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## Dr. Notes sues former employees, companies

BY BRIAN BANDELL

Court records show Dr. Notes and sister company Datamed World Wide have a long history of being defendants, but now they are plaintiffs in a case against 10 former employees and two companies.

The electronic medical records companies owned by Dr. Angel M. Garcia accuse the former employees and two other medical software companies of breach of contract, civil theft and tortious interference. The suit, filed in Palm Beach County Circuit Court on Dec. 6, seeks more than \$15,000 on each of the 31 counts, plus attorney's fees.

However, one attorney said the case could backfire against Garcia and his companies by unveiling the location of assets and creating judgments that creditors would seize.

Garcia and his companies face 28 judgment liens totaling more than \$3.42 million; federal, state and local tax liens totaling \$1.27 million; and 19 pending cases seeking at least \$1.05 million.

The new complaint by Garcia's companies says former employees and contractors violated non-compete agreements by joining competing companies, including defendants Medstar Systems and Clinical Control Systems. They also took copies of Dr. Notes' software, technical support information and client lists, the complaint said.

Medstar Systems and Clinical Control Systems said there is no basis for the lawsuit, as did an attorney for four of the employees named in the action.

"Dr. Notes' claims have no basis," said Clinical Control Systems founder Gary Morgan, who is married to Garcia's sister.

He had a consulting and reseller agreement with Dr. Notes.

"They did not deal in good faith with me," Morgan said.

The lawsuit says he violated the agreement by forming Clinical Control Systems in Boca Raton and competing with Dr. Notes by using its former employees.

Morgan said his company possessed no confidential information about Dr. Notes and employees signed agreements stating they weren't bound by non-competes.

### Accusation: Violated agreement

Dr. Notes accuses Fort Lauderdale-based Medstar of violating its reseller agreement by using confidential information to develop competing software and hiring former Dr. Notes employees.

Medstar President Emilio Valls said everything in the complaint is untruthful and he never hired the former Dr. Notes employees.

Dr. Notes violated the terms of the contract, but he hasn't sued, Valls said. "They owe me money and it's a hell of a lot more than \$15,000."

Eight ex-employees named in the lawsuit have previously said they left Dr. Notes because they weren't paid wages. While none of them have sued Dr. Notes, 13 other former employees have filed claims, according to court records.

Unpaid wages could be a key defense argument.



Gomez

If a contract has been substantially breached, a court may let the party that upheld the agreement out of the deal, said Rudy Gomez, a Miami-based labor and employment law attorney. Not paying employees might free them from their non-complete agreements, but

it's usually not a defense for taking a company's trade secrets, he said.

Dr. Notes' claims are unjustified and unfounded, said attorney Aaron Cohen, who represents ex-employees Neil Redmond, Carl Fisher, Jesus "Mario" Morales and Steven Avnet. All of his clients are owed wages by Dr. Notes, he said.

The lawsuit said some of them stole computer equipment from Dr. Notes, but Cohen said he has signed agreements showing that the company granted the equipment to them in exchange for out-of-pocket expenses owed.

Avnet is also accused of developing a patch that stopped Dr. Notes' software program from collecting medical information from its doctors, which Dr. Notes says cost it an opportunity to resell that data.

Previously, Avnet said he developed the patch in response to doctors who didn't want Dr. Notes taking de-identified medical information about their patients without being compensated as their contracts stated. Two doctors have sued the company for not paying them for that data, according to court records.

Dr. Notes wants Fisher and former tech support employee Ruby Daniels to pay damages for allegedly distributing Avnet's patch on message boards and a Web site. Daniels said she had not seen the suit and could not comment.

Dr. Notes attorney Melissa Alexis Rudman did not return calls for comment. Garcia has not responded to e-mails for comment.

By bringing a plaintiff action, Dr. Notes could open the door for its creditors to collect, Boca Raton attorney Andrew M. Schwartz said. After succeeding in three previous garnishments against Garcia and his companies, Schwartz is trying to help Dr. Dean Banks of South Carolina collect a \$1.45 million judgment against Dr. Notes.

If Dr. Notes is awarded any money, creditors can petition the court to have the damages paid directly to them, Schwartz said.

Dr. Notes hasn't responded to multiple requests for discovery and deposition in most cases, according to court records. However, creditors might be able to locate the company's accounts due to its plaintiff action, Schwartz said. Since Dr. Notes is seeking attorney fee compensation, the defendants can request information about how the company is paying its attorney.

If Dr. Notes claims it was harmed financially, it can be asked to disclose its financial status, Schwartz said.

"I'm just baffled as to why Dr. Notes would take this action now and open itself up to all of that."

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