision correction clinics that provide ophthalmology services, including, but not limited to, laser eye surgery and other refractive surgeries. LCA manages and provides non-medical personnel to LPT's clinic, and is engaged in a joint enterprise with LPT. On December 15, 2003, Defendant, Federico Mattioli, M.D. entered into an employment contract with LPT to provide various ophthalmology services at LPT/LCA's clinic, located at 3700 Buffalo Speedway, Ste. 325, Houston, Texas. The employment contract, entitled "LPT Employment Agreement," is attached hereto as Exhibit "A." See the affidavit of David L. Thomas, attached hereto as Exhibit "B". LCA is a third party beneficiary of the LPT employment Agreement. See Exhibit "A".

7. The LPT Employment Agreement contains an eighteen (18) month Covenant Not to Compete prohibiting Mattioli from delivering laser vision correction services (other than as an employee of LPT) within a restrict area set forth in the LPT Employment Agreement. Additionally, the LPT Employment Agreement prevents Mattioli from soliciting any of LPT's patients and/or employees, or employees of LCA.

8. On October 16, 2012, Mattioli notified LPT that his last day of employment would be November 16, 2012. Mattioli later changed his last day to November 17, 2012. A few

days before his last scheduled day of work, Mattioli advised LPT that he was opening a new clinic located at 2200 Southwest Freeway #500, Houston, TX 77098. This clinic is less than two miles from LPT's vision center.

9. Since October, 2012, LCA has received notice from its employees in the Houston office advising of their resignation. These employees worked with Mattioli. Plaintiffs have reason to believe that these employees are leaving to work for Mattioli at his new practice. One of the employees gave the same resignation date as that given by Mattioli.

10. Over the years, Plaintiffs have spent substantial funds to promote and advertise Mattioli and his services at LPT. Plaintiffs have developed invaluable and immeasurable goodwill and name recognition in the Houston vision correction market utilizing Mattioli and LPT's names synonymously and in harmony with each other. Defendant, in violation of the LPT Employment Agreement, is now attempting to reap the benefits of this name recognition and goodwill developed at the expense of Plaintiffs.

11. Plaintiffs have notified Mattioli of his contractual obligations and breaches of the LPT Employment Agreement, including his obligations with notice and competition. Unfortunately, Mattioli has refused to honor his contractual obligations.

V.

COUNT ONE: BREACH OF CONTRACT

12. Plaintiffs reallege and incorporate by reference the allegations made in the above paragraphs.

13. Plaintiffs and Mattioli have a valid and enforceable written contract of employment. The contract states that Mattioli, for a period of eighteen (18) months after termination of his employment, shall not "engage in any manner in the delivery of laser vision

correction services (other than as an employee of LPT) in the Restricted Area." See Ex. "A", Section 8.1.1 of the LPT Employment Agreement.

14. The contract further provides that Mattioli, for a period of two (2) years after termination of his employment, shall not "directly or indirectly, solicit, induce, recruit, hire, encourage or influence" any and all staff employed by Plaintiffs to terminate his or her employment with Plaintiffs. See Ex. "A", Section 8.2 of the LPT Employment Agreement.

15. The contract further provides that Mattioli must provide "120 days advance written notice to LPT" of termination of his employment. See Ex. "A", Section 4.3 of the LPT Employment Agreement.

16. Mattioli breached, and continues to breach, the employment contract by:

- a. opening a new office and competing in violation of Section 8.1.1 of the LPT Employment Agreement.
- b. inducing Plaintiffs' employees to leave their employ and work for Mattioli in violation of Section 8.2 of the LPT Employment Agreement.
- d. failing to provide proper notice of his resignation in violation of Section 4.3 of the LPT Employment Agreement.

17. Plaintiffs have performed all the conditions precedent required pursuant to their contract with Defendant.

18. As a result of Mattioli's breach, Plaintiffs have been damaged. Plaintiffs seek to recover actual damages, attorney's fees, pre and post judgment interest and court costs. In addition to these damages, Plaintiffs are also entitled to and request a temporary restraining order, temporary injunction and permanent injunction to prevent additional damage as a result of this conduct by Mattioli.

VI.

COUNT TWO: TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIPS

19. Plaintiffs reallege and incorporate by reference the allegations made in the above paragraphs.

20. The acts and conduct of Mattioli have tortuously interfered with the contractual and/or employment relationships between and among Plaintiffs and their employees.

21. Plaintiffs have been substantially damaged by this tortious interference, which actual damages are not subject to precise calculation at this time but are in excess of the jurisdictional limits of this Court. To the extent Plaintiffs can prove such damages, or any part of such damages, with the degree of reasonable certainty required by law, Plaintiffs are entitled to recover actual damages, exemplary damages, pre and post judgment interest and costs of court as a result of Defendant's tortious interference. Plaintiffs are also entitled to and request a temporary restraining order, temporary injunction and permanent injunction to prevent additional damage as a result of this conduct by Defendant.

VII.

COUNT THREE: DECLARATORY JUDGMENT ACTION

22. Pursuant Chapter 37 of the Texas Civil Practice & Remedies Code, Plaintiffs file this request for a Declaratory Judgment against Defendant and in support thereof would respectfully show the Court as follows:

23. Plaintiffs reallege and incorporate by reference the allegations made in the above paragraphs.

24. Plaintiffs seek one or more of the following declarations:

- a. That Defendant's business, new office location and efforts to compete are in violation of the LPT Employment Agreement.

- b. That Defendant's efforts to induce Plaintiffs' employees to leave Plaintiffs' employ and/or hire Plaintiffs' employees are in violation of the LPT Employment Agreement.
- c. That Defendant violated the LPT Employment Agreement by terminating the contract without giving proper notice.

25. Plaintiffs seek declaratory judgment and costs as allowed by Chapter 37 of the Texas Civil Practice & Remedies Code.

VIII.
REQUEST FOR TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

26. Plaintiffs reallege and incorporate by reference the allegations made in the above paragraphs.

27. Section 8.3 of the LPT Employment Agreement provides as follows:

8.3. Remedies. Physician [Mattioli] agrees that LPT would suffer immediate and irreparable harm by a breach of Section 8.1 or 8.2. In the event of Physician's actual or threatened breach of the provisions of 8.1 or 8.2, LPT shall be entitled to an injunction against said breach by Physician, and Physician hereby consents to such injunction by a court in accordance with the laws of the State of Texas...

See Ex. "A", Section 8.3 of the LPT Employment Agreement.

28. As allowed by law and the LPT Employment Agreement, Plaintiffs request a temporary restraining order, temporary injunction, and permanent injunction enjoining Defendant from breaching contractual, statutory and/or common law duties as set forth above. Harm is imminent because, in violation of the LPT Employment Agreement, Mattioli is competing within less than two (2) miles from Plaintiffs' vision center, stands to gain and/or divert significant business from Plaintiffs while utilizing Plaintiffs' goodwill and name

recognition, and is inducing Plaintiffs' employees to leave their employment and work for Mattioli.

29. Unless the Court intervenes, irreparable injury, harm and damages will continue because of Mattioli's actions.

30. Section 65.011 of the Texas Civil Practices and Remedies Code authorizes the granting of a writ of injunction. All indispensable parties have been joined pursuant to Texas Rule of Civil Procedure 39.

A. Probable Right to Relief

31. Plaintiffs will succeed in establishing that Defendant has violated the restrictive covenant set forth in Section 8.1 of the LPT Employment Agreement, and the No Solicitation of Employees provision found in Section 8.2 of the LPT Employment Agreement.

32. It is essential that the Court restrain Defendant and all parties working in concert with him from violating the parties' employment contract.

B. No Adequate Remedy at Law and Immediate Irreparable Injury

33. Plaintiffs have no adequate remedy at law. Even if a monetary value could be attributed to Plaintiffs' goodwill and name recognition, Defendant has wrongfully used same for his benefit in unfairly competing against Plaintiffs, and Plaintiffs would be unable to access the lost value to a particular degree of certainty such that it would be fully compensated for the loss of value, or, alternatively, Defendant would be unable to make remuneration for the damages assessed against him. Therefore, unless the Court intervenes, Plaintiffs are threatened with imminent and irreparable harm for which they have no adequate remedy at law.

IX.
REFORMATION

34. Plaintiffs reallege and incorporate by reference the allegations made in the above paragraphs.

35. Per Section 8.4 of the LPT Employment Agreement and Texas Business and Commerce Code § 15.51(c), to the extent the restrictive covenant is found to be unenforceable, unreasonable and/or invalid, in part or in its entirety, Plaintiffs ask that the covenant be reformed.

X.
RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that Defendant, Federico Mattioli, M.D. be cited to appear and answer herein and that, upon trial of this cause, that they have relief as follows:

- a. grant Plaintiffs' request for a declaratory judgment;
- b. grant Plaintiffs' application for a temporary restraining order;
- c. schedule an evidentiary hearing on Plaintiffs' application for temporary injunction;
- d. after a hearing, grant Plaintiffs' application for temporary injunction;
- e. after trial, enter a final judgment containing a permanent injunction and awarding Plaintiffs damages, as requested above, in an amount in excess of the jurisdictional limits of this Court, according to the proof at the time of trial.

Plaintiffs pray that the above damages be awarded, and respectfully request any or other such further relief as they may be entitled.

Respectfully submitted,

LORANCE & THOMPSON, P.C.



Ryan Hand
SBN: 24012777
2900 North Loop West, Suite 500
Houston, Texas 77092
Telephone: (713) 868-5560
Facsimile: (713) 864-4671
**ATTORNEYS FOR PLAINTIFFS,
LASIKPLUS OF TEXAS, P.A. AND
LCA-VISION, INC.**

CERTIFICATE OF SERVICE

Pursuant to the Texas Rules of Civil Procedure, I certify that on November 30th, 2012, a copy of this document was forwarded via E-filing, certified mail/return receipt requested, hand delivery and/or facsimile transmission to Defendant's attorneys of record.

Gary M. Pollard
Valeria Lee Brock
2211 Norfolk Street, Suite 920
Houston, Texas 77098

George W. Vie III
Mills Shirley LLP
1021 Main Street, Suite 1950
Houston, Texas 77002

David A. Jones
733 West 43rd Street
Houston, Texas 770018



Ryan T. Hand

CAUSE NO. 2012-68429

LASIKPLUS OF TEXAS, P.C. AND
LCA-VISION INC.

§
§
§
§
§
§

IN THE DISTRICT COURT OF

vs.

HARRIS COUNTY, TEXAS

FEDERICO MATTIOLI, MD

80th JUDICIAL DISTRICT

**TEMPORARY RESTRAINING ORDER
AND ORDER SETTING
HEARING FOR TEMPORARY INJUNCTION**

ON THIS DAY, the Court heard Plaintiffs' application for temporary restraining order. After examining the pleadings, this Court finds that Plaintiffs will likely recover against Defendant on their claims. Second, the harm to Plaintiffs from Defendant's conduct is imminent and if the Court does not issue a temporary restraining order, Plaintiffs will be irreparably injured. As a result, no adequate remedy at law exists and injunctive relief via a temporary restraining order is necessary to enjoin Defendant from further action.

IT IS THEREFORE ORDERED that:

Plaintiffs, LasikPlus of Texas, P.A. and LCA-Vision Inc.'s application for a temporary restraining order is GRANTED;

IT IS FURTHER ORDERED that:

- a. Defendant, Federico Mattioli, M.D. is prohibited from providing laser vision correction services, including, but not limited to, any laser eye surgery and/or other refractive surgeries at 2200 Southwest Freeway #500, Houston, TX 77098, or any other location within a twenty (20) mile radius from 3700 Buffalo Speedway, Ste. 325, Houston, Texas, and/or in any contiguous county to Harris

County, Texas, unless such services are emergency medical services requested by a patient seen by Dr. Mattioli in the past three (3) years.

- b. Defendant, Federico Mattioli, M.D. is prohibited from directly or indirectly soliciting, inducing, recruiting, hiring, encouraging or influencing any and all staff employed by LasikPlus of Texas, P.A. and LCA-Vision Inc. to terminate his or her employment with Plaintiffs.

IT IS FURTHER ORDERED that the Clerk issue notice to Defendant that the hearing on Plaintiffs' application for temporary injunction is set for oral hearing on the _____ day of _____, 2012, at _____:_____ a.m./p.m. The purpose of the hearing shall be to determine whether this temporary restraining order should be made a temporary injunction pending a full trial on the merits.

IT IS FURTHER ORDERED that bond is set in the amount of \$ _____, and that this Order expires on the _____ day of _____, 2012.

SIGNED on this the _____ day of _____, 2012.

JUDGE PRESIDING

CAUSE NO. 2012-68429

P-3
XTREX
CASO

LASIKPLUS OF TEXAS, P.C. AND
LCA-VISION INC.

§
§
§
§
§
§

IN THE DISTRICT COURT OF

vs.

HARRIS COUNTY, TEXAS

FEDERICO MATTIOLI, MD

80th JUDICIAL DISTRICT

**AGREED ORDER EXTENDING TEMPORARY RESTRAINING ORDER
AND ORDER SETTING HEARING FOR TEMPORARY INJUNCTION**

BE IT REMEMBERED that on November 30, 2012, the above named parties agreed to extend the Temporary Restraining Order entered in this matter on November 19, 2012, under the following terms, which are hereby granted and entered:

IT IS THEREFORE ORDERED that:

A. Defendant, Federico Mattioli, M.D. is prohibited from providing Lasik and PRK laser eye surgery at 2200 Southwest Freeway #500, Houston, TX 77098, or any other location within a twenty (20) mile radius from 3700 Buffalo Speedway, Ste. 325, Houston, Texas, and/or in any contiguous county to Harris County, Texas.

B. Defendant, Federico Mattioli, M.D. is prohibited from directly or indirectly soliciting, inducing, recruiting, hiring, encouraging or influencing any and all staff employed by LasikPlus of Texas, P.A. and LCA-Vision Inc. to terminate his or her employment with Plaintiffs.

IT IS FURTHER ORDERED that the Clerk issue notice to Defendant that the hearing on Plaintiffs' application for temporary injunction is set for oral hearing on the 7th day of December, 2012, at 3:00 p.m. The purpose of the hearing shall be to determine whether this temporary restraining order should be made a temporary injunction pending a full trial on the merits.

IT IS FURTHER ORDERED that bond is set in the amount of \$25,000.00, and that this Order expires at 3:00 p.m., Central Standard Time, on December 7, 2012.

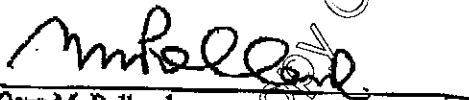
SIGNED on this the 6th day of December, 2012.


JUDGE PRESIDING

APPROVED AS TO FORM:



Ryan Hand
SBN: 24012777
Scott B. Novak
SBN: 24051124
LORANCE & THOMPSON, P.C.
2900 North Loop West, Suite 500
Houston, Texas 77092
713.868.5560
713.864.4671—fax
ATTORNEYS FOR PLAINTIFFS,
LASIKPLUS OF TEXAS, P.A. AND LCA-VISION INC.



Gary M. Pollard
SBN: 16095800
Valeria Lee Brock
SBN: 12074610
2211 Norfolk Street, Suite 920
Houston, Texas 77098
713.621.6335
713.622.6334—fax

George W. Vie III
SBN: 20579310
Mills Shirley LLP
1021 Main Street, Suite 1950
Houston, Texas 77002

David A. Jones
SBN: 10869500
733 West 43rd Street
Houston, Texas 770018
713.504.8188
713.861.1406 – fax

**ATTORNEYS FOR DEFENDANT,
FEDERICO MATTIOLI, M.D.**

Unofficial Copy Office of Chris Daniel District Clerk

CAUSE NO. 2012-68429

LASIKPLUS OF TEXAS, P.C. AND
LCA-VISION INC.

§
§
§
§
§
§

IN THE DISTRICT COURT OF

vs.

HARRIS COUNTY, TEXAS

FEDERICO MATTIOLI, MD

80th JUDICIAL DISTRICT

**PLAINTIFFS' BRIEF ON REFORMATION OF COVENANT NOT TO COMPETE
MADE IN CONCERT WITH PLAINTIFFS' REQUEST FOR INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs, LASIKPLUS OF TEXAS, P.A. ("LPT") AND LCA-VISION INC. ("LCA") file this, their Brief on Reformation of Covenant Not to Compete Made in Concert with Plaintiffs' Request for Injunctive Relief, and respectfully show unto this Honorable Court as follows:

PROCEDURAL BACKGROUND

On November 19, 2012, Plaintiffs filed their Original Petition, Request for Declaratory Judgment, Application for Temporary Restraining Order ("TRO"), Temporary Injunction and Permanent Injunction. On November 19, 2012, Plaintiffs presented their application for a TRO to the ancillary judge, Judge Engelhart. Defendant was notified of the hearing on the TRO, but failed to call in or otherwise appear. On November 19, 2012, Plaintiffs' application for a TRO was granted and entered in this matter. The hearing for the Temporary Injunction was originally set for November 30, 2012.

On November 28, 2012, Defendant filed his Motion to Dissolve Temporary Restraining Order, and in Response to Plaintiffs' Request for Injunction, or in the Alternative to Increase Bond.

On November 30, 2012, Plaintiffs filed their First Amended Original Petition, Request for Declaratory Judgment, Application for Temporary Restraining Order, Temporary Injunction and Permanent Injunction. At that time, Plaintiffs corrected a typo in a party name. LPT was mistakenly identified in the initial pleading as LasikPlus of Texas, P.C., rather than its actual name of LasikPlus of Texas, P.A.

On November 30, 2012, the parties appeared at the hearing for the Temporary Injunction with counsel. At that time, the parties agreed to extend the TRO and reset the hearing on the Temporary Injunction until December 7, 2012. The TRO expired by its terms on December 7, 2012. Accordingly, Defendant's Motion to Dissolve the TRO is moot.

On December 7, 2012, the Court heard Plaintiffs' application for a temporary injunction and took evidence. Following the presentation of evidence and argument from both sides, the Court requested briefing on the issue of whether the covenant not to compete contained in the employment contract could ultimately be reformed. Plaintiffs now provide said briefing demonstrating reformation as a probable right in this matter.

II. FACTUAL BACKGROUND

LPT and LCA operate vision correction clinics that provide ophthalmology services, including, but not limited to, laser eye surgery and other refractive surgeries. LCA manages and provides non-medical personnel to LPT/LCA's clinic, and is engaged in a joint enterprise and/or partnership with LPT. In 2003, LPT and LCA entered into a Management Agreement (the "Agreement") setting forth the parties relationship. Among other things, the Agreement provides as follows:

1. LCA agreed to sublease an office suite to LPT for use as a laser eye clinic;

2. LPT agreed to provide LCA physicians to perform ophthalmologic treatment using LPT's laser vision equipment at the clinic;
3. At LCA's expense, LCA agreed to furnish the medical supplies, medical equipment, office equipment and office furnishings at the clinic;
4. At LCA's expense, LCA agreed to provide all utilities;
5. At LCA's expense, LCA agreed to provide all non-medical personnel, nurses and technicians to conduct the laser eye services at the clinic;
6. At LCA's expense, LCA agreed to bill for and collect all the health care and ancillary services rendered to patients at the clinic, including the physician's services;
7. At LCA's expense, LCA agreed to provide all marketing and advertising for LPT;
8. LPT agreed to pay LCA a management fee for LCA's services;
9. LPT agreed to require each of LPT's physicians to enter into a written employment agreement with LPT that would include a covenant not to compete with LPT and LCA. LPT agreed to strictly and consistently enforce the employment agreements with the physicians.
10. LPT agreed to indemnify and hold harmless LCA from and against any and all claims and damages resulting from any act or omission of LPT or its physicians.
11. LPT and LCA agreed that Defendant would be the primary ophthalmologist at the clinic.
12. LPT agreed to assign to LCA all net practice revenue and accounts receivable of LPT.
13. LPT agreed to compensate physicians and optometrists from LPT's payroll account.
14. LPT agreed not to compete against LCA.

See Plaintiffs' Ex. "2", admitted at the Temporary Injunction hearing on December 7, 2012.

As required by the Agreement, on December 15, 2003, Defendant, Federico Mattioli, M.D. entered into an employment contract with LPT to provide various ophthalmology services at LPT/LCA's clinic, located at 3700 Buffalo Speedway, Ste. 325, Houston, Texas. The employment contract, entitled "LPT Employment Agreement," is attached hereto as Exhibit "A". LCA is a third party beneficiary of the LPT Employment Agreement. See Exhibits "A", Section 23, and Plaintiffs' Ex. "2", Page 22, No. 7, admitted at the Temporary Injunction hearing.

The LPT Employment Agreement contains an eighteen (18) month Covenant Not to Compete prohibiting Mattioli from delivering laser vision correction services (other than as an employee of LPT) within a restrict area set forth within same. Additionally, the LPT Employment Agreement prevents Mattioli from soliciting any of LPT's patients and/or employees, or employees of LCA. See Exhibit A.

On October 16, 2012, Mattioli notified LPT that his last day of employment would be November 16, 2012. Mattioli later changed his last day to November 17, 2012. This is far less notice than is required under the LPT Employment Agreement. See Exhibit A. A few days before his last scheduled day of work, Mattioli advised LPT that he was opening a new clinic located at 2200 Southwest Freeway #500, Houston, TX 77098. This clinic is less than two miles from LPT's vision center.

Since October, 2012, LCA has received resignations from its employees in the Houston office. These employees worked with Mattioli. Plaintiffs have reason to believe that these employees are leaving to work for Mattioli at his new practice. One of the employees gave the same resignation date as that given by Mattioli.

Over the years, Plaintiffs have spent substantial funds to promote and advertise Mattioli and his services at LPT in "branding" Dr. Mattioli with the LPT name. *See generally* Testimony of Dave Thomas, December 7, 2012. Plaintiffs have developed invaluable and immeasurable goodwill and name recognition in the Houston vision correction market utilizing Mattioli and LPT's names synonymously and in harmony with each other. *Id.* Defendant, in violation of the LPT Employment Agreement, is now attempting to reap the benefits of this name recognition in the subject market area and goodwill generated at the expense of Plaintiffs. As averred by Mr. Thomas on December 7, 2012, the harm to LPT/LCA is impossible to precisely calculate.

Plaintiffs notified Mattioli of his contractual obligations and breaches of the LPT Employment Agreement, including his obligations attendant to the notice and competition provisions. Unfortunately, Mattioli refuses to honor his contractual obligations. On December 7, 2012, Plaintiffs put forth evidence demonstrating their entitlement to injunctive relief including, but not limited to, damage to Plaintiffs' goodwill, brand confusion and the deleterious effects of Dr. Mattioli reaping (and continuing to reap) the benefits of Plaintiffs' One Million dollar plus "hyper-local" advertising campaign designed to mate Dr. Mattioli with the LasikPlus brand. *See generally* Testimony of Dave Thomas, December 7, 2012. It should be noted that there is no doubt Dr. Mattioli, in addition to opening a Lasik practice 1.2 miles from LasikPlus, further breached the subject LPT Employment Agreement in failing to provide adequate notice of termination. *See generally* Testimony of Dave Thomas, December 7, 2012. Such breaches are considered *prima facie* evidence of irreparable injury to the plaintiff employer at the injunctive phase. *Cardinal Health Staffing Network v. Bowen*, 106 S.W.3d 230, 236 (Tex. App.--Houston [1st Dist.] 2003, no pet.) (Irreparable injury to the promisee sufficient to support the necessity of equitable relief is frequently presumed from the fact of breach. Thus, evidence of a breach by a

highly trained employee constitutes prima facie proof of probable injury to the former employer.). To wit, Plaintiffs seek judicial intervention in the form of a temporary injunction to maintain the status quo, as well as an expedited trial to determine Dr. Mattioli's duties under the subject LPT Employment Agreement.

Despite the intermediate phase of this case, Defendant takes the position this Court cannot grant injunctive relief to protect the Plaintiffs' interests because defects in the subject Covenant render it ultimately unenforceable. Defendant takes a very narrow view of Tex. Bus. & Commerce Code §15.50, as well as whitewashing over the clear intent of the parties to the subject Employment Agreement to not only be bound by the Covenant, but to permit reformation if the Covenant is determined to be unenforceable. See Exhibit A. Notwithstanding the shortcomings of Defendant's contentions, an analysis of the legislative history demonstrates broad discretion in the trial court's ability to reform in effectuating an otherwise enforceable covenant. Moreover, and as a paramount consideration, the Court's function at the temporary injunction phase is not to determine the saliency of the Covenant, but rather to apply equitable principals in determining the sufficiency of the injunctive relief requested. To wit, Defendant's demands are not only legally dubious, they are premature as a matter of law.

As demonstrated herein, the purpose of Tex. Bus. & Commerce Code §15.50 was and is to protect continuity of patient care – which is affected by Plaintiffs' requested injunctive relief in that it is not hindered by the enforcement of a contractual covenant not to compete.¹ Per the legislative history of Tex. Bus. & Commerce Code §15.50, as well as equitable principals of reformation, the addition of an arbitration clause at the final phase of this matter is consistent

¹ Plaintiffs merely seek injunctive relief as to the proximity of Dr. Mattioli's practice of Lasik and PRK procedures for 18 months and within 20 miles from LasikPlus' office in Houston and its contiguous counties; Plaintiff has already notified Dr. Mattioli's former and current patients of his departure from LasikPlus and informed them how to obtain their medical records.

with the intent of §15.50 – which was to relax the rules of covenants not to compete and allow a trial court the authority to ensure that contracts containing same are given their full force and benefit – as well as the intent of the parties on the face of the contract at issue.

III. ARGUMENT

A. Equitable Rules Apply in Considering Temporary Injunctive Relief. Defendant's Demand for Ruling on Enforceability of Covenant Not to Compete is Premature

In the instant case, Defendant attempts to circumvent well-settled law applying rules of equity to the subject temporary injunction proceeding by demanding an immediate ruling as to the enforceability of the subject LPT Employment Agreement and attendant Covenant Not to Compete. While Plaintiffs concede the form of the subject Covenant is lacking, the improper standard has been requested in an effort to circumvent the injunctive phase of this matter. As will be discussed *infra*, Plaintiffs would show there are ample bases to uphold the enforcement of the subject covenant and/or reform same to add the missing arbitration provision from the covenant so as to render it in compliance with the statute and the subject LPT Employment Agreement. Nevertheless, at this stage the only consideration is one of equity, which does not depend on the enforcement of the Covenant, but rather the equitable question of whether Plaintiffs will suffer as a result of the Defendant's refusal to comply with the Covenant Not to Compete. Consequently, this Court can, and should, enforce a reasonable temporary injunction to maintain the *status quo* without regard to the question of the final remedy of the Covenant.

As an initial matter, it must be noted that the ultimate question as to the enforceability of a covenant not to compete does not derail the application of equitable principals at the injunctive phase. Per the 14th Court of Appeals, the Texas Covenants Not to Compete Act (the "Act") does not preempt the common law relating to temporary injunctions. *EMS USA, Inc. v. Shary*, 309

S.W.3d 653, 657-658 (Tex. App.--Houston [14th Dist.] 2010); *EMSL Analytical, Inc. v. Younker*, 154 S.W.3d 693, 695 (Tex. App.--Houston [14th Dist.] 2004, no pet.); *see also Cardinal Health Staffing Network, Inc. v. Bowen*, 106 S.W.3d 230, 238-39 (Tex. App.--Houston [1st Dist.] 2003, no pet.)(same). "[T]he clear language of the [Texas Covenants Not to Compete Act] expresses an intention to govern only final remedies. By its very nature, a temporary injunction is not a final remedy. Accordingly, we look to the common law rules governing temporary injunctions in determining whether the court below properly denied the application." *Younker*, 154 S.W.3d at 695.²

The purpose of a temporary injunction is to preserve the *status quo* of the litigation's subject matter pending a trial on the merits. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204, 45 Tex. Sup. Ct. J. 916 (Tex. 2002); *Rugen v. Interactive Bus. Sys., Inc.*, 864 S.W.2d 548, 550 (Tex. App.-Dallas 1993, no writ); *Elec. Data Sys. Corp. v. Powell*, 508 S.W.2d 137, 139 (Tex. Civ. App.-Dallas 1974, no writ). The *status quo* is defined as, "the last, actual, peaceable, non-contested status which preceded the pending controversy." *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) (orig. proceeding). To obtain a temporary injunction, the applicant must plead and prove (i) a cause of action against the defendant, (ii) a probable right to the relief sought, and (iii) a probable, imminent, and irreparable injury in the interim. *Tom James*, 109 S.W.3d at 882 (citing *Butnaru*, 84 S.W.3d at 204); *Walling v. Metcalfe*, 863 S.W.2d 56, 57, 37 Tex. Sup. Ct. J. 18 (Tex. 1993). Thus, the legal issues before the trial judge at a temporary injunction hearing are

² Under the common law, the decision to grant or deny a temporary injunction lies within the sound discretion of the trial court. *Walling v. Metcalfe*, 863 S.W.2d 56, 58 (Tex. 1993). A trial court does not abuse its discretion by granting a temporary injunction if some evidence supports its decision. *Sharma v. Vinmar Int'l, Ltd.*, 231 S.W.3d 405, 419 (Tex. App.--Houston [14th Dist.] 2007, no pet.). In reviewing the trial court's exercise of discretion, the appellate court must draw all legitimate inferences from the evidence in the light most favorable to the trial court's decision. *Id.* When no findings of fact or conclusions of law are filed, the trial court's determination of whether to grant or deny a temporary injunction "must be upheld on any legal theory supported by the record." *Davis v. Huey*, 571 S.W.2d 859, 862 (Tex. 1978); *see Tom James of Dallas, Inc. v. Cobb*, 109 S.W.3d 877, 884 (Tex. App.--Dallas 2003, no pet.).

whether the applicant showed a probability of success and irreparable injury; the underlying merits of the controversy, including the saliency of the covenant not to compete, are not presented. "Because the issue of whether the covenant not to compete is enforceable must await a final judgment on the merits, a court should refrain from addressing that ultimate issue at the injunctive phase." See *Loye v. Travelhost, Inc.*, 156 S.W.3d 615, 621 (Tex. App.--Dallas 2004, no pet.) (citing *Tom James*, 109 S.W.3d at 885 ("Despite our de novo review of legal issues related to the trial court's decision on the application for temporary injunction, the trial court did not, and we do not, reach the ultimate issue of the enforceability of the non-compete agreements. That issue awaits a final judgment on the merits, such as a final judgment entered after a jury or bench trial or a hearing on a motion for summary judgment.")). It follows that the appeal of an order granting or denying a temporary injunction based on a covenant not to compete does not present for appellate review the ultimate question of whether the covenant is enforceable under section 15.50 of the Business and Commerce Code. *Id.*; see also TEX. BUS. & COM. CODE ANN. § 15.50 (Vernon 2002).

Per the 1st Court of Appeals, the ultimate issues of the controversy, both legal and factual, are not before a trial court during a temporary injunction hearing. The only issue is whether the applicant for temporary injunction may maintain the *status quo* because he has shown (1) a probable right of success at final trial; and (2) imminent, irreparable injury in the interim if the injunction is not issued. *Donaho v. Bennett*, No. 01-08-00492-CV, 2008 Tex. App. LEXIS 8783, 2008 WL 4965143, at *3 (Tex. App.—Houston [1st Dist.] Nov. 20, 2008, no pet.) (mem. op.). Because a temporary injunction is a pre-trial remedy, the merits have not yet been finally determined, and the court may consider only the possible effects of error in granting or denying the temporary relief. *NMTC Corp. v. Conarroe*, 99 S.W.3d 865, 868 (Tex. App.--Beaumont

2003, no pet.); *Universal Health Servs., Inc. v. Thompson*, 24 S.W.3d 570, 578 (Tex. App.--Austin 2000, no pet.); *Sadler Clinic Ass'n, P.A. v. Hart*, 2010 Tex. App. LEXIS 209 (Tex. App. Beaumont Jan. 14, 2010)(“Because we need not determine the merits of the noncompete agreement in this interlocutory appeal, we do not reform the agreement in this appeal.”). To wit, when considering temporary injunctive relief in the context of an action involving a covenant not to compete, a court must balance competing equities. *NMTC Corp. v. Conarroe*, 99 S.W.3d 865, 868 (Tex. App.--Beaumont 2003, no pet.). “As part of its weighing of the equities, a court considering a temporary injunction under the Act may balance the probable harm to the plaintiff if a temporary injunction is erroneously denied with the probable harm to the defendant if a temporary injunction is erroneously granted.” *Id.*

In the instant matter, Defendant demands a ruling which not only disregards legislative history (discussed *infra*), contractual law, equitable principals and his own promise to reform the subject Covenant, but essentially requires a final determination of the saliency of that Covenant at this injunctive phase. This is premature and, as demonstrated *supra*, grounds for reversal insofar as injunctive relief is not predicated on the enforceability of the subject Covenant. Defendant's narrow view of this Court's reformation power not only disregards the legislative intent behind Tex. Bus. & Commerce Code §15.50, but also the express agreement of the parties made to reform the subject Covenant if it is “otherwise” found unenforceable. Given the fact there is, at the very least, a question as to whether the Covenant will be determined to be enforceable by reformation, disposition at this stage on enforceability principals is improper.

B. Tracking §15.50's Legislative History Evidences an Overriding Awareness that Complete Reformation by the Addition of Missing Provisions by the Trial Court was Intended to Harmonize the Intent of the Parties with Patient Interests So Long as the Covenant at Issue was Ancillary to an Otherwise Enforceable Agreement

One of the chief points of contention in this case is to what extent this Court is allowed to reform the subject covenant not to compete. The defense takes the position the Court may not add provisions of any sort to the defective covenant, as it would materially alter the agreement. The Plaintiffs, however, believe reformation by the addition of an arbitration clause is allowable when adding such a provision is consistent with the intent of the statute and, most importantly, the intent of the parties vis-à-vis the agreement to submit to reformation. Notwithstanding the reformation provision contained in the LPT Employment Agreement itself, the legislative history of §15.50 demonstrated broad authority allowing the Trial Court to not only amend provisions attendant to a defective covenant, but to add them so long as the subject covenant was ancillary to an otherwise enforceable agreement, as here. A discussion of the evolution of Tex. Bus. & Commerce Code §15.50 is instructive in that, in considering the reformation authority in the context of the statute's purpose, a manifest purpose to allow reformation to affect the agreement of the parties to a defective but otherwise enforceable covenant always was intended.

The Texas Covenant Not to Compete Act was signed into law on August 28, 1989. Essentially, the original version of §15.50 stated that covenants not to compete were enforceable if they 1) were ancillary to an otherwise enforceable agreement; and 2) "contained reasonable limitations as to time, geographical area, and scope of activity to be restrained that do not impose a greater restraint than is necessary to protect the goodwill or other business interest of the promisee." *Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson*, 209 S.W.3d 644 (Tex. 2006). The 1989 version of Section 15.51(c) which dealt with reformation, stated that the court "shall reform the covenant to the extent necessary to cause the covenant to meet the criteria specified by

subdivision (2) of Section 15.50." Thus, the original version of the Covenants Not to Compete Act provided that the court "shall" reform the covenant to make it enforceable so long as the covenant was part of an otherwise enforceable contract. It should be pointed out that in 1989, there were no special provisions for medical practitioners; moreover, though provisions related to medical practitioners *were added* in 1999, the reformation language was never materially amended.

The Act was intended to reverse the Court's apparent antipathy to covenants not to compete and specifically to remove the obstacle to their use presented by the narrow "common calling" test instituted by *Hill v. Mobile Auto Trim*, and to "restore over 30 years of common law developed by Texas Courts and remove an impairment to economic development in the state." *Sheshunoff*, 209 S.W.3d at 653 (quoting House Research Org., Bill Analysis, Tex. S.B. 946, 71st Leg., R.S. (1989)). Quite simply, "[t]he purpose of the act was to return Texas' law generally to the common law as it existed prior to *Hill v. Mobile Auto Trim*." *Peat Marwick Main & Co. v. Haass*, 818 S.W.2d 381, 388 (Tex. 1991) (citation omitted); *Hill v. Mobile Auto Trim, Inc.*, 725 S.W.2d 168, 170-71, 30 Tex. Sup. Ct. J. 179 (Tex. 1987). Per the common law prior to *Hill*, the "rule [was] well established in Texas that non-competition clauses in contracts pertaining to employment [were] not normally considered to be contrary to public policy as constituting an invalid restraint of trade." *Marsh United States, Inc. v. Cook*, 354 S.W.3d 764, 772-773 (Tex. 2011).

The original 1989 version of §15.50 read as follow:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 15, Business & Commerce Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. COVENANTS NOT TO COMPETE

SEC. 15.50. CRITERIA FOR ENFORCEABILITY OF COVENANTS NOT TO COMPETE. NOTWITHSTANDING SECTION 15.05 OF THIS CODE, A COVENANT NOT TO COMPETE IS ENFORCEABLE TO THE EXTENT THAT IT:

- (1) IS ANCILLARY TO AN OTHERWISE ENFORCEABLE AGREEMENT BUT, IF THE COVENANT NOT TO COMPETE IS EXECUTED ON A DATE OTHER THAN THE DATE ON WHICH THE UNDERLYING AGREEMENT IS EXECUTED, SUCH COVENANT MUST BE SUPPORTED BY INDEPENDENT VALUABLE CONSIDERATION; AND
- (2) CONTAINS REASONABLE LIMITATIONS AS TO TIME, GEOGRAPHICAL AREA, AND SCOPE OF ACTIVITY TO BE RESTRAINED THAT DO NOT IMPOSE A GREATER RESTRAINT THAN IS NECESSARY TO PROTECT THE GOODWILL OR OTHER BUSINESS INTEREST OF THE PROMISEE.

...

(C) IF THE COVENANT MEETS THE CRITERIA SPECIFIED BY SUBDIVISION (1) OF SECTION 15.50 OF THIS CODE BUT DOES NOT MEET THE CRITERIA SPECIFIED BY SUBDIVISION (2) OF SECTION 15.50, THE COURT, AT THE REQUEST OF THE PROMISEE, SHALL REFORM THE COVENANT TO THE EXTENT NECESSARY TO CAUSE THE COVENANT TO MEET THE CRITERIA SPECIFIED BY SUBDIVISION (2) OF SECTION 15.50 AND ENFORCE THE COVENANT AS REFORMED, EXCEPT THAT THE COURT MAY NOT AWARD THE PROMISEE DAMAGES FOR A BREACH OF THE COVENANT BEFORE ITS REFORMATION AND THE RELIEF GRANTED TO THE PROMISEE SHALL BE LIMITED TO INJUNCTIVE RELIEF.

See 1989 Tex. ALS 1193; 1989 Tex. Gen. Laws 1193; 1989 Tex. SB 946. What is abundantly clear by the language of the original 1989 statute is that the legislature granted the trial court broad discretion to amend or add needed provisions to bring an otherwise noncompliant covenant into compliance, so long as the covenant was ancillary to an otherwise enforceable agreement. *Id.* In other words, the trial court was not hamstrung (“to the extent necessary”) by limiting its amending power to time, scope or geographic location, as Defendant suggests. Importantly, the broad discretion of the trial court to amend and add-to is supported by

subsequent legislative discussion addressing the purpose of the Act. The 1989 Act also made explicit that a court could reform covenants that did not comply with the Act, and could provide money damages for a violation occurring after reformation. *Peat Marwick Main & Co. v. Haass*, 818 S.W.2d 381, 388 (Tex. 1991); Tex. Bus. & Com. Code § 15.51(c); *see also Light v. Centel Cellular Co. of Tex.*, 883 S.W.2d 642, 644 (Tex. 1994) (citing Tex. Bus. & Com. Code § 15.52) (stating that the Act supplanted prior common law).

The legislative history to the subsequent amendment to §15.50 addressing the buyout provision added in 1999 is abbreviated. Tex. H.B. 3285, 76th Leg., R.S. (1999) (introduced). However, its purpose strongly supports the Plaintiffs' position that reformation through the addition of an arbitration clause is consistent with the purpose behind the Act – namely, to ensure no impediments to patient care continuity. Representative Leticia Van de Putte introduced House Bill 3285 on March 25, 1999, which amended §15.50 through the addition of the commonly-referred-to “buyout” provision. The House Committee on Public Health conducted a very brief committee hearing on April 21, 1999. At the hearing, Representative Uresti substituted a complete replacement bill to the original bill initially presented at the hearing. Representative Van de Putte made a brief statement that consisted of reading the Background and Purpose section of the Office of House Bill Analysis on HB 3285 as follows:

In today's medical practice environment, many physicians have grouped together to form multi-specialty clinics, leaving fewer solo practitioners. When a physician leaves a group to enter his or her own practice or another group practice, the ability of the departing physician to treat his or her patients may be hindered due to a covenant not to compete, a contractual clause in the physician's work contract. This clause may make it difficult for the patients to have his or her records transferred to the departing physician's new office and to receive continuing care from that physician. H.B. 3285 provides a —buy-out clause in a covenant not to compete, as well as other provisions designed to allow a departing physician to provide his or her patients with continued care.

See Background and Purpose Section: Office of House Bill Analysis, on H.B. 3285, 76th Leg. (Tex. 1999); House Comm. on Public Health, Bill Analysis, Tex. H.B. 3285, 76th Leg., R.S. (1999).

The foregoing Background and Purpose and the statements of Representative Van de Putte at the hearing on H.B. 3285 indicate a clear concern of the legislature that the departing physician have the opportunity to continue to care for existing patients. On the other hand, prospective patient encounters (at issue here), which are also usually restricted in physician covenants, do not seem to have been a concern of the legislators. *Id.* The Background and Purpose makes it clear that the legislature wanted to ensure that existing patients had access to their regular physician. *Id.* In so doing, the Legislature sought to allow courts broader discretion to ensure enforcement of covenants not to compete and do away with the *Hill* referendum uniformly denying their enforceability.

Not insignificantly, the original version of 1999 version of HB 3285, like the substituted bill, contained a requirement that an enforceable covenant not to compete have a buyout at a reasonable price. See Tex. H.B. 3285, 76th Leg., R.S. (1999) (introduced). The original version of the 1999 bill required the covenant to contain a provision that allowed a buyout of a covenant—at a reasonable price as determined by a mutually agreed arbitrator. See *Id.* It did not have a provision wherein the amount of the buyout was to be predetermined by the parties. *Id.* The substituted bill changed the original bill to provide for a buyout at a reasonable price or at the option of either party by a mutually agreed arbitrator. Tex. H.B. 3285, 76th Leg., R.S. (1999) (House Committee Report). The substituted bill (the final version) also added that if the parties could not agree on an arbitrator, a court could select an arbitrator. *Id.* This would seem to

indicate a legislative appreciation that a court-appointed arbiter would be the ultimate determiner for the buyout cost when disparate parties could not agree on an amount or an arbitrator.

Coupled with the intended purpose – patient care continuity – it is logical that reformation adding the missing court-appointed arbitration term is not only consistent with contractual intent in this case, but also in keeping with the authority vested in the trial court by the Legislature post-*Hill* – namely, the naming of an arbitrator as a final measure to ensure an otherwise enforceable covenant is not ameliorated for *pro-forma* noncompliance. See Tex. Bus. & Com. Code § 15.50(b)(1)(A) (Vernon 2002) (stating the covenant must not deny the physician access to a list of his patients whom he had seen or treated within one year of termination of the contract or employment); *Id.* § 15.50(b)(1)(B) (stating the covenant must —provide access to medical records of the physician’s patients upon authorization of the patient).³

When a Covenant is ancillary to an otherwise enforceable agreement, as here, the intended involvement of the trial court was to harmonize the agreement with the interest of the patients to ensure patient continuity was not adversely affected. *Marsh United States, Inc. v. Cook*, 354 S.W.3d 764, 778 (Tex. 2011) (“We hold that if the relationship between the otherwise enforceable agreement and the legitimate interest being protected is reasonable, the covenant is not void on that ground [that it seeks to protect good will]”). The reformation provision of the current §15.50 should be more broadly construed than Defendant suggests so as to allow the addition of the court-appointed arbitration provision which, by its very nature, would seem to be consistent with legislative intent. Moreover, as that provision appears to be disjunctive in nature (“or, in the case of an inability to agree, an arbitrator of the court whose decision shall be

³ Before Dr. Mattioli’s employment ended with Plaintiffs, Plaintiffs notified the patients treated by Dr. Mattioli of his departure and provided them an opportunity to obtain a copy of their medical records. Thus, the parties satisfied the legislature’s original concern over continuity of care upon the departure of a medical doctor under contract that contains a covenant not to compete. See Exhibits “B” and “C” attached hereto. Furthermore, Plaintiffs are not asking that Defendant be enjoined from treating any past or current patients.

binding on the parties”) and required, its addition does not materially alter the contract, but rather brings it into compliance with the statute. As noted by Justice Hecht in 2009, “[i]n determining whether and how to enforce a covenant not to compete, a court must seek equity in reformation, not in the statement and application of general contract principles. The enforcement vehicle must be directed by steering, not by rebuilding the chassis.” *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 856 (Tex. 2009). To wit, from a legislative perspective this Court is fully vested with the power to reform the defective Covenant not to Compete not by principals of contract, but in equity. *Id.*

C. *The Covenant Not to Compete Expresses the Intent of the Parties to the LPT Employment Agreement to Permit Reformation of the Agreement to Comport with Tex. Bus. & Commerce Code §15.50*

Defendant takes the position the injunctive relief sought by the Plaintiffs fails as a matter of law because Section 8.1 of the subject LPT Employment Agreement does not contain a “buy out” provision or arbitration clause. Section 8.1 of the LPT Employment Agreement provides:

8.1 Covenant Not to Compete. Physician agrees during the Terms of this Agreement and for eighteen (18) months after termination of the Physician’s employment with LPT to not:

8.1.1. engage in any manner in the delivery of laser vision correction services (other than as an employee of LPT) in the Restricted Area including, but not limited to, directly or indirectly owning, managing, joining, operating, controlling, contracting with, being employed by, acting in the capacity as officer, director, trustee, shareholder, member, or partner, or consultant, or participating in or being connected in any manner with the ownership, management, operation, or control of any person, firm, or corporation providing laser vision correction services of facilities. For purposes herein, the Restricted Area is defined as: A radius of twenty (20) miles from or in any county contiguous in which any laser vision facility owned, operated or managed by LPT or LCA-Vision Inc., or any subsidiary or affiliate thereof in the State of Texas as of the Effective Date of this Agreement or as of the date of termination of Physician’s employment with LPT. The parties agree and acknowledge that as of the Effective Date LPT, LCA-Vision Inc. and/or their subsidiaries or affiliates own, operate or manage those centers listed in Exhibit B attached hereto.

8.1.2. induce or attempt to induce any healthcare facility or provider of health care services with a referring relationship with other physician employees or with LPT to terminate or alter that relationship; or

8.1.3. directly or indirectly induce or solicit any of LPT's patients, regardless of their location, to obtain professional medical services from any business, corporation, partnership or entity other than LPT's or from any person who is not an employee or affiliate of LPT; provided, however, that the foregoing shall not prohibit a bona fide referral of a patient to another provider of medical services if such is medically indicated and necessary for such patient.

See Ex. "A", Section 8.1, *et. al.*, of the LPT Employment Agreement. Also contained therein is a "Remedies" provision which explicitly contemplates injunctive relief for breach of the Covenant Not to Compete, explicitly stating that LPT would suffer immediate and irreparable harm:

8.3. Remedies. Physician [Mattioli] agrees that LPT would suffer immediate and irreparable harm by a breach of Section 8.1 or 8.2. In the event of Physician's actual or threatened breach of the provisions of 8.1 or 8.2, LPT shall be entitled to an injunction against said breach by Physician, and Physician hereby consents to such injunction by a court in accordance with the laws of the State of Texas...

See Ex. "A", Section 8.3 of the LPT Employment Agreement. The "Remedies" subsection further memorializes the Defendant's consent to injunctive relief. Not insignificantly, the next section, entitled "Enforcement" specifically consents to judicial reformation if any of the Covenants are deemed unenforceable by the Court:

8.4 Enforceability. It is further agreed that if a court determines the aforesaid covenants not to compete or non-solicitation of employees to be unreasonable as to time or area or otherwise, the parties consent to the reformation of the covenants by such court and LPT or Manager, as the case may be, shall be entitled to enforce the covenants for such period of time and within such area as may be determined to be reasonable by such court.

See Ex. "A" Section 8.4 of the LPT Employment Agreement. Importantly, this provision calling for judicial reformation memorializes LCA-Vision, Inc.'s right to enforce the covenants. *Id.* To further solidify LCA-Vision, Inc.'s right's under the Employment Agreement, Section 23 of said agreement specifically identifies LCA-Vision, Inc.'s right as a third-party beneficiary to that instrument:

23 No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to the benefit of any third party (other than affiliates of LPT or LCA-Vision, Inc.) unless expressly named herein and designated to inure to such party's benefit.

As demonstrated from the totality of the LPT Employment Agreement, it is evident Dr. Mattioli and LPT intended to execute a binding covenant not to compete for the benefit of not only LPT, but also for LCA-Vision, Inc., which invested extensive time and money in branding LPT and Dr. Mattioli in the relevant market area. See Ex. A. Even assuming *arguendo* the Covenant is unenforceable as drafted, the document itself contemplates reformation in the event of same. See Exhibit A at Section 8.4. As such, it is Plaintiffs' position that any *pro-forma* impediment to the enforcement of the subject covenant not to compete is superseded by the contractual provision allowing for same. To ignore Section 8.4 would vitiate contractual principals, as discussed *infra*. By extension, Defendant's assertion that the Covenant cannot be enforced should be disregarded as it is squarely within the power of this Court to determine its enforceability and, by the terms of the LPT Employment Agreement, reform as needed to ensure compliance with the law. *Light v. Gentel Cellular Co. of Texas*, 883 S.W.2d 642, 644 (Tex. 1994) ("The enforceability of a covenant not to compete, including the question of whether a covenant not to compete is a reasonable restraint of trade, is a question of law for the court."); *Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson*, 209 S.W.3d 644, 649 (Tex. 2006) (stating "We do not disturb the holding in *Light*."); *Henshaw v. Kroenecke*, 656 S.W.2d 416, 418 (Tex. 1983) ("The question of whether a covenant not to compete is reasonable is a legal question for the court."). Consequently, a brief discussion of contractual interpretation and judicial concern attendant to same is required.

In construing contracts, a court's primary concern is to ascertain and give effect to the intentions of the parties as expressed in the contract. *Kelley-Coppedge, Inc. v. Highlands Ins.*

Co., 980 S.W.2d 462, 464 (Tex. 1998). To ascertain the parties' true intentions, a court must examine the entire agreement in an effort to harmonize and give effect to all provisions of the contract so that none will be rendered meaningless. *MCI Telecomms. Corp. v. Tex. Utils. Elec. Co.*, 995 S.W.2d 647, 652 (Tex. 1999). By extension, each contract provision should be considered with reference to entire contract, and no single provision taken alone should be controlling. *Hicks v. Castille*, 313 S.W.3d 874, 879-880 (Tex. App.--Amarillo 2010, no pet.); *Nevarez v. Ehrlich*, 296 S.W.3d 738, 742 (Tex. App.--El Paso 2009, no pet.). A court will construe written contracts according to parties' intention, notwithstanding errors and omissions, by considering the entire document and, to this end, words, names, and phrases that parties obviously intended may be supplied. *Falk & Fish, L.P. v. PLE, Inc.*, 317 S.W.3d 523, 527-528 (Tex. App.--Dallas 2010, no pet.).

In the instant matter, it is evident from the subsection of the LPT Employment Agreement entitled "Enforceability" that the parties intended this Court to supply terms omitted from the Covenant not to Compete which would otherwise render it unenforceable. Though it is conceded the Covenant as drafted does not comply with Tex. Bus. & Com. Code § 15.50, the parties nonetheless contemplated such pro-forma errors by way of mutual error in the form of the Covenant. Section 8.4 of the LPT Employment Agreement cannot be disregarded or otherwise ignored in light of well-settled precedent allowing parties to such a contract to agree to such reformation in contemplation of noncompliance with the applicable law. *See* Tex. Const. art. I, § 16 (The Texas Constitution protects the freedom to contract.); *Fairfield Ins. Co. v. Stephens Martin Paving, LP*, 246 S.W.3d 653, 663-64 (Tex. 2008); *see also In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 128-29 (Tex. 2004).

A contract is construed in its entirety, and each part must be considered in relation to every other part so that effect of each part on others may be determined. *In re Service Corp. Int'l*, 355 S.W.3d 655, 661 (Tex. 2011); *Epps v. Fowler*, 351 S.W.3d 862, 865-866 (Tex. 2011); *City of Keller v. Wilson*, 168 S.W.3d 802, 811 (Tex. 2005). When a contract contains conflicting provisions, court should construe them together and attempt to harmonize and give effect to all provisions. *Frost Nat'l Bank v. L & F Distribs., Ltd.*, 165 S.W.3d 310, 312 (Tex. 2005). What parties objectively expressed in contract governs its meaning, not parties' present interpretation of agreement. *Providence Land Services, LLC v. Jones*, 353 S.W.3d 538, 541 (Tex. App.--Eastland 2011, no pet. h.); *U.S. Denro Steels, Inc. v. Lieck*, 342 S.W.3d 677, 682 (Tex. App.--Houston [14th Dist.] 2011, pet. denied).

What Defendant asks this Court to do, notwithstanding the prematurity of ruling on the enforceability of the subject Covenant at this injunctive phase, is to turn a "blind eye" towards the express intent of the parties – namely, to enter into a reasonable covenant not to compete and to allow the judicial reformation of same in the event the covenant is found legally unenforceable. See Exhibit A, Section 8.4. Holding as Defendant demands has the adverse effect of not only disregarding the purpose of the Covenant not to Compete Act, but also the clear intent of the parties as expressed in the subject contract. Nevertheless, this court is neither required nor permitted to address these questions at this intermediate stage; rather, the only appropriate ruling is on the Plaintiffs' requested injunctive relief which has been shown just as a matter of law. The contract at issue inarguably demonstrates Plaintiffs and Dr. Mattioli's intent to be bound by a covenant not to compete; it should not be avoided merely due to a mutual error in omitting a buyout/arbitration provision. See *Roland v. McCullough*, 561 S.W.2d 207, 213 (Tex. Civ. App.-San Antonio 1978, writ ref'd n.r.e.) ("A contract may not be avoided on the

ground of mistake of fact where it appears that ignorance of the facts was the result of carelessness, indifference, or inattention.").

"Reformation is a proper remedy when the parties have reached a definite and explicit agreement, understood in the same sense by both, but, by their mutual or common mistake, the written contract fails to express this agreement." *Champlin Oil & Ref. Co. v. Chastain*, 403 S.W.2d 376, 377, 9 Tex. Sup. Ct. J. 84 (Tex. 1965). Because it is evident the parties had a covenant not to compete but mutually erred in including the required buyout/arbitration provision, reformation is appropriate. *Laredo Med. Group v. Lightner*, 153 S.W.3d 70, 74 (Tex. App.—San Antonio 2004, pet. denied) ("Because it is clear the parties had a non-compete agreement, but it is unclear from the signed document what all the terms of the agreement were, the matter must be remanded to the trial court to reform the written contract to conform to the terms of the agreement."). This is keeping with long-standing constitutional principals supporting the freedom to contract and the judiciary's duty to enforce same. TEX. CONST. art. I, § 16 ("No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made."); see also *Churchill Forge, Inc. v. Brown*, 61 S.W.3d 368, 371 (Tex. 2001); *Wood Motor Co. v. Nobel*, 150 Tex. 86, 238 S.W.2d 181, 185 (Tex. 1951)("[I]f there is one thing which more than another public policy requires it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by Courts of justice. Therefore, you have this paramount public policy to consider—that you are not lightly to interfere with this freedom of contract.") (quoting *Printing & Numerical Registering Co. v. Sampson*, 19 L.R.Eq. 462, 465 (1875)). As demonstrated herein, reformation of the subject LPT Employment Agreement to resolve the Covenant at issue is required as a necessary function of this Court in

harmonizing that section with Section 8.4 and the express intent of the parties. Though the ultimate question of the enforcement of the subject Covenant is premature, there is ample factual and legal basis to excoriate Defendant's demand and proceed with injunctive relief.

D. *Greenville Surgery Center, Ltd. v. Beebe, et al. does not address the pressing question presented herein and is distinguishable from the case at bar.*

Defendant attempts to argue that the court's ruling in *Greenville Surgery Center, Ltd. v. Beebe, et al.*, 320 S.W.3d 850 (Tex.App.—Dallas 2010, no pet.) prevents this Court from reforming the covenant not to compete to include a buyout or arbitration provision. Not insignificantly, *Greenville Surgery Center* is distinguishable on four major points: 1) the covenant not to compete in that case did not contain a contractual clause requiring reformation of the covenant; 2) a request for reformation of the covenant per §15.51 of the Texas Business and Commerce Code was not at issue; 3) the covenant not to compete in that case addressed not the practice of medicine, but an ownership interest in a medical practice; and 4) equitable principals and a balancing of the parties probable harm was not considered. Because the primary issue before the Court herein is the question of whether the Court may reform the covenant not to compete per §15.51 and when the parties' covenant requires reformation, *Greenville Surgery Center* provides absolutely no guidance or comment on these issues.

E. *The injunctive relief requested does not prevent Dr. Mattioli from opening his new clinic only 1.2 miles from Plaintiffs' clinic and does not prevent him from earning a living.*

Defendant argues that if the temporary injunction is granted, he will be prevented from practicing as an ophthalmologist and earning a living. This could not be further from the truth and the evidence presented. At the temporary injunction hearing, evidence was presented that under the covenant not to compete, Dr. Mattioli would only be enjoined from providing Laski and PRK surgeries. Importantly, he is NOT prevented from opening his new clinic and doing

everything else that an ophthalmologist is qualified to do. Significantly, Dr. Mattioli's LinkedIn profile indicates that he plans to provide other services at his new clinic, including, but not limited to, non-lasik surgery options, facial cosmetic treatments, cataract surgery, lens implants, Botox, Juvederm, and wrinkle reduction treatments. See Plaintiffs' Ex. "14" at the temporary injunction hearing. Additionally, testimony was offered at the temporary injunction hearing that Dr. Mattioli is able to diagnose and treat various diseases of the eye without violating the covenant. Without question, a temporary injunction will not prevent Dr. Mattioli from earning a living and practicing at his new clinic.

F. Plaintiffs have a probable right to relief because §15.51 of the Texas Business and Commerce Code and the parties' contract require reformation.

Temporary Injunctive relief is appropriate because Plaintiffs have demonstrated a probable right to relief at the final trial on the merits. Although the covenant not to compete does not meet the requirements of §15.50 of the Texas Business and Commerce Code as written, namely that it does not contain a buyout clause or arbitration provision, because both the Covenants Not to Compete Act and the covenant in question require reformation, the covenant can be easily fixed to comply with the Act. Thus, Plaintiffs have shown they have a probable right to relief and are entitled to temporary injunctive relief.

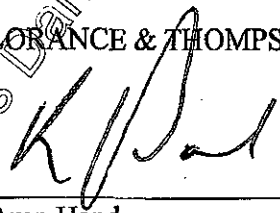
At the final trial on Plaintiffs request for a permanent injunction, the Court can reform the covenant to comply with the Act by simply granting injunctive relief that prohibits Dr. Mattioli from performing Lasik and PRK surgery within twenty (20) miles of the Houston LasikPlus office, and contiguous counties, until May 17, 2014, (18 months from Dr. Mattioli's last day of employment with Plaintiffs). The Court can further reform the covenant to add a binding and final arbitration provision that allows either party to force an arbitration before a court appointed arbitrator, or mutually agreed upon arbitrator of the parties. Because §15.50(b)(2) is worded in

the disjunctive, at the final trial on the merits, the Court can reform the covenant to include an arbitration with a mutually agreed upon arbitrator **"OR"** if the parties cannot agree, an arbitration before a Court appointed arbitrator. Thus, after the trial, if either party is dissatisfied with the covenant not to compete as reformed, a buyout can be imposed through a binding arbitration.

Based on the foregoing arguments and authority, Plaintiffs respectfully request that the Court grant Plaintiffs' application for a temporary injunction to preserve the *status quo* pending a trial on the merits.

Respectfully submitted,

LORANCE & THOMPSON, P.C.



Ryan Hand
SBN: 24012777
Scott B. Novak
SBN: 24051124
2900 North Loop West, Suite 500
Houston, Texas 77092
Telephone: (713) 868-5560
Facsimile: (713) 864-4671
**ATTORNEYS FOR PLAINTIFFS,
LASIKPLUS OF TEXAS, P.A. AND
LCA-VISION, INC.**

Unofficial Copy Office of Chris Daniel District Clerk


CERTIFICATE OF SERVICE

On this 11th day of December, 2012, a true and correct copy of the foregoing instrument has been provided to all parties by Efiling, United States mail, courier service, or telefax transmission.

Gary M. Polland
Valeria Lee Brock
2211 Norfolk Street, Suite 920
Houston, Texas 77098

George W. Vie III
Mills Shirley LLP
1021 Main Street, Suite 1950
Houston, Texas 77002

David A. Jones
733 West 43rd Street
Houston, Texas 770018



Ryan T. Hand

Unofficial Copy Office of Chris Daniel District Clerk

CAUSE NO. 2012-68429

LASIKPLUS OF TEXAS, P.C. AND
LCA-VISION INC.
Plaintiff

v.

FEDERICO MATTIOLI, M.D.
Defendant

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

80TH JUDICIAL DISTRICT

P-2
DITRX
TINJY

ORDER

After considering Defendant's Motion to Dissolve Temporary Restraining Order, and in Response to Plaintiffs' Request for Temporary Injunction, or in the Alternative to Increase Bond, and the response, the court is of the opinion that Defendant, FEDERICO MATTIOLI, M.D.'s motion is in all things GRANTED.

IT IS THEREFORE ORDERED that Plaintiffs' Temporary Restraining Order filed on November 19, 2012, is hereby dissolved.

IT IS FURTHER ORDERED that Plaintiffs' Request for Temporary Injunction is DENIED.

~~Alternatively, Applicants/Plaintiffs are ORDERED to post a \$
surety bond.~~

SIGNED on December 12, 2012


JUDGE PRESIDING

Unofficial Copy Office of Chris Daniel District Clerk

APPROVED AS TO FORM AND ENTRY REQUESTED:

By: 

Gary M. Polland
State Bar No. 16095800
Valeria Lee Brock
State Bar No. 12074610
2211 Norfolk Street, Suite 920
Houston, Texas 77098
Telephone: (713) 621-6335
Facsimile: (713) 622-6334

George W. Vie III
State Bar No. 20579310
Mills Shirley LLP
1021 Main Street, Suite 1950
Houston, Texas 77002

David A. Jones
State Bar No. 10869500
783 West 43rd Street
Houston, Texas 77018
Telephone: (713) 504-8188
Facsimile: (713) 861-1406
**ATTORNEYS FOR DEFENDANT
FEDERICO MATTIOLI, M.D.**

Unofficial Copy Office of Christopher D. Mattioli

P-3
ENTY

CAUSE NO. 2012-68429

LASIKPLUS OF TEXAS, P.C. AND
OF LCA-VISION INC.
Plaintiff

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

v.

FEDERICO MATTIOLI, M.D.
Defendant

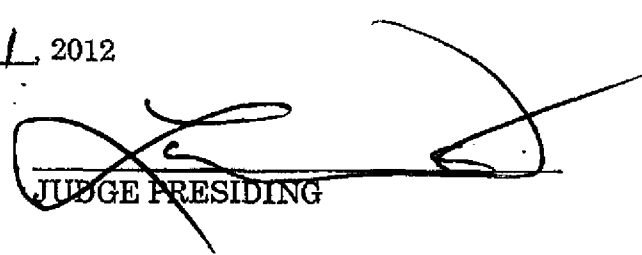
80TH JUDICIAL DISTRICT

**ORDER DENYING REQUEST
FOR RULING INJUNCTIVE RELIEF UNDER ALTERNATIVE THEORY OF
BREACH OF THE CONTRACTUAL NOTICE PROVISION OF THE
EMPLOYMENT CONTRACT**

After considering Plaintiff's Request for Ruling Injunctive Relief Under Alternative Theory of Breach of the Contractual Notice Provision of the Employment Contract and the response, therefore the court finds that Plaintiff, LASIKPLUS OF TEXAS, P.C. AND LCA-VISION INC.'s Request is in all things DENIED.

IT IS THEREFORE ORDERED, that Plaintiff's Request for Ruling Injunctive Relief Under Alternative Theory of Breach of the Contractual Notice Provision of the Employment Contract is DENIED.

SIGNED on December 31, 2012


JUDGE PRESIDING

Unofficial Copy Office of Chris Daniel District Clerk

APPROVED AS TO FORM AND ENTRY REQUESTED:

By: 

Gary M. Polland
State Bar No. 16095800
Valeria Lee Brock
State Bar No. 12074610
2211 Norfolk Street, Suite 920
Houston, Texas 77098
Telephone: (713) 621-6335
Facsimile: (713) 622-6334

George W. Vie III
State Bar No. 20579310
Mills Shirley LLP
1021 Main Street, Suite 1950
Houston, Texas 77002

David A. Jones
State Bar No. 10869500
733 West 43rd Street
Houston, Texas 77018
Telephone: (713) 504-8188
Facsimile: (713) 861-1406
ATTORNEYS FOR DEFENDANT.
FEDERICO MATTIOLI, M.D.

Unofficial Copy Office of Chris D. Mattioli

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of December, 2012, a true and correct copy of the foregoing instrument was forwarded via facsimile and/or via first class mail to opposing counsel in accordance with the Texas Rules of Civil Procedure as follows:

Via Facsimile (713) 864-4671
Ryan Hand
Lorance & Thompson
2900 North Loop West, Suite 500
Houston, Texas 77052
Attorney for Plaintiffs



Gary M. Polland
Valeria Lee Brock

Unofficial Copy Office of Christy Daniel District Clerk

CAUSE NO. 2012-68429

LASIKPLUS OF TEXAS, P.C. AND LCA-VISION INC.	§	IN THE DISTRICT COURT OF
	§	
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
FEDERICO MATTIOLI, MD	§	80th JUDICIAL DISTRICT

**PLAINTIFFS' NOTICE OF ACCELERATED INTERLOCUTORY
APPEAL PURSUANT TO CPRC § 51.014(a)(4)**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, *LasikPlus* of Texas, P.A. and LCA-Vision, Inc., Plaintiffs in the above-number and entitled cause, and file this Notice of Accelerated Interlocutory Appeal made pursuant to Civil Practices and Remedies Code §51.014(a)(4).

1. Notice is hereby given that *LasikPlus* of Texas, P.A. and LCA-Vision, Inc. hereby appeal to the Court of Appeals the Trial Court's Order of December 12, 2012 denying Plaintiffs' Request for Temporary Injunction.
2. This interlocutory appeal is brought pursuant to Civil Practices and Remedies Code §51.014(a)(4) and is an accelerated appeal.
3. The parties filing this Notice of Accelerated Appeal and stating their desire to appeal the Order, along with all rulings subsumed or incorporated therein, are *LasikPlus* of Texas, P.A. and LCA-Vision, Inc. See TEX. R. APP. P. 25.1(d)(3), (5), (6).
4. *LasikPlus* of Texas, P.A. and LCA-Vision, Inc. state that they take this appeal to the Court of Appeals for the First or Fourteenth District, Houston, Texas, Harris County. TEX. R. APP. P. 25.1(d)(4).

Respectfully submitted,

LORANCE & THOMPSON, P.C.



Ryan Hand
SBN: 24012777
Scott B. Novak
SBN: 24051124
2900 North Loop West, Suite 500
Houston, Texas 77092
Telephone: (713) 868-5560
Facsimile: (713) 864-4671
**ATTORNEYS FOR PLAINTIFFS,
LASIK PLUS OF TEXAS, P.A. AND
LCA VISION, INC.**

CERTIFICATE OF SERVICE

On this 19th day of December, 2012, a true and correct copy of the foregoing instrument has been provided to all parties by E-filing, United States mail, courier service, or telefax transmission.

Gary M. Polland
Valeria Lee Brock
2211 Norfolk Street, Suite 920
Houston, Texas 77098

George W. Vie III
Mills Shirley LLP
1021 Main Street, Suite 1950
Houston, Texas 77002

David A. Jones
733 West 43rd Street
Houston, Texas 770018



Ryan T. Hand

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (the "Agreement") is made and entered into this ___ day of _____, 2003 (the "Commencement Date"), by and between **LASIKPLUS OF TEXAS, P.A.**, a Texas professional association ("PC"), and **LCA-VISION INC.**, a Delaware corporation ("Manager").

RECITALS

WHEREAS, Manager wishes to sublease to PC the premises located at such locations, which are described on Exhibit "A" (the "Premises" or the "Office"); and

WHEREAS, Manager wishes to furnish certain administrative services ("Services" as set forth in Section 2 herein) to PC in connection with PC's practice of medicine at the Premises; and

WHEREAS, PC employs or retains certain physicians licensed to practice medicine in the State of Texas ("Physicians"), who will provide ophthalmologic treatment of vision using the refractive treatment equipment ("Refractive Equipment") at the Premises ("Laser Services"); and

WHEREAS, PC wishes to sublease the Office from Manager and wishes to engage Manager to render the Services on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants, terms, conditions, and agreements hereafter provided, the parties mutually agree as follows:

1. Term.

(a) Term. This Agreement shall commence on the Commencement Date and shall terminate on the date PC ceases its legal existence, for whatever reason, unless sooner terminated or extended in accordance with the terms hereof.

2. Services to be Provided by the Manager.

Manager agrees to provide to PC the following Services during the term of this Agreement, all in exchange for the compensation described in Section 3(a):

(a) Premises. Manager shall furnish to PC use of the Premises, together with necessary and appropriate furnishings as determined by Manager, after consultation with PC, for the conduct by PC of the Laser Services. During the term of this Agreement, PC may not provide any professional services at the Premises other than the Laser Services. Except as otherwise provided herein, all expenses of maintaining the Office shall be borne by Manager.

(b) Utilities. During the term of this Agreement, Manager shall provide, at its own cost and expense, necessary utilities and other services, including, without limitation, heat, water, gas, electricity, air conditioning, and telephone service necessary for PC to conduct the Laser Services at the Office.

(c) Personnel. Manager shall provide appropriate clerical, non-medical personnel, and medical technologists (and medical nurses, if any) required in its reasonable judgment, upon consultation with PC, to conduct the Laser Services at the Office. In addition, Manager shall negotiate on behalf of the PC all employment contracts between the PC and Physicians.

(d) Transcription. Manager shall provide transcription services to PC, at Manager's own cost and expense.

(e) Negotiating Managed Care Agreements. Manager shall negotiate, on behalf of PC, all agreements with health care service plans, hospital service plans, health maintenance organizations, independent provider associations and other purchasers of medical services for the provision of laser vision correction services.

(f) Collecting and Analyzing Outcomes Data. Manager shall provide for the collection and analysis of outcomes data in connection with laser vision correction services performed.

(g) Billing and Collection. Manager shall assist PC in the billing and collection of all accounts receivable attributable to health care services and ancillary services rendered by or on behalf of PC or its employees and provide a corporate accounting function for accounts payable, payroll, financial analysis, and financial reporting. Solely for the purpose of carrying out the billing and collection services hereunder, PC hereby appoints Manager as its agent and its true and lawful attorney-in-fact for the following purposes:

(i) To submit all claims and other documents necessary or appropriate for billing for such services in the name of PC and all Physicians under their provider number or numbers and for the benefit of PC;

(ii) To collect, receive payment of, receipt for and give discharges and releases of all claims for such health care and ancillary services;

(iii) To make demand with respect to, settle, compromise and adjust such claims and, with the consent of PC, to commence and prosecute in the name of PC and its Physicians and for the benefit of PC any suit, action or proceeding to collect any such claims;

(iv) To take possession of and endorse in the name of PC or any of its Physicians, any note, check, money order, insurance payment or any other instrument received as payment for such services; and

(v) To deposit all payments for healthcare services rendered by PC into the Holding Account (defined in Section 4) established by Manager and PC.

Manager will perform all patient and third-party billing and collection activities in the name of PC and under its provider number, or, if required by a third-party payor, in the name and under the provider number of the Physician rendering the service. The parties understand that Manager does not guarantee the collection of any charges billed on behalf of PC. PC shall cause each of

its Physicians to forward all payments for health care and ancillary services to Manager for deposit in accordance with Section 4 herein.

(h) Physician Schedules. Manager shall develop Physician schedules in consultation with PC. PC shall provide Manager thirty (30) days notice of any vacation or leave of absence of any Physician.

(i) Record Management. Manager shall manage the records of PC. All medical records shall remain the property of PC.

(j) Inventory and Supplies. Manager shall order and purchase inventory and supplies, and such other ordinary, necessary or appropriate materials that Manager shall deem to be necessary in the operation of the Office.

(k) Call Center. Manager will provide a call center to handle patient inquiries and to schedule appointments for the PC.

(l) Human Resources. Manager will provide corporate human resources function to assist in recruiting and administer employee benefit program for the PC and its employees.

(m) Risk Management. Manager shall provide PC with corporate risk management and coordinate PC's insurance programs, including but not limited to those required under Paragraph 10 herein.

(n) Administrative Duties. Manager shall provide such other administrative assistance to PC upon the consent of Manager, which consent shall not be unreasonably withheld.

(o) Marketing, Advertising and Public Relations. Manager shall provide or arrange for such marketing, advertising, and public relations services as Manager and PC shall mutually agree upon from time to time, at Manager's own cost and expense.

(p) Equipment. Manager shall provide the equipment described on Exhibit "D" (the "Equipment"). The Corporation shall use the Equipment only in connection with its medical practice relating to the treatment of vision using lasers and/or other refractive equipment (the "Practice") and shall have no right to alter, repair, augment, sublet, relocate, relinquish possession of or remove any item of Equipment from the Premises without the prior written consent of LCA. Upon delivery of the Equipment, LCA will cause an authorized representative of its manufacturer to test and inspect the same at the Premises.

3. Covenants and Obligations of PC.

(a) Compensation to Manager.

(i) Management Fee. In consideration for Manager providing the Premises and Services set forth in this Agreement, PC shall, beginning on the Commencement Date pay Manager monthly in arrears a management fee (the "Management Fee") as specified in Exhibit "B".

(ii) Security Interest. As long as any amount of the Management Fee, interest thereon, or any other sum which may be due under this Agreement remains unpaid, Manager shall have a continuing security interest in all accounts receivable of PC (except as otherwise prohibited by law), hereinafter existing or acquired, evidencing any obligation to PC for service rendered. PC agrees that from time to time, at the expense of PC, PC shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or that Manager may reasonably request, in order to perfect any security interest granted or purported to be granted by PC herein or to enable Manager to exercise and enforce its rights and remedies hereunder with respect to the collateral in which a security interest has been granted.

(iii) Books and Records. Subject to applicable law, Manager is entitled to access to the records of PC, including patient records on a confidential basis at any time, including during the term of this Agreement and for a reasonable period thereafter.

(iv) Good Faith Negotiation. No amount paid hereunder is intended to be, nor shall it be construed to be, an inducement or payment for referral of, or recommending referral of, patients by PC to Manager (or its affiliates) or by Manager (or its affiliates) to PC. In addition, the Management Fee charged hereunder does not include any discount rebate, kickback, or other reduction in charge, and the Management Fee charged hereunder is not intended to be, nor shall it be construed to be, an inducement or payment for referral, or recommendation of referral, of patients by PC to Manager (or its affiliates) or by Manager (or its affiliates) to PC.

(v) Renegotiation. The parties agree that on the first anniversary of the Commencement Date, and on each anniversary of the Commencement Date thereafter, the parties shall meet to consider the modification of the Management Fee and any other changes. The Management Fee and any other charges shall be modified prospectively only upon the mutual agreement of the parties. In the event that the parties do not agree upon any change to the Management Fee, the Management Fee shall remain at the most recently established level.

The parties agree that in considering changes to the Management Fee and other charges, the following criteria will be considered:

(A) the capital investment and risk taken by the respective parties in opening the Office and the provision of Laser Services at the Office;

(B) the capital and operating costs incurred by the respective parties in operating the Office and the provision of Laser Services at the Office;

(C) providing a return on investment to the parties and their respective owners given the degree of risk inherent in their investment, as well as the labor and effort necessary to develop the project;

(D) the value of the professional services rendered by PC;

(E) changes in applicable reimbursement levels or timing by third-party payors for PC's services; and

(F) a presumption shall be given that the original Management Fee and other charge structure reflected an arm's length agreement between the parties and should only be modified if one or more of the above criteria suggest that such change will be fair and equitable as between the parties.

In the event that any rule, regulation, law or other final decision of a governmental or quasi-governmental entity results in the Management Fee or any other material term of this Agreement being held to be void or unenforceable, then the parties agree to enter into good faith negotiations to modify this Agreement, and if the parties cannot come to agreement on modifications to the Agreement to remedy the void or unenforceable term, either party may terminate this Agreement upon sixty (60) days' written notice to the other party.

(b) Professional Services by Physicians. The professional services provided at the Office shall be provided only by the Physicians who are competent in the use of the Refractive Equipment, and (i) who are board certified or eligible ophthalmologists, certified to perform Lasik procedures; (ii) who are duly licensed and currently registered and in good standing to engage in the practice of medicine in the State of Texas and against whom no proceedings are pending which could result in the suspension or revocation of such license; and (iii) who have never been denied reappointment of or been terminated from membership on the medical staff of any hospital for reasons of ethics or competency and against whom no proceedings are pending which could result in such denial or termination.

(c) Physician Contracts. PC shall require each Physician to enter into a written employment or professional services agreement containing the provisions set forth in Exhibit "C" and shall provide a copy to Manager. PC agrees that it shall strictly and consistently enforce the terms of and diligently pursue its rights under each such agreement which it has entered into with any Physician.

(d) Indemnification. To the extent not covered by insurance, PC shall indemnify and hold harmless Manager and its affiliates and each officer, director, stockholder and employee of Manager and its affiliates and the agents of each of them, from and against any and all claims, actions, losses, damages, expenses, offsets, deductions, refunds, recoupments, or penalties (including court costs and attorney and other consultancy fees) resulting from or attributable to any act or omission of PC or any of PC's physicians, employees, agents or contractors.

(e) Primary Ophthalmologist. Federico Mattioli shall be the primary ophthalmologist on site at the Premises. In the event that Federico Mattioli is unable to fulfill his obligations as the primary ophthalmologist on site at the Premises, Manager, in consultation with PC, will provide a trained ophthalmologist to fulfill such obligations during that period that Federico Mattioli is unable to fulfill such obligations.

(f) Location of Practice. During the term of this Agreement, PC shall not perform Lasik procedures at any location other than the Premises without the prior consent of Manager. Nothing contained in this subsection shall restrict the shareholders, officers, directors, employees

or agents of PC from personally engaging in other medical practices or activities, except that no such activities shall be conducted at the Premises except as permitted under Section 3(h).

(g) Other Medical Practices. PC agrees that it shall not permit any of its shareholders, physicians, employees, independent contractors or agents to engage in any activities at the Premises (including the diagnosis or treatment of patients) other than those activities that are specifically contemplated under this Agreement, without the prior written consent of Manager.

(h) Coverage. PC agrees that it will fully cooperate with Manager to assure that all reports of services rendered shall be ready to be transcribed within twenty-four (24) hours of completion of a Lasik procedure, provided that all Lasik procedures conducted on a Friday, Saturday, Sunday or national holiday shall be processed by the close of business on the following business day. PC will commit to having Federico Mattioli on site as determined necessary by PC and Manager. In the event Federico Mattioli is ill and such illness extends beyond thirty (30) days, Manager, in consultation with PC, will assign a substitute to fulfill the terms of this Agreement during his absence.

(i) Recordkeeping. For the duration of this Agreement, PC shall keep a daily accounting of all Lasik procedures performed using the Refractive Equipment. Such accounting records shall be made available to Manager or its agents upon request during normal business hours.

(j) Physician Powers of Attorney. Upon request by Manager, PC shall cause each Physician to execute and deliver to Manager a power of attorney, satisfactory in form and substance to Manager appointing Manager as attorney-in-fact for such Physician for the purposes set forth in Section 2.

4. Assignment of Accounts Receivable and Net Practice Revenue.

(a) In consideration of Manager's obligation to provide Services to PC incurred on or after the Commencement Date, PC, on behalf of itself and each Physician, hereby assigns and sets over to Manager all of the net practice revenue and accounts receivable of PC and the Physicians, including, without limitation, all withholding returns, surplus distributions and bonuses under any managed care or other risk sharing arrangement and reinsurance proceeds which are attributable to services rendered on or after the Commencement Date, and all books and records related thereto, including all files, other business records and information systems.

(b) PC acknowledges and agrees that Manager shall have the sole and exclusive right to bill for all medical and other health care services rendered by PC and Physicians and to collect all net practice revenue and accounts receivable of PC, including without limitation, all such revenue, as the agent of PC and the Physicians and under their provider number or numbers.

(c) Deposit of Practice Revenue.

(i) Manager shall deposit all Practice revenue collected by it or by PC in an account in the name of PC at a bank acceptable to PC and Manager (the "Holding Account"). Sums in the Holding Account shall be transferred immediately into an account in the name of Manager or its designee (the "LCA-Vision Account") and/or into

a PC payroll account (the "P.C. Payroll Account") as determined by Manager and as reasonably necessary for the operation of PC.

(ii) PC, on behalf of itself and each Physician, agrees that any amounts received by it or any Physician on or after the Commencement Date with respect to any accounts receivable or net practice revenue shall be held in trust for the benefit of Manager and deposited, in the form received, in the Holding Account immediately upon receipt by PC or any Physician. PC on behalf of itself and each Physician, shall ensure that all third parties make payments of accounts receivable and net practice revenue directly to the Holding Account.

(iii) PC agrees to execute and deliver from time to time and at any time all such documents and instruments as may reasonably be required by Manager to effectuate the foregoing provisions in this Section 4(c) and to extend or amend such documents and instruments as may be required from time to time.

(d) PC Payment of Professional Expenses. PC shall be required to pay compensation costs to Physicians and optometrists, if any ("Professional Expenses"), from the P.C. Payroll Account. Manager shall have no obligation to make any payment from the LCA-Vision Account for Professional Expenses.

(e) Payment of Management Fee. Manager shall make payments on behalf of PC from the LCA-Vision Account for payment of the Management Fee.

5. Representations and Warranties.

(a) Representations and Warranties of PC. PC makes the following representations and warranties to Manager, each of which is material and is being relied upon by Manager.

(i) PC's Corporate Status. PC is a professional service corporation duly organized, validly existing and in good standing under the laws of the State of Texas, is authorized to engage in the practice of medicine and has full corporate power and authority to hold property under lease and to enter into and perform its obligations under this Agreement.

(ii) Authorization. The execution, delivery and performance by PC of this Agreement have been duly authorized by all necessary corporate action on the part of PC, and the intended operation of the Refractive Equipment pursuant to the terms of this Agreement is not inconsistent with PC's Certificate of Incorporation or Bylaws, does not contravene any laws or governmental rule, regulation or order applicable to it, and this Agreement constitutes a legal, valid and binding agreement of PC, enforceable in accordance with its terms.

(iii) Governmental Approvals. No consent or approval of, giving of notice to, registration with, or taking of any other action in respect of, any state, federal or other governmental authority or agency is required with respect to the execution, delivery and performance by PC of its obligations under this Agreement or, if any such approval, notice, registration or action is required, it has been obtained.

(iv) Litigation. There are no actions, suits or proceedings pending or, to the knowledge of PC, threatened against or affecting PC in any court or before any governmental commission, board or authority which, if adversely determined, will have a material adverse effect on the ability of PC to perform its obligations under this Agreement.

(v) Information from PC. Any and all factual information furnished or to be furnished by PC to Manager, including any financial statements or reports, shall be true and accurate in all material respects as of the date of which such information is furnished.

(vi) Indemnification. To the extent not covered by insurance, PC shall hold harmless and indemnify Manager, its officer, directors, shareholders and employees from and against any and all claims, actions, causes of action, verdicts, demands, orders, judgments, settlements, liabilities, losses, costs, obligations, damages, expenses, offsets, deductions, refunds, recoupments, or penalties (including court costs and attorney and other consultancy fees) resulting from or attributable to any act or omission of PC or its employees, agents or contractors.

(vii) Additional PC Covenants. PC shall not, directly or indirectly, without the prior written approval of Manager: (1) effect any voluntary liquidation, dissolution or winding up of its affairs, including the filing of a voluntary petition under the federal Bankruptcy Code or any similar law or (2) merge or consolidate with or into any other corporation or other entity.

(b) Representations and Warranties of Manager. Manager makes the following representations and warranties to PC, each of which is material and is being relied upon by PC.

(i) Manager's Corporate Status. Manager is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to hold property under lease and to enter into and perform its obligations under this Agreement.

(ii) Authorization. The execution, delivery and performance of this Agreement by Manager, have been duly authorized by all necessary corporate action, and are not inconsistent with Manager's Articles of Incorporation or Code of Regulations, do not contravene any laws or governmental rule, regulation or order applicable to it, do not and will not contravene any provision of, or constitute a default under any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound, and this Agreement constitutes a legal, valid and binding agreement of Manager, enforceable in accordance with its terms.

(iii) Governmental Approvals. No consent or approval of, giving of notice to registration with, or taking of any other action in respect of, any state, federal or other governmental authority or agency is required under any law, rule, or regulation in effect on the date hereof, with respect to the execution, delivery and performance by Manager of this Agreement, or if any such approval, notice, registration or action is required, it has been obtained.

(iv) Litigation. There are no actions, suits or procedures pending or, to the knowledge of Manager, threatened against or affecting Manager in any court or before any governmental commission, board or authority which, if adversely determined, will have a material adverse effect on the ability of Manager to perform its obligations under this Agreement.

(v) Information from Manager. Any and all factual information furnished or to be furnished by Manager to PC, including any financial statements or reports, shall be true and accurate in all material respects as of the date of which such information is furnished.

(vi) Non-disturbance. Provided PC is not in default hereunder, PC shall have the undisturbed right to use the Premises pursuant to the terms of this Agreement.

(vii) Indemnification. To the extent not covered by insurance, Manager shall indemnify and hold harmless PC, its officers, directors, shareholders and employees and the agents of each of them, from and against any and all claims, actions, losses, damages, expenses, offsets, deductions, refunds, recoupments, or penalties (including court costs and attorney and other consultancy fees) resulting from or attributable to any act or omission of Manager or any of Manager's employees, agents or contractors.

6. Compliance with Laws and Regulations.

PC and Manager in the performance of their respective obligations hereunder shall comply with all applicable laws, rules and regulations, and do everything in their power to ensure that the conduct of the Practice at the Office (including the operation of the equipment used for the provision of the Laser Services) is in compliance with the rules of any accrediting or regulatory body, agency or authority having jurisdiction over the provision of Laser Services.

7. Responsibility for Conduct of Practice.

PC shall have full responsibility for the professional conduct of the medical practice at the Office, including, but not limited to, the supervision of professional activities, the conduct of educational activities of all employees at the Office in matters relating to the Laser Services, the professional services provided as part of the Practice, and planning and quality assurance activities.

8. Service Hours.

PC and Manager agree initially to keep the Office open for Laser Services during standard business hours and at additional times agreed to by Manager and PC.

9. Termination.

(a) By PC. This Agreement may be terminated immediately by PC, upon written notice to Manager after the occurrence of any one of the following events:

(i) Gross negligence, Fraud or other illegal acts by the Manager. For purposes of this Agreement, material breach of this Agreement by Manager with such breach continuing for ten (10) days after written notice to Manager from PC stating the specific default or breach shall be considered gross negligence by the Manager; provided, however, that if the default is not susceptible of cure within said ten (10) day period, then Manager shall have ninety (90) days to cure such breach provided that Manager commences action to cure said breach within the ten (10) day notice period and continues diligently to cure the breach; or

(ii) If Manager shall apply for or consent to the appointment of a receiver, trustee or liquidator of Manager or all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due, make a general assignment for the benefit of creditors or take advantage of any insolvency law with respect to itself, or if any order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of creditor, adjudicating Manager as bankrupt or insolvent or approving of a petition seeking reorganization of Manager or appointment of a trust or a receiver, trustee, or liquidator of Manager or all or a substantial part of the assets of Manager and the same is not dismissed or vacated within sixty (60) days thereafter.

(b) By Manager. This Agreement may be terminated immediately by Manager upon written notice to PC after the occurrence of any one of the following events:

(i) Material breach of this Agreement by PC, with such breach continuing for ten (10) days after written notice to PC stating the specific default or breach; provided, however, that if the default is not susceptible of cure within said ten (10) day period, then PC shall have ninety (90) days to cure such breach provided that PC commences action to cure said breach within the ten (10) day notice period and continues diligently to cure the breach; or

(ii) If the lease by Manager of the Premises is terminated for any reason and Manager elects not to replace the Premises; or

(iii) If any event of force majeure as set forth in Section 17 of this Agreement continues for more than one hundred eighty (180) consecutive days; or

(iv) If PC's existence as a professional corporation is terminated or dissolved, or if its Certificate of Incorporation is suspended; or

(v) If PC shall apply for or consent to the appointment of a receiver, trustee or liquidator of PC or all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due, make a general assignment for the benefit of creditors or take advantage of any insolvency law with respect to itself, or if any order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating PC as bankrupt or insolvent or approving of a petition seeking reorganization of PC or appointment of a

receiver, trustee, or liquidator of PC or all or a substantial part of the assets of PC and the same is not dismissed or vacated within sixty (60) days thereafter.

(c) Termination Without Cause. Manager may terminate this Agreement prior to its expiration upon ninety (90) days written notice to PC.

(d) PC's Continuing Obligations. The parties agree that, in the event of termination of this Agreement by Manager, PC shall remain liable to pay to Manager all amounts owed to Manager which have accrued (whether or not invoiced) prior to such termination. The security interest pursuant to Section 3(a)(ii) shall remain in full force and effect until all Management Fees required to be paid by PC to Manager under this Agreement have been paid in full.

(e) Use of PC's Name and Other Information. PC and each of its physicians agree that upon termination of this Agreement for any reason, all rights held by PC and/or its physicians to use the name "LCA-Vision," "LasikPlus," or any other name of any subsidiary company of LCA-Vision or any name with the words "LCA-Vision" in its title shall expire. Manager shall be entitled to the continued use of any information obtained by it during the course of this Agreement without restriction and such records shall not be removed or destroyed by PC; provided, that the medical records of PC shall remain the property of PC.

(f) Return of Premises. Upon the expiration or termination of this Agreement for any reason, PC shall vacate the Premises.

10. Insurance.

(a) Professional Liability Insurance. PC shall maintain professional liability insurance (including malpractice insurance), for itself, and for each of its physicians and technologists providing services hereunder in the minimum amount of One Million Dollars (\$1,000,000.00) for each occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate. PC shall, from time to time, furnish appropriate evidence to Manager of the existence of such insurance, which (if available) shall contain a provision which gives thirty (30) days' notice of cancellation or modification to Manager. PC agrees that it will acquire or cause its employees (and independent contractors) to acquire, if requested by Manager, applicable "tail" coverage for all of PC's physicians (and PC itself) if this Agreement is terminated for any reason. PC shall pay or cause its employees (or independent contractors) to pay any premium charged for such tail policy or policies. This provision shall survive the termination of this Agreement.

(b) General Liability and Casualty Insurance of Manager. Manager shall, at its expense, provide and maintain comprehensive public liability insurance against claims for bodily injury, death and/or property damage arising out of the use, ownership, possession, operation or condition of the Office, together with such other insurance as may be required by law or reasonably determined to be necessary by Manager. All said insurance shall name both Manager and PC as parties insured and shall be in form and amounts, and underwritten by insurers satisfactory to Manager. Manager shall furnish to PC, upon request, certified copies or certificates of the policies of such insurance and each renewal thereof. Each insurer must agree, by endorsement upon the policy or policies issued by it, that it will give PC not less than thirty (30) days written notice before such policy or policies are canceled or altered, and under the loss,

theft or physical damage insurance: (1) that losses shall be payable solely to Manager, and (2) that no act or omission of PC or any of its officers, agents, employees or representatives shall affect the obligation of the insurer to pay the full amount of any loss. PC hereby irrevocably authorizes Manager to make, settle and adjust claims under such policy or policies of physical damage insurance and to endorse the name of PC on any check or other item of payment.

(c) General Liability and Casualty Insurance of PC. Manager shall, at its expense, provide and maintain comprehensive public liability insurance against claims for bodily injury, death and/or property damage arising out of the use, ownership, possession, operation or condition of the Office, together with such other insurance as may be required by law or reasonably determined to be necessary by Manager. All said insurance shall name both Manager and PC as parties insured and shall be in form and amounts, and underwritten by insurers satisfactory to Manager. Manager shall furnish to PC, upon request, certified copies or certificates of the policies of such insurance and each renewal thereof. Each insurer must agree, by endorsement upon the policy or policies issued by it, that it will give PC not less than thirty (30) days written notice before such policy or policies are canceled or altered, and under the loss, theft or physical damage insurance: (1) that losses shall be payable solely to Manager, and (2) that no act or omission of PC or any of its officers, agents, employees or representatives shall affect the obligation of the insurer to pay the full amount of any loss. PC hereby irrevocably authorizes Manager to make, settle and adjust claims under such policy or policies of physical damage insurance and to endorse the name of PC on any check or other item of payment.

(d) PC's Records. Manager shall maintain on behalf of PC an up-to-date personnel file with documentation of the following credentials, and this information, and copies thereof, will be available to Manager and PC upon its request: (i) medical licenses; (ii) medical board certifications; (iii) malpractice insurance; and (iv) DEA certification.

11. Independent Contractor.

This Agreement is not intended, and shall not be construed, to create a venture, partnership or association as between Manager and PC. Each party is an independent contractor of the other. In the event the Internal Revenue Service or any other governmental agency shall, at any time, question or challenge the independent contractor status of Manager or PC as to the other, each party shall, upon receipt by it of notice from the Internal Revenue Service or any other governmental agency, promptly notify the other party and afford the other party the opportunity to participate in any discussion or negotiation with the Internal Revenue Service or other governmental agency, irrespective of for whom or by whom such discussions or negotiations are initiated. The other party may participate in any such discussions or negotiations to the extent permitted by the Internal Revenue Service or other governmental agency.

12. Taxes.

PC shall pay as and when due, and indemnify and hold Manager harmless from and against, all present and future taxes due as a result of PC's operation of its practice.

13. Alterations.

PC shall not make or permit any changes or alterations to the Office without Manager's prior written consent.

14. Right to Perform Obligations.

If PC shall fail to make any payment or perform any act or obligation required of PC hereunder, after notice and expiration of any applicable period under Section 9 of this Agreement, Manager may, but shall not be obligated to, make such payment or perform such act or obligation without waiving or releasing any obligation or default. Any expense so paid or incurred by Manager shall constitute additional charges hereunder payable by PC to Manager upon demand. PC shall indemnify and hold harmless Manager from and against all losses and expenses (including, but not limited to, reasonable attorneys' fees) suffered or incurred by Manager by reason of any acts performed by it pursuant to this Section 14.

15. Confidentiality.

(a) To the extent Manager assists PC with patient records and information or otherwise has access to such records during the term of this Agreement, Manager shall maintain the confidentiality of all such records and information and shall maintain such records consistent with applicable law. Manager shall not release any information with respect to any patient to any third party except as authorized by PC or by law. When such information is to be released, PC and Manager shall inform the appropriate physician immediately. This Section 15(a) shall survive the termination or expiration of this Agreement.

(b) In the course of fulfilling its obligations under this Agreement, PC, its shareholders and employees may obtain confidential information concerning the finances, management, structure, marketing and general operations of Manager, all of which is proprietary "trade secret" information belonging to Manager. Except as otherwise required by law, PC, its shareholders and employees agree not to disclose such information to any person or entity without the express written consent of Manager, except in undertaking its duties at the Office, or except as otherwise required by law. PC further agrees not to utilize any such information for any purpose other than performing its obligations and exercising its rights under this Agreement. This Section 15(b) shall survive the termination or expiration of this Agreement.

(c) In the course of fulfilling its obligations under this Agreement, Manager, its consultants and employees (collectively, "Manager's Participants") shall be exposed to confidential information concerning the operations of PC, which is proprietary "trade secret" information belonging to PC. Manager, its consultants and employees agree not to disclose such information to any person or entity without the express written consent of PC, except in undertaking its duties at the Office, or except as otherwise required by law. Manager further agrees not to utilize such information for any purpose other than performing its obligations and exercising its rights under this Agreement.

16. Assignments.

This Agreement and any rights or obligations hereunder may be assigned or transferred, by operation of law or otherwise, by Manager without the prior written consent of PC. Upon such assignment by Manager, Manager shall have the right to retain all consideration received in exchange for the assignment. Neither this Agreement nor any rights or obligations hereunder may be assigned or transferred, by operation of law or otherwise, by PC without the prior written consent of Manager, and any attempt to make any assignment in violation of the provisions hereof shall be null and void, and any transfer or assignment by operation of law shall be deemed a material default by PC under Section 9 hereof.

17. Force Majeure.

If either party's ability to perform its obligations hereunder is limited or prevented in whole or in part due to acts of God, war, invasion, acts of foreign enemy, hostilities (whether war be declared or not), strikes and/or industrial disputes, delay on the part of the supplier or transportation delay, such party, without liability of any kind, shall be excused, discharged, and released from performance to the extent such performance is limited, delayed or prevented.

18. Waiver of Breach.

No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision of this Agreement or to any succeeding breach of any provision of this Agreement.

19. Amendment of Agreement.

This Agreement shall not be altered, modified, supplemented or amended except pursuant to an instrument in writing signed by the parties hereto.

20. Notices.

All notices permitted or required under this Agreement shall be sent by overnight express courier, by United States express mail or by certified mail deposited with the post office, return receipt requested, postage pre-paid, and shall be deemed to have been given three (3) days from the date so deposited with the courier or post office. Notices shall be sent to the parties at the following addresses:

If to PC: LasikPlus of Texas, P.A.
3700 Buffalo Speedway, Suite 325
Houston, Texas 77098

If to Manager: LCA-Vision Inc.
7840 Montgomery Road
Cincinnati, Ohio 45236
Telephone: (513) 792-9292
Telecopy: (513) 792-5620
Attention: General Counsel

NOV. 21, 2003 3:10 PM

Any person to whom notice may be given hereunder may from time to time change said address by written notice given as provided above.

21. Restrictive Covenant.

(a) PC agrees that, unless otherwise agreed in writing by Manager, PC shall not during the term of this Agreement engage in any manner in the delivery of laser vision correction services except pursuant to this Agreement, including, but not limited to, directly or indirectly, owning, managing, joining, operating, controlling, contracting with, being employed by, acting in the capacity as officer, director, trustee, shareholder, member, or partner, or participating in or being connected in any manner with the ownership, management, operation, or control of any person, firm, or corporation providing laser vision correction services or facilities; the foregoing restrictions shall apply within a radius of twenty-five (25) miles from, or in any county contiguous to the county in which, any laser vision facility managed by Manager, or any subsidiary of Manager within the State of Texas ("Restricted Area"). The record or beneficial ownership by physician of 1% or less of the outstanding capital stock of any publicly traded company providing medical services or facilities described herein shall not be deemed to be in violation of this section so long as physician is not an officer, director, independent contractor or employee of such company;

(b) Any and all staff employed by Manager to provide services at the Office shall be considered "Protected Persons" for purposes of this Agreement. Until this Agreement is superseded by another agreement between the parties, PC shall not, directly or indirectly, solicit, induce, recruit, encourage or influence (or seek to solicit, induce, recruit, encourage or influence) any of the Protected Persons to terminate his or her employment contract with Manager.

22. Miscellaneous.

(a) Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to the matters contained herein. It supersedes any prior agreement or understandings among them with respect to the matters contained herein.

(b) Governing Law. This Agreement and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Ohio.

(c) Binding Effect. Except as herein otherwise specifically provided, this Agreement shall be binding upon and inure to the benefit of Manager, PC and their legal representatives, administrators, successors and assigns.

(d) Captions. Captions and section headings contained in the Agreement are inserted only as a matter of convenience and shall not be construed as part of this Agreement.

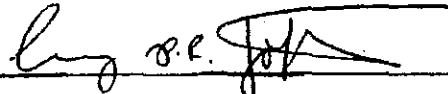
(e) Survival. All representations, warranties and indemnities contained in this Agreement or in any document or certificate delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the expiration or other termination of this Agreement.

(f) Unenforceability in Jurisdictions. Any provision of this Agreement which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, PC hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(g) Counterparts. This Agreement may be executed in several counterparts, and all so executed shall constitute one Agreement, binding on all parties hereto, notwithstanding that both parties are not signatories to the same counterpart.

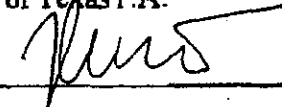
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

MANAGER:
LCA-VISION INC.

By: 

Name: CRAIG JOFFE
Title: Senior Vice President &
General Counsel

PC:
LasikPlus of Texas P.A.

By: 

Name: Federico Mattioli, President

EXHIBITS

1. Exhibit "A" Premises
2. Exhibit "B" Compensation
3. Exhibit "C" Provisions of Physician Contracts
4. Exhibit "D" Equipment

EXHIBIT "A"
Premises

3700 Buffalo Speedway, Suite 325
Houston, Texas 77098

EXHIBIT "B"
Management Fee

The management fee shall be equal to the gross revenues earned by the PC less any expenses incurred by the PC.

EXHIBIT "C"
Provisions of Physician Contracts

The employment or professional services agreement between PC and each Physician shall, at a minimum, contain the following provisions:

(1) **Covenant Not to Compete.** Physician agrees that, unless otherwise agreed in writing by PC, Physician shall not:

(a) during the term of this Agreement engage in any manner in the delivery of laser vision correction services (other than as an employee or independent contractor of PC), including, but not limited to, directly or indirectly, owning, managing, joining, operating, controlling, contracting with, being employed by, acting in the capacity as officer, director, trustee, shareholder, member, or partner, or participating in or being connected in any manner with the ownership, management, operation, or control of any person, firm, or corporation providing laser vision correction services or facilities; the foregoing restrictions shall apply within a radius of twenty-five (25) miles from, or in any county contiguous to the county in which, any laser vision facility owned or operated by PC or managed by Manager, or any subsidiary of Manager within the State of Texas ("Restricted Area"). The record or beneficial ownership by physician of 1% or less of the outstanding capital stock of any publicly traded company providing medical services or facilities described herein shall not be deemed to be in violation of this section so long as physician is not an officer, director, independent contractor or employee of such company;

(b) directly or indirectly, induce or solicit any of PC's patients, regardless of their location, to obtain professional medical services from any other entity other than PC or from any person who is not an employee of PC; provided, however, that the foregoing shall not prohibit a bona fide referral of a patient to another provider of professional medical services if such is medically indicated for such patient.

The foregoing covenant shall not apply if (a) this Agreement is terminated by Physician upon PC's failure to cure a material breach or termination by PC without cause or (b) upon the expiration of the Agreement if and only if the compensation offered to Physician in connection with renewal or renegotiation of the Agreement is less than the compensation paid to physician pursuant to the Agreement as of the expiration date of the Agreement; or (c) in the case of Physician's acceptance of a solely academic, governmental or research position.

(2) **No Solicitation of Employees.** Any and all staff employed by PC to provide patient care services or staff employed by Manager to provide other services at the Office shall be considered Protected Persons for purposes of this Agreement. Until this Agreement is superseded by another agreement between the parties, Physician shall not, directly or indirectly, solicit, induce, recruit, encourage or influence (or seek to solicit, induce, recruit, encourage or influence) any of the Protected Persons to terminate his or her employment contract with PC and/or Manager.

(3) Representations and Warranties. At all times during the term of the Agreement, Physician represents and warrants to PC that he or she:

(a) is licensed and registered to practice medicine in the State of Texas and maintains his or her license in good standing and holds and maintains federal and state registrations to prescribe and dispense controlled substances; and

(b) participates in such continuing medical education and training programs as are required to maintain skills compatible with standards of medical care in the community; and

(c) has never been denied professional liability insurance coverage, or had such coverage revoked, canceled or not renewed; and

(d) maintains board certification or eligibility by the American Board of Ophthalmology; and

(e) complies with all rules, regulations and policies, including quality assurance activities, adopted by PC; and

(f) is not under any contractual or other restriction or obligation which is inconsistent with the execution of this Agreement; and

(g) that any service provided pursuant to this Agreement shall be performed in compliance with all pertinent provisions of federal, state and local statutes, rules and regulations; and

(h) is under no physical or mental disability that would hinder his or her performance of the professional duties to be rendered under this Agreement; and

(i) shall participate in all managed care agreements with which PC has an agreement; and

(j) does not have any pending proceedings against him or her which could result in the suspension or revocation of his or her license to practice medicine in the State of Texas; and

(k) is certified to perform Lasik procedures; and

(l) has never been denied reappointment of or been terminated from membership on the medical staff of any hospital for reasons of ethics or competency and that there are no proceedings pending which could result in such denial or termination; and

(m) will use the excimer laser system as well as any ancillary equipment ("Equipment") in compliance with any and all statutes, laws, ordinances and regulations of any governmental agency applicable to the use of the Equipment and that he or she will use the Equipment only in the manner for which it was designed and intended and in accordance with the manufacturer's recommendations; and

(n) agrees that upon termination of the Management Agreement, all rights held by him or her to use the name "LCA-Vision," "LasikPlus," or any other name of any subsidiary company of LCA-Vision or any name with the words "LCA-Vision" in its title shall expire; and

(o) agrees to provide thirty (30) days notice to PC of any vacation or leave of absence; and

(p) acknowledges that Manager's responsibilities include the management of medical and other records of PC and therefore Manager is entitled access to such records at any time.

(4) Setting Professional Fees. PC, after consulting with LCA-Vision, Inc., shall establish the fees to be charged for medical and other services provided by Physician pursuant to this Agreement. All fees and other compensation received by the Physician for professional services shall belong to PC, and shall be immediately paid over to PC.

(5) Patients of PC. All patients treated by the Physician shall be considered patients of PC and their medical records shall be the sole property of PC.

(6) Cooperation with LCA-Vision, Inc. The Physician will cooperate with LCA-Vision, Inc. and its affiliates in connection with the performance of their respective duties under the Facility Use and Management Agreement, including cooperating with LCA-Vision, Inc. in its dealings with third-party payers, submitting timely, accurate and complete billing information to LCA-Vision, Inc. in compliance with all applicable laws, regulations, policies and practices governing payment for medical services rendered by PC. and complying with all purchasing procedures established by LCA-Vision, Inc. The Physician will comply with all obligations of PC's physicians as contained in the Facility Use and Management Agreement.

(7) Third-Party Beneficiary of the Agreement. LCA-Vision, Inc. is hereby expressly named as a third-party beneficiary hereof.

EXHIBIT "D"
Equipment

LPT EMPLOYMENT AGREEMENT

December 15

CP&J
FM

THIS EMPLOYMENT AGREEMENT (the "Agreement"), dated as of ~~November 24~~, 2003, (the "Effective Date"), is by and between LasikPlus of Texas, P.C. ("LPT"), and Federico Mattioli, MD ("Physician") (collectively "the Parties").

LPT operates vision correction clinics, including those listed on Exhibit A (referenced herein, with such other locations as LPT may establish in Texas, as the "Clinics"). Physician is an ophthalmologist licensed to practice medicine in the State of Texas. LPT desires to employ Physician to provide ophthalmology services, including but not limited to PRK, LASIK and related laser services at the Clinics. The Clinics are managed by LCA-Vision Inc., a Delaware corporation, and its affiliates and subsidiaries (collectively, the "Manager"). As of the Effective Date, this Agreement amends and supercedes any and all prior agreements between the Physician and LCA-Vision Inc. and its affiliates, including any and all prior employment agreements.

The Parties agree as follows:

1. Employment

December 15

CP&J
FM

- 1.1. Physician's employment shall commence as of ~~November 24~~, 2003, and continue until terminated in accordance with Section 2 of this Agreement.
- 1.2. LPT reserves the right to implement, amend and terminate policies relating to the employment of its employees and their employment benefits, provided that they do not substantially impair Physician's rights under this Agreement. Physician shall not be entitled to any payment or benefit other than those expressly provided for herein.
- 1.3. Physician shall have no authority to act on behalf of or bind LPT or its affiliates with respect to any agreement.
- 1.4. Physician shall have no interest in the ownership of the equipment, accounts receivable, medical and other patient records (subject to applicable law regarding access to patient records), books of accounts, or other property, including both tangible and intangible assets of LPT or its affiliates. The intangible assets covered by the terms of this Section include, without limitation, any good will or going concern value associated with LPT's business, name, service mark, or any logo or other device utilized in connection with LPT's medical practice or any other business activities in which LPT may engage.
- 1.5. LPT shall have the right to contract on any basis with any physicians LPT wishes to employ or retain.

2. Services and Duties. Physician agrees to the following:

- 2.1.** To perform services in accordance with the terms and conditions of this Agreement, LPT's policies, rules and regulations, as may be in effect from time to time, and the lawful directions of LPT's board of directors and authorized officers (including those of LPT's affiliates), with Physician independently exercising his professional judgment in the provision of services, care, treatment to, and referral of patients.
- 2.2.** To devote his reasonable best efforts to the provision of ophthalmological surgical procedures, including but not limited to PRK, LASIK and related laser services, and related services at the Clinics, including pre-operative and post-operative care for laser vision correction and such other services as LPT may request, with such services being provided by Physician solely at the Clinics unless otherwise directed by LPT.
- 2.3.** To provide such professional medical services as necessary or appropriate to conduct and operate a medical practice, including but not limited to serving as a laser surgeon, at the practice locations listed on Exhibit A and at any substitute or additional practice location designated by LPT (collectively, the "Practice Locations"). All services provided hereunder shall be in accordance with current standards of care in the medical community, the laws of the State of Texas and the credentialing and quality criteria adopted by LPT. Physician shall exert his best efforts to the affairs of LPT.
- 2.4.** To maintain licensure to practice medicine in the State of Texas, remaining in good standing at all times; to hold and maintain his specialty board certification, if applicable; and to hold and maintain federal and state registrations to prescribe and dispense controlled substances. In addition, Physician hereby agrees to use his best efforts to procure board certification as soon as possible, recognizing the timing of such certification is subject to the American Board of Ophthalmology certification process. Physician recognizes and agrees that failure to procure such certification prior to December 31, 2004 shall constitute a breach of Physician's obligations hereunder.
- 2.5.** To participate in continuing medical education programs as are required or appropriate to maintain skills compatible with standards of medical care in the community.
- 2.6.** To maintain current certification in the use of all refractive surgery instruments used at the Clinics.
- 2.7.** Physician hereby represents and warrants that his existing professional malpractice insurance policy will cover Physician while delivering services as an employee of LPT pursuant to this Agreement or that he will otherwise obtain comparable insurance coverage (including tail coverage). Physician further represents and warrants that his policy shall have minimum limits of \$1,000,000 per incident and \$3,000,000 in the aggregate and shall be with an insurance company reasonably acceptable to LPT. LPT may reimburse

Physician up to (but not exceeding) \$10,000 per year for the cost of such insurance. Physician shall provide LPT written evidence of coverage under Physician's professional malpractice policy. If Physician at any time is no longer covered by his existing insurance or the insurance covering physician during the term of this Agreement, Physician hereby agrees that he shall, at his cost, promptly obtain "tail" insurance covering Physician for any acts or omissions during the Term of this Agreement. In addition, Physician shall fully cooperate with any reasonable risk prevention or risk management activities of Physician's and LPT's insurer(s), and, at LPT's request, shall participate in any risk management discount program for which Physician may qualify.

- 2.8. The Physician hereby represents and warrants that the Physician is currently not bound by a non compete or other restrictive covenant limiting his ability to practice medicine (including ophthalmology) from any previous employer and that to the extent LPT, Manager or any of their affiliates or subsidiaries is named or otherwise implicated in a complaint, lawsuit or similar action in connection with Physician's prior employment, Physician shall fully indemnify LPT, Manager and any of their affiliates or subsidiaries in connection therewith.
- 2.9. To provide services at the Clinics as provided in Exhibit A, or as LPT otherwise provided. Physician shall provide the Manager with reasonable advance written notice of any inability of Physician to perform scheduled services including thirty (30) days' advance notice of any vacation or leave of absence.
- 2.10. To not delegate his responsibilities hereunder without the prior written consent of LPT.
- 2.11. To independently exercise his professional medical judgment in rendering and oversight of services, care, treatment to, and referral of patients.

3. Compensation.

- 3.1. LPT or its affiliates shall have full discretion and authority to establish fees to be charged for services provided to patients, including those services provided by Physician hereunder.
- 3.2. All patients seen or treated by Physician pursuant to this Agreement shall be patients of LPT or its affiliates. LPT shall bill and collect all professional fees attributed to services rendered by Physician pursuant to this Agreement. To the extent allowable by law and the policies, procedures, and requirements of any third-party payor involved, LPT shall bill in LPT's name. Physician shall cooperate fully with LPT in all activities necessary to collect such fees, including permitting LPT to bill as agent in circumstances where LPT is unable to bill in its own name. Physician shall remit to LPT immediately all money received from any third party including but not limited to, patients and third party payors, for services rendered by Physician pursuant to this Agreement.

3.3. Physician shall provide services at the Clinic (or such other locations as LPT may direct from time to time) at least five (5) days per week. Physician shall provide the Manager with thirty (30) days advance written notice of any leave of absence.

3.4. Physician shall be compensated by 10% of the center revenue for the first 300 eyes treated per month and 12% of the center revenue based against Physician's performance for each additional eye treated in the month over and above the 300 monthly threshold for bilateral Lasik; provided, however, that for the three-month period following the Effective Date only and ending as of ~~February 24~~, 2004, Physician shall be compensated no less than \$10,000 per month. Such amounts shall be paid by the Manager on or about the fifteenth day of each month for services delivered by the Physician during the immediately preceding month. A laser vision correction procedure refers to the treatment of one patient having both eyes treated.

March 15

CPEJ
FM

3.5. All amounts paid to Physician hereunder shall be subject to applicable taxes being deducted.

4. Termination of Employment

4.1. Notwithstanding any provision in this Agreement to the contrary, this Agreement may be terminated by LPT for any reason at any time prior to its expiration, upon thirty (30) days written notice; provided, however, that LPT shall pay physician within twenty (20) days of the date of such termination in a lump sum in his salary up to and including the date of termination and any other compensation for services provided by physician that has not yet been paid.

4.2. LPT may also terminate this Agreement for "Cause" as defined below. Such termination shall be effective immediately upon the giving of written notice of such termination to Physician or as of a later date stated in such notice. In the event of Physician's termination for Cause, this Agreement shall terminate without further obligation by LPT, except for the payment of Physician's salary up to the effective date of termination. Notwithstanding any provision herein to the contrary, upon occurrence of the "Cause" described in this Subsection, this Agreement shall terminate immediately. For purposes of this Agreement, "Cause" shall include:

- suspension or revocation of Physician's medical license, specialty board certification (including Physician's failure to procure board certification on or prior to December 31, 2004 as provided in Section 2.4 above), DEA registration or any other certificate or license which LPT deems necessary or appropriate for Physician's performance of duties hereunder;

- the plea of guilty or nolo contendere to, or conviction for, the commission of a felony offense by Physician;
 - Physician's violation of the Code of Medical Ethics;
 - termination of Physician's professional liability coverage and inability to obtain substitute coverage;
 - Physician's having committed any actions or inactions which pose a threat to the health or safety of patients;
 - Physician's engaging in fraud, embezzlement, or the like;
 - Physician's abuse of any chemical substance;
 - Physician's material breach of Sections 8 or 9 of this Agreement;
 - Physician's substantial failure to perform adequately all of the duties appropriate to the scope of his employment; and
 - Physician's death or disability (defined herein as Physician's incapacity due to physical or mental illness, resulting in physician being absent from the performance of his duties with LPT for a period of four consecutive months.
- 4.3.** Physician may terminate this Agreement (a) with 120 days advance written notice to LPT or (b) immediately if LPT is in material breach of this Agreement and such default continues for a period of thirty (30) days after Physician gives written notice thereof to LPT. Physician acknowledges that LPT relied on Physician's assurances of employment in the Houston, Texas market in making a decision to expand into the Houston, Texas marketplace. As a result, notwithstanding any provision herein to the contrary, Physician agrees that, upon execution of this Agreement, if (a) Physician chooses not to commence employment with LPT on or about November 24, 2003 (or on such dates as otherwise mutually agreed by the Parties) or (b) Physician terminates his employment with LPT within six (6) months of the Effective Date, other than if LPT is in material breach of this Agreement, then Physician shall pay LPT a lump sum of one hundred thousand dollars (\$100,000) to compensate LPT for its damages, both economic and non-economic, in connection therewith. Upon execution of this Agreement, if LPT terminates Physician within three (3) months of the Effective Date of this Agreement other than if Physician is in material breach of his obligations hereunder, LPT shall pay Physician guaranteed minimum payments of \$10,000 per month for the months remaining, up to a maximum aggregate payment of \$30,000.
- 4.4.** Upon notice of termination and thereafter, Physician and LPT shall cooperate fully with LPT in (a) the orderly transfer of all patient care services and related

functions under this Agreement from Physician to LPT or its employees or affiliates and (b) any litigation in which physician and LPT are involved.

5. **Additional Benefits.** Physician shall also be entitled to those benefits as provided in Exhibit C attached hereto.

6. **Personnel.**

6.1 Manager shall provide Physician with such non-physician support personnel (the "Support Personnel") which are necessary, as determined by Manager or LPT, as the case may be, to effectively and efficiently conduct, manage, and operate the Practice Locations. Manager or LPT, as the case may be, shall be responsible for hiring and discharging Support Personnel at the Practice Locations.

6.2 Physician will oversee the clinical duties performed by Support Personnel at the Practice Locations in order for Physician to maintain appropriate standards of professional quality assurance and quality control of services rendered to LPT's patients, and the medical records and reports related thereto.

7. **Managed Care Agreements.** All agreements with health care service plans, hospital service plans, health maintenance organizations, independent practice associations and other purchasers of medical services ("Plans"), for the provision of Physician's professional medical services for laser vision correction or related services for individuals covered by such Plans, shall be entered into in the name of LPT. LPT shall have sole responsibility for negotiating all such agreements with respect to Physician's services and Physician shall participate in all Plans with which LPT has such an agreement.

8. **Restrictive Covenant.**

8.1. **Covenant Not to Compete.** Physician agrees during the Term of this Agreement and for eighteen (18) months after termination of Physician's employment with LPT to not:

8.1.1. engage in any manner in the delivery of laser vision correction services (other than as an employee of LPT) in the Restricted Area including, but not limited to, directly or indirectly, owning, managing, joining, operating, controlling, contracting with, being employed by, acting in the capacity as officer, director, trustee, shareholder, member, or partner, or consultant, or participating in or being connected in any manner with the ownership, management, operation, or control of any person, firm, or corporation providing laser vision correction services or facilities. For purposes herein, the Restricted Area is defined as: A radius of twenty (20) miles from, or in any county contiguous to the county in which, any laser vision facility

owned, operated or managed by LPT or LCA-Vision Inc., or any subsidiary or affiliate thereof in the State of Texas as of the Effective Date of this Agreement or as of the date of termination of Physician's employment with LPT. The parties agree and acknowledge that as of the Effective Date LPT, LCA-Vision Inc. and/or their subsidiaries or affiliates own, operate or manage those centers listed in Exhibit B attached hereto.

- 8.1.2. induce or attempt to induce any healthcare facility or provider of health care services with a referring relationship with other physician employees or with LPT to terminate or alter that relationship; or
- 8.1.3. directly or indirectly, induce or solicit any of LPT's patients, regardless of their location, to obtain professional medical services from any business, corporation, partnership or entity other than LPT's or from any person who is not an employee or affiliate of LPT; provided, however, that the foregoing shall not prohibit a bona fide referral of a patient to another provider of professional medical services if such is medically indicated and necessary for such patient.
- 8.2. No Solicitation of Employees. Any and all staff employed by LPT or Manager, as the case may be, to provide patient care or other services at the vision centers operated and maintained by LPT or Manager, as the case may be, shall be considered "Protected Persons" for purposes of this Agreement or Physician's employment. Until two years following the date of termination of this Agreement, Physician shall not, directly or indirectly, solicit, induce, recruit, hire, encourage or influence (or seek to solicit, induce, recruit, hire, encourage or influence) any of the "Protected Persons" to terminate his or her employment contract with LPT or Manager, as the case may be.
- 8.3. Remedies. Physician agrees that LPT would suffer immediate and irreparable harm by a breach of Section 8.1 or Section 8.2. In the event of Physician's actual or threatened breach of the provisions of Sections 8.1 or 8.2, LPT shall be entitled to an injunction against said breach by Physician, and Physician hereby consents to such injunction by a court in accordance with the laws of the State of Texas and upon notice to Physician, and an opportunity to be heard; provided, however, that LPT shall not be prohibited from pursuing any other remedies for such breach or threatened breach, including, without limitation, recovery of damages from Physician. The record or beneficial ownership by Physician of 1% or less of the outstanding capital stock of any publicly traded company providing medical services or facilities described in Section 8.1.1 hereof shall not be deemed to be in violation of that Section so long as Physician is not an officer, director, independent contractor, consultant or employee of such company.
- 8.4. Enforcement. It is further agreed that if a court determines the aforesaid covenants not to compete or non solicitation of employees to be unreasonable as to time or area or otherwise, the parties consent to the reformation of the

covenants by such court, and LPT or Manager, as the case may be, shall be entitled to enforce the covenants for such period of time and within such area and otherwise as may be determined to be reasonable by such court.

9. Confidentiality.

9.1. Physician expressly acknowledges that during the term of this Agreement, Physician may have access to trade secrets, proprietary information, and confidential information of LPT or Manager, as the case may be including but not limited to patient records, market share, referring physicians, the identity, names, addresses, telephone numbers and medical history of existing patients and prospective patients, as well as referral sources, business plans, strategic plans, information technology systems, marketing plans, and methods of doing business. Physician expressly agrees that all such information shall be and shall remain the property of LPT or Manager, as the case may be, and that Physician shall not duplicate, photocopy, transcribe for the purpose of removing, or remove any such information, data, records, or property from the Practice Locations in which Physician renders service. Physician further agrees that both during and after the term of this Agreement, Physician shall protect and preserve the confidential and proprietary nature of all such information and shall not disclose such information to any other person or entity, except to the extent required to carry out the duties and responsibilities set forth herein during the Term or as may be otherwise required by law; or use such information to Physician's advantage or to the advantage of any other person or entity, except to the extent necessary and consistent with his duties and obligations hereunder. Physician agrees to deliver or return to LPT at LPT's request at any time or upon termination or expiration of Physician's employment or as soon thereafter as possible all documents, computer tapes and disks, records, lists, data, drawings, prints, notes and written information (and all copies thereof) furnished by LPT and its subsidiaries or affiliates or prepared by Physician in the course of his employment.

9.2. In the event a court determines Physician has breached Subsection 9.1, Physician shall pay to LPT, as liquidated damages, the sum of one hundred thousand dollars (\$100,000). The Parties agree the covenant in Subsection 9.1 is of extraordinary value; in the event of its breach, pecuniary damages to LPT would be very difficult to ascertain; and the liquidated damages fixed herein represent a fair and reasonable estimate of such damages. In the event of breach of Subsection 9.1, the liquidated damages shall be paid or sufficient security for such payment acceptable to LPT shall be furnished to LPT within 10 days entry of final judgment against Physician. It is further agreed that LPT would suffer immediate and irreparable harm by a breach of Subsection 9.1. In the event of Physician's actual or threatened breach of Subsection 9.1, LPT shall be entitled to an injunction against such breach and any further breach by Physician until the liquidated damages are paid in full or security for such payment satisfactory to LPT is furnished by Physician. Physician hereby consents to such injunction.

- 10. Indemnification.** To the extent not covered by insurance, each Party shall hold harmless and indemnify the other Party, its successors and assigns, from and against any and all claims, actions, Causes of action, verdicts, demands, orders, judgments, settlements, liabilities, losses, costs, obligations, damages, expenses, offsets, deductions, refunds, recoupments, or penalties resulting from or attributable to any act or omission of the first Party; provided, however, that this section shall be of no force and effect in the event that it results in a denial or reduction in insurance coverage under an applicable insurance policy.
- 11. Life Insurance.** Physician acknowledges that LPT shall have the right, at its sole expense, to procure insurance on Physician's life of which LPT or its designee shall be the sole beneficiary, and agrees that he shall take all such action, submit to such examinations, and execute all such documents as are reasonably necessary to enable LPT to obtain such coverage. In the event of Physician's termination from employment with LPT, Physician may have the right and privilege, upon thirty (30) days' written notice and to the extent allowed by the policies, to purchase all policies of whole life insurance then owned by LPT on Physician's life by tendering to LPT the amount of the cash surrender value, if any, together with any unearned premium on said policies. Furthermore, LPT agrees that it shall not cancel any term life insurance policy under which Physician is then insured without first giving Physician thirty (30) days' written notice of its intention to cancel any of said policies and without first giving Physician the opportunity to continue such policy, if permitted by such policy, by Physician's assumption of the payment of premiums therefore.
- 12. Records.** Physician will maintain accurate records in the manner and form prescribed by LPT. All records, documents, notes, files or other materials, whether or not secret or confidential, which Physician prepares, receives, collects or otherwise acquires in the course of his employment shall be the sole property of LPT and upon expiration or termination of Physician's employment, Physician shall promptly deliver to LPT, but in no event later than 5 days from the date of expiration or termination, all such records, documents, notes, files or other materials, including any and all copies thereof.
- 13. Contracts of LPT.** Physician will have no authority to enter into any contracts binding upon LPT or its affiliates or to create any obligations on the part of LPT or its affiliates except as specifically authorized in advance in writing by the Manager or LPT.
- 14. Entire Agreement; Amendments.** This Agreement, including any exhibits, schedules, lists and other documents and writings referred to herein or delivered pursuant hereto, all of which form a part hereof, contains the entire understanding of the Parties with respect to its subject matter. This Agreement may be amended only by a written instrument duly executed by all Parties or their respective heirs, successors, assigns, or legal personal representatives.
- 15. Assignment.** Physician may not assign any of his rights or delegate any of his duties or obligations under this Agreement. The rights and obligations of LPT under this Agreement shall inure to the benefit of, and shall be binding upon, the successors and

assigns of LPT. For purposes of this Agreement, "successors" shall include, without limitation, successors by way of share exchange, merger, consolidation, reorganization or sale of all or substantially all of LPT's assets.

16. Waiver of Breach. No condition of this Agreement can be waived except by the written consent of the parties.

17. Notices. All notices pursuant to this Agreement shall be given by certified mail properly addressed with appropriate postage paid thereon, telegram, telex, telecopier or facsimile transmission, and shall be deemed to be duly given and received on the date of delivery if delivered personally, date of receipt, as evidenced by return receipt if mailed, upon acknowledgment of receipt of electronic transmission if sent by telecopier or facsimile transmission, or on the first day after delivery to the telegraph office if given by telegraph. Notices shall be sent to the following addresses:

If to Physician:

Federico Mattioli, MD
1614 Monarch Oaks
Houston, TX 77055

If to LPT % the Manager:

LCA-Vision Inc.
General Counsel & Senior Vice President
7840 Montgomery Road
Cincinnati, OH 45236

or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notices of change of address shall only be effective upon receipt.

18. Gender: Number. Whenever the context of this Agreement so requires, the masculine gender shall include the feminine or neuter, the singular number shall include the plural, and reference to one or more Parties hereto shall include all permitted assignees of the Party.

19. Governing Law and Forum. This Agreement shall be governed by the laws of the State of Texas, and all actions, suits, or other proceedings with respect to this Agreement shall be brought only in an appropriate court sitting in the State of Texas.

20. Severability. In the event any provision of this Agreement, or the application thereof to any person or circumstance, is held by a court to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

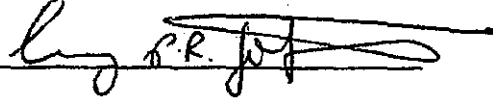
21. Further Assurances. Each Party shall perform further acts and execute further documents as may be reasonably necessary to carry out this Agreement.

22. Survival. Except as otherwise expressly provided, the obligations contained in Sections 8 and 9 shall survive the expiration or termination of this Agreement.

23. No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to the benefit of any third party (other than affiliates of LPT or LCA-Vision, Inc.) unless expressly named herein and designated to inure to such party's benefit.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed by themselves or their duly authorized representatives as of the day and year first written above.

LASIKPLUS OF TEXAS, P.C..

By: 


FEDERICO MATTIOLI, MD

Date: 12/15/2003

Date: 11-13-2003

EXHIBIT A

OFFICE LOCATIONS

Houston, Texas

EXHIBIT B

CENTER	CENTER PHONE	CENTER FAX	STREET	CITY	STATE	ZIP
Albany	518/426-1189	518/426-2359	12 Corporate Woods Blvd.	Albany	NY	12211
Alexandria, VA	703/519-9913	703/519-8917	1101 King Street, Su. 100	Alexandria	VA	22314
Annapolis	410/897-0560	410/897-0565	115 Defense Highway, Su. 104	Annapolis	MD	21401
Atlanta - Alpharetta	770/345-9075	770/345-0860	13010 Morris Road, Su. 175	Alpharetta	GA	30004
Atlanta - Buckhead	404/442-9919	404/442-9245	3363 Peachtree Road, NE, Su. 120	Atlanta	GA	30328
Atlanta - Galleria	770/956-3938	770/956-5708	200 Galleria Pky., Su. 200	Atlanta	GA	30339
Atlanta - Gwinnett	770/622-9810	770/622-2607	3175 Satellite Blvd., Bldg. 600, Su. 175	Duluth	GA	30098
Baltimore	410/829-2020	410/829-2018	22 West Road	Baltimore	MD	21204
Charlotte	704/336-0014	704/336-0776	621 E. Morehead Street, Su. 130	Charlotte	NC	28202
Cincinnati	613/794-9954	613/794-9965	7840 Montgomery Road, 2nd Floor	Cincinnati	OH	45236
Cleveland	216/328-9181	216/328-1206	5701 Rockside Road, Suite 209	Independence	OH	44131
Columbia	410/772-5412	410/772-6417	10026 Governor Warfield Pky.	Columbia	MD	21044
Columbus	614/863-9104	614/863-8379	6100 East Main Street, Su. 109	Columbus	OH	43219
Concord	925/688-0400	925/688-0403	1390 Willow Pass Road, Su. 120	Concord	CA	94520
Dayton	937/291-9555	937/291-7939	6470 Centerville Business Pky.	Centerville	OH	45459
Edina	612/835-3201	612/835-0874	3300 Edinborough Way, Su. 412	Edina	MN	55435
Helsinki Gyldenintie 2A	91011/3589-682-4555	91011/3589-68245540	SILMALASERI GYLDENINTIE 2A	Helsinki Gyldenintie 2A		
Houston			3700 Buffalo Speedway, Suite 325	Houston	TX	77099
Indianapolis	317/818-3960	317/818-3489	8930 Keystone Crossing	Indianapolis	IN	46240
Las Vegas	702/228-4554	702/228-7621	8981 West Sahara Avenue, Su. 270	Las Vegas	NV	89117
Louisville	502/898-3288	502/898-3289	400 Dutchman's Lane, Suite 6F	Louisville	KY	40207
Maple Grove	612/416-6501	612/416-5505	7767 Elm Creek Blvd., Su. 140	Maple Grove	MN	55435
Naperville	630/861-2020	630/861-2840	1555 Bond Street	Naperville	IL	60540
Northbrook	847/405-0049	847/405-0182	302 Saunders Road, Su. #200	Riverwoods	IL	60016
Oakbrook	630/568-3937	630/538-3941	1110 Jorie Blvd., Su. 105	Oakbrook	IL	60521
Philadelphia - Chadds Ford	484/840-1480	484/840-1484	223 Wilmington - West Chester Pike Rt. 202	Chadds Ford	PA	19317
Philadelphia - King of Prussia	610/265-6228	610/265-1560	215 Mall Blvd., Su. 100	King of Prussia	PA	19406
Philadelphia - Mt. Laurel, NJ	856/231-9977	856/231-9963	303 Fellowship Rd., Su. 100	Mt. Laurel	NJ	8054
Raleigh	919/782-5555	919/782-0981	3126 Blue Ridge Road, Suite 100	Raleigh	NC	27612
Richmond, VA	804/627-0620	804/627-0616	10571 Telegraph Road, Su. 100	Glen Allen	VA	23059
Rockville, MD	240/314-0160	240/314-0164	14825 Physicians Lane	Rockville	MD	20860
San Jose	408/487-3620	408/487-3623	101 Metro Drive, Suite 255	San Jose	CA	95110
San Mateo	650/266-8200	650-266-8208	950 Tower Lane, Su. 130	Foster City	CA	94404
San Antonio				San Antonio	TX	
Schaumburg	847/413-2110	847/413-2114	999 Plaza Drive, Su. 100	Schaumburg	IL	60173
Tampa	813/870-3937	813/414-0073	2202 N. Westshore Blvd., Su. 100	Tampa	FL	33607
Toronto	416/492-3937	416/492-2002	2235 Sheppard Avenue E	Willowdale, Ontario,	Canada	M2J6B5
Tysons Corner	703/355-2239	703/355-2810	7789 Leesburg Pike, Su. 220, N. Tower	Falls Church	VA	22043

EXHIBIT C

BENEFITS

- A. Insurance. LPT agrees to make available to Physician insurance coverage commensurate with that which is provided to LPT's employees to the extent Physician is eligible to participate in such programs, which include health, dental, life insurance, short and long term disability and 401k participation. To the extent Physician is eligible to participate in such programs, Physician shall pay the semi-monthly contribution consistent with all other employees for medical and dental benefits. LPT reserves the exclusive right to modify or change the employee benefit package at any time.
- B. Vacations and Meetings. During each year of the Agreement, Physician shall be entitled to two (2) weeks of vacation in accordance with the plans, policies, programs and practices of LPT as may be in effect from time to time. Physician understands and agrees that such vacation shall be taken upon reasonable advance written notice to LPT and to the Manager and at such times as will not unduly inconvenience LPT, the Manager or other employees or affiliates. Physician shall not be entitled to receive any additional compensation for unused vacation time.
- C. Continuing Medical Education. LPT may provide or arrange for the provision of continuing medical education in Ophthalmology for Physician including, without limitation, training in developments in eye care. Additionally, Physician shall be entitled to three (3) days of continuing medical education in Ophthalmology annually such that it shall be taken upon reasonable advance written notice to LPT and to the Manager and at such times as will not unduly inconvenience LPT, the Manager or other employees or affiliates of LCA-Vision Inc. If LPT so agrees in advance in writing, the reasonable cost of Physician attending (including reasonable travel expenses) industry conferences or seminars, or such other professional activities as shall agree in advance in writing to pay, shall be paid in an aggregate amount up to \$1,500 per year. CARS FN
- D. Stock Options. Physician shall receive 12,500 stock options to purchase stock in LCA-Vision Inc. at the market price per original award at time of start date in Texas. The market price of LCA-Vision Inc.'s stock shall be defined as the last reported price of such stock on the NASDAQ National Market on the Effective Date. Such options shall vest as follows: 2,500 stock options on the first anniversary of the Effective Date of this Agreement, 2,500 stock options on the second anniversary of the Effective Date of this Agreement, 2,500 stock options on the third anniversary of the Effective Date of this Agreement, 2,500 stock options on the fourth anniversary of the Effective Date of this Agreement, and 2,500 on the fifth anniversary of the Effective Date of this Agreement. Physician shall forfeit any options not vested at the time of termination of employment. The stock options shall be governed by terms and conditions contained in LCA-Vision Inc.'s 1998 Long-Term Stock Incentive Plan.

From: Mattioli, Fred
Sent: Tuesday, October 16, 2012 1:16 PM
To: Thomas, Dave; Celebrezze, Michael
Subject: resignation of Dr Mattioli

October 16, 2012

Mr. David Thomas, Co-CEO, COO

Mr. Michael Celebrezze, Co-CEO, CFO

LCA Vision, Inc.

640 Montgomery Rd

Cincinnati, OH 45236

Cc: Texas Medical Board

Re: Resignation from Employment

Dear Dave and Mike:

After careful consideration, I am writing this letter to provide you with formal notice of my plans to resign from employment with LasikPlus/LCA Vision effective on November 16, 2012.

If you need any assistance in recruiting for my replacement, I am more than willing to assist in this process during my remaining time. Similarly, if you would like, I will make myself available to help in coordinating visits from Texas surgeons Drs. Whiteside, Smith, and Webster from Austin, Dallas, and San Antonio.

In compliance with Texas Medical Board, Notice to Patients on the Departure of a Physician, I am required to send letters to all patients I have seen for the past 2 years notifying them of discontinuance of practice at this location and by placing written notice in the office. Please provide me with the names and addresses of these patients or if you complete patient notification internally, please send me confirmation of completion.

I have appreciated all that we have been able to accomplish together over the past nine years, and I wish you continued success with LasikPlus.

Sincerely,



Fred Mattioli, MD

If you are not an intended recipient, use and disclosure of this message are prohibited. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

+You Search Images Maps Play YouTube News Gmail Drive Calendar More

dr. mattioli houston

ryanhand1@yahoo.com

Web Images Maps Shopping Videos More Search tools

About 451,000 results (0.38 seconds)

LASIK in Houston, Texas | LasikPlus

www.lasikplus.com/location/houston-lasik-center/

Dr. Do graduated Summa Cum Laude from University of Houston College of Optometry in 2005 and has co-managed many patients since. Dr. Do has been with ...

You've visited this page 2 times. Last visit: 11/27/12

LasikPlus Vision Center - Greenway - Houston, TX

www.yelp.com › Health and Medical › Optometrists

Rating: 3.5 - 6 reviews

Houston, TX 77098. Neighborhoods: Dr. Mattioli came in and explained to me what was going to happen and was very nice. First, I was brought into a room ...

You visited this page on 11/20/12.

Dr. Federico Mattioli, MD - Ophthalmologist - Houston, TX - Vitals

www.vitals.com › Ophthalmologists › TX › Houston

Rating: 1/4 - 1 review

Dr. Federico Mattioli, MD, Houston, TX, Rated 1/4 By Patients. 1 Review, Attended One Star Medical School, Phone Number & Practice Locations.

You visited this page on 11/27/12.

Dr. Federico L. Mattioli, MD, Houston, TX - Ophthalmology

www.healthgrades.com › ... › Texas (TX) › Houston

Rating: 100% - 1 vote

Dr. Federico L. Mattioli, MD, Houston, TX, Ophthalmology. Get a FREE Background Report on Dr. Mattioli. View ratings, complaints, credentials, and detailed ...

Dr. Martha Mattioli - Phone & Address Info - Houston, TX - Family ...

www.healthgrades.com › ... › Texas (TX) › Houston

Visit Healthgrades for information on Dr. Martha Mattioli. Find Phone & Address information, medical practice history, affiliated hospitals and more.

You visited this page on 11/27/12.

Dr. Federico L. Mattioli, MD - HealthGrades

www.healthgrades.com › ... › Texas (TX) › Houston

Dr. Mattioli's Contact Information. 1. 1740 W 27th St Suite 180. Houston, TX 77008 (713) 869-3383. Accepting New Patients: Yes. Get Directions. 2 ...

Dr. Federico Mattioli, MD - Ophthalmology - Houston, TX

www.ucomparehealthcare.com › ... › Texas (TX) › Ophthalmologists

Dr. Federico Mattioli, MD Ophthalmologist in Houston, TX. Review detailed information on Dr. Mattioli's 16 years experience and background in medicine.

You visited this page on 12/6/12.

LasikPlus Ophthalmologist Dr. Fred Mattioli Interview on Great Day ...



www.youtube.com/watch?v=st2XTOQBQ0

Jul 16, 2010 - Uploaded by LasikPlusVision

Learn about LASIK treatment with Dr. Fred Mattioli, LasikPlus Ophthalmologist in Houston. For more ...

More videos for dr. mattioli houston »

LasikPlus Vision Center - LASIK Eye Surgery in Houston, Texas

www.allaboutvision.com/lasik-surgeons/lasikplus-houston.htm

... about Dr. Fred Mattioli, who performs LASIK laser eye surgery in Houston, Texas.

... Fred Mattioli, MD, is a highly skilled ophthalmologist who has extensive ...

You visited this page on 11/20/12.

Dr. Federico Mattioli - Houston, TX Ophthalmologist - 3 doctor ...

www.ratemds.com/doctor.../Dr-Federico-Mattioli-Houston-TX.html

Rating: 1.8 - 3 reviews

3 free doctor reviews and ratings for Ophthalmologist Dr. Federico Mattioli - Houston, TX Ophthalmologist - 3 doctor reviews | RateMDs.com.

Searches related to dr. mattioli houston

[mattioli lasik](#)

[lasikplus houston](#)

[damon pettinelli lasik](#)

[dr sonny goel](#)

1 2 3 4 5 6 7 8 9 10

[Next](#)

[Advanced search](#) [Search Help](#) [Give us feedback](#)

[Google Home](#) [Advertising Programs](#) [Business Solutions](#) [Privacy & Terms](#) [About Google](#)

+You Search Images Maps Play YouTube News Gmail Drive Calendar More

lasikplus houston



ryanhand1@yahoo.com

Web images Maps Shopping Videos More Search tools

About 51,400 results (0.43 seconds)

Ads related to **lasikplus houston**

LasikPlus@ Vision Center - lasikplus.com

www.lasikplus.com/Houston
\$500 Off LASIK Until December 31st Hurry! Schedule a Free Exam Today
» Map of Sugar Land, TX and nearby lasikplus.com locations
Save up to \$1,200 Using Your FSA Patient Stories
Trust LasikPlus 1,000,000 Surgeries Get the Gift of LASIK & Save \$500

Lasik Eye Surgery 1 (877) 818 3785

www.lasikvisioninstitute.com/
900,000 Surgeries Performed. Prices Start At \$299/eye, Free Evaluation.

Laser Eye Surgery - johngoosey.com

www.johngoosey.com/
Laser Eye and Cornea Surgery Specialists. Schedule Free Consult.
» Map of 2855 Gramercy, Houston, TX

LASIK in Houston, Texas | LasikPlus

www.lasikplus.com/location/houston-lasik-center/
3700 Buffalo Speedway Suite 325, Houston, Texas, 77098. Call 1 (866) 755-2026.
You've visited this page 2 times. Last visit: 11/27/12

Warning Letters > Lasik Plus Houston, 10/30/09

www.fda.gov/ICECI/EnforcementActions/.../ucm192704.htm
Dec 8, 2009 - LasikPlus Houston 3700 Buffalo Speedway Suite 325, Houston, Texas 77098. Dear Mr. Elizondo: During an inspection of your facility located in ...
You visited this page on 11/27/12.

LasikPlus Vision Center

www.lasikplus.com/locations-doctors/location/river-oaks?encSource...
4 Google reviews
3700 Buffalo Speedway #325 Houston, TX 77098
(866) 921-2392

LasikPlus Vision Center - Greenway - Houston, TX

www.yelp.com > Health and Medical > Optometrists
Rating: 3.5 - 6 reviews
6 Reviews of LasikPlus Vision Center "I agree this was a miracle! I have wanted to do this for such along time but was skeptical as you only have one set of eyes!
You visited this page on 11/20/12.

LasikPlus Vision Center - LASIK Eye Surgery in Houston, Texas

www.allaboutvision.com/lasik-surgeons/lasikplus-houston.htm
Learn about Dr. Fred Mattioli, who performs LASIK laser eye surgery in Houston, Texas.
You visited this page on 11/20/12.

LasikPlus Ophthalmologist Dr. Fred Mattioli Interview on Great Day ...

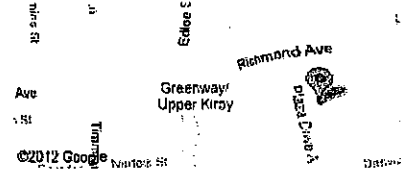


www.youtube.com/watch?v=sl2XTOQBQ0
Jul 16, 2010 - Uploaded by LasikPlusVision
... LASIK treatment with Dr. Fred Mattioli, LasikPlus
Ophthalmologist in Houston. For more information about ...

More videos for **lasikplus houston** »

LasikPlus Vision Center in Houston, TX - Reviews and Directions

houston.citysearch.com > Houston
Rating: 100% - 1 vote
LasikPlus Vision Center in Houston, TX. Come to Citysearch® to get information, directions, and reviews on LasikPlus Vision Center and other Ophthalmologists ...



LasikPlus Vision Ce

Ads

Berkeley Eye Center

www.berkeleyeye.com/Texas
Texas' LASIK, Cataract, Lens & Eye
Care for 50 Years. (713) 526-3937
Houston, TX
(713) 526-1600 - Directions

\$495 LASIK at Joffe

www.joffemedicenter.com/
Why pay more for 20/20 vision?
Excellent LASIK + Affordability
5420 West Loop South, Bellaire
(866) 626-6250 - Directions

TLC - Official Website

www.tlcvision.com/
Visit TLC @ Laser Eye Centers Today
& Schedule Your Free Consultation.

Save money, have LASIK

www.lasikmd.com/SaveWithLasik
Free Yourself of Glasses & Contacts
Calculate Your Savings w/ LASIK MD.

Sterling Optical Eye Exam

www.sterlingoptical.com/
Make Your Next Appointment Now.
Find A Location Near You.

See your ad here »

Lasik plus in Houston, TX | Houston Lasik plus - YP.com

www.yellowpages.com/houston-tx/lasik-plus

2 listings of Laser Vision Correction in Houston on YP.com. Find reviews, directions & phone numbers for the best **lasik plus** in Houston, TX.

LasikPlus Vision Center in Houston, TX | 3700 Buffalo Speedway ...

www.superpages.com/.../Houston.../Lasik-Plus-Vision-Center-L2044...

LasikPlus Vision Center in Houston, TX – Map, Phone Number, Reviews, Photos and Video Profile for **Houston LasikPlus Vision Center. LasikPlus Vision ...**

LasikPlus - Houston | Houston, TX 77098 | Angies List

www.angieslist.com › Local Reviews › Houston

Reviews you can trust on **LasikPlus - Houston** from Angie's List members | 3700 Buffalo Speedway Houston, TX.

LasikPlus Vision Center - 3700 Buffalo Speedway Houston, TX, 77098

linktown.khou.com › Houston Yellow Pages › Glasses

Reviews and ratings of **LasikPlus Vision Center at 3700 Buffalo Speedway Houston, TX, 77098**. Get phone numbers, maps, directions and addresses for ...

Searches related to lasikplus houston

[lasikplus houston reviews](#)

[lasikplus vision center river oaks](#)

[dr. mattioli houston](#)

[lasikplus complaints](#)

1 2 3 4 5 6 7 8 9 10 **Next**

[Advanced search](#) [Search Help](#) [Give us feedback](#)

[Google Home](#) [Advertising Programs](#) [Business Solutions](#) [Privacy & Terms](#) [About Google](#)