CAUSE NO. D-1-GN-21-006290

RYAN, LLC,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
GLENN HEGAR, IN HIS OFFICIAL CAPACITY AS COMPTROLLER OF PUBLIC ACCOUNTS OF THE STATE OF TEXAS AND THE OFFICE OF THE COMPTROLLER OF PUBLIC ACCOUNTS FOR THE STATE OF TEXAS,	§	353rd JUDICIAL DISTRICT
	§	
Defendants.	§	TRAVIS COUNTY, TEXAS

PLAINTIFF'S REPLY TO DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff files this Reply to respond to the argument the Comptroller raised in his Response to Plaintiff's Motion for Summary Judgment that Plaintiff has not stated a claim for an injunction. The Court should reject that argument because (1) injunctive relief is necessary to make the declaratory judgment Plaintiff seeks effective; and (2) to the extent it is required to do so, if Plaintiff establishes that the challenged rule sections are invalid, then it has established all the elements of a permanent injunction.

I. Injunctive relief is necessary to make the declaratory relief Plaintiff seeks effective.

In his response, the Comptroller asserted that "the statute under which Ryan is seeking declaratory relief does not entitle Ryan to an automatic injunction if Ryan prevails on the substance of its claims. *See* Tex. Gov't Code § 2001.038 (providing for declaratory relief only)."[1] The Austin Court of Appeals, however, rejected a similar argument in *Texas Department of State Health Services v. Balquinta*.[2]

In *Balquinta*, the Appellants contended "that the declaratory-judgment provided in APA section 2001.038 is intended to serve as the sole remedy in any suit challenging the 'validity or applicability of a rule.'"[3] The primary support for that contention was that "section 2001.038 refers only to 'an action for declaratory judgment' and makes no explicit mention of injunctive relief."[4]

The Austin Court of Appeals rejected that argument and stated that:

> This Court has repeatedly held that trial courts may award temporary injunctive relief against an agency in connection

[1] Defendants' Response to Plaintiff's Motion for Summary Judgment, p. 25.
[2] 429 S.W.3d 726, 750 (Tex. App.—Austin 2014, pet. dism'd).
[3] *Id.* at 749.
[4] *Id.*

> with pending rule challenges under section 2001.038, reasoning that the statute's waiver of immunity suffices to confer jurisdiction to grant the injunctive relief and that such relief is necessary to make effective the declaratory relief the Legislature has expressly authorized.[5]

The opinion the Austin Court of Appeals cited in support of that statement provides the following explanation regarding why injunctive relief is necessary to effectuate a declaratory judgment:

> Allowing plaintiffs to challenge the validity of an agency rule but barring injunctive relief preventing application of the challenged rule would defeat the purpose of section 2001.038, which "is to obtain a final declaration of a rule's validity *before* the rule is applied."[6]

Accordingly, if Plaintiff establishes that the rule sections it challenges are invalid, then it is entitled to an injunction against the Comptroller from enforcing those sections. Such an injunction is necessary to make a declaratory judgment that those sections are invalid effective.

---

[5] *Id.* (citing *Texas Dept. of Pub. Safety v. Salazar*, 304 S.W.3d 896, 903-04 (Tex. App.—Austin 2009, no pet.)) (emphasis added).

[6] *Salazar*, 304 S.W.3d at 903 (quoting *Rutherford Oil Corp. v. General Land Office*, 776 S.W.2d 232, 235 (Tex. App.—Austin 1989, no writ) (stating that to hold that state agency could not be enjoined from applying rule subject to validity challenge would "wholly nullify" predecessor to section 2001.038 of APA)).

II. To the extent it is required to do so, if Plaintiff establishes that the challenged rule sections are invalid, then it has established all the elements of a permanent injunction.

The Comptroller asserts that, to obtain a permanent injunction, Plaintiff must establish (1) a wrongful act; (2) imminent harm; (3) an irreparable injury; and (4) the absence of an adequate remedy at law. The summary judgment evidence establishes each of those elements.

A determination that the challenged rule sections are invalid is sufficient to establish a wrongful act.

As far as imminent harm and irreparable injury, the Affidavit of Michael Thompson explains that the challenged rule sections have had numerous adverse effects on Plaintiff. First, the rule amendments have deterred potential clients from retaining Plaintiff.[7] Second, some clients that did retain Plaintiff withdrew their claims or decided not to pursue the Texas research and development tax incentives.[8] Finally, the restrictions in the rule amendments have eliminated some of the activities Plaintiff has undertaken to develop its computer software and

[7] Appendix 19, ¶ 36.
[8] *Id.*

historically included without issue in its federal and other state tax credit calculations from qualification for the Texas franchise tax credit.[9] These facts are sufficient to establish imminent harm and an irreparable injury.

As for the final element, there is no adequate remedy at law that can address the harm the challenged rule sections have imposed on Plaintiff. Section 2001.038 does not provide for monetary damages.[10] Further, the injuries being imposed upon Plaintiff are recurring in nature. As a result, even if monetary damages were available, to fully remedy Plaintiff's injury it would need to file a multiplicity of suits.[11]

---

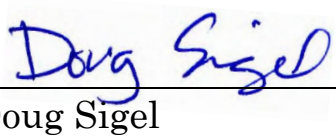
[9] *Id.*

[10] *See Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002) ("An injury is irreparable if the injured party cannot be adequately compensated in damages or if the damages cannot be measured by any certain pecuniary standard.").

[11] *See Lamb v. Kinslow*, 256 S.W.2d 903, 905 (Tex. Civ. App.—Waco 1953, writ ref'd n.r.e.) ("It is further our view that the nuisance here complained of is of a recurring nature and that injunction will lie irrespective of legal remedy at law."); *Ellen v. Bryan*, 410 S.W.2d 463, 465 (Tex. Civ. App.—Waco 1966, writ ref'd n.r.e) ("[W]here the nuisance is of a recurring nature, an action at law is not an adequate remedy, because damages could be recovered only to the time of the bringing of the action, and a multiplicity of suits would be necessary.").

Respectfully submitted,

RYAN LAW FIRM, PLLC
Terrace I, 2600 Via Fortuna Dr.
Suite 150
Austin, Texas 78746
512.459.6600 – Telephone
512.459.6601 – Fax

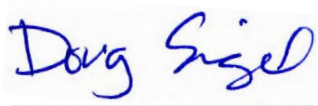
By: 
Doug Sigel
State Bar No. 18347650
doug.sigel@ryanlawyers.com
Bryan Dotson
State Bar No. 24072769
bryan.dotson@ryanlawyers.com

COUNSEL FOR PLAINTIFF

Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been served on all counsel of record, as listed below, by electronic service on July 8, 2022.

Brittney R. Johnston
Assistant Attorney General
Thales Smith
Assistant Attorney General
Office of the Attorney General
Tax Division MC 029
P.O. Box 12548
Austin, Texas 78701-2548
brittney.johnston@oag.texas.gov
thales.smith@oag.texas.gov



Doug Sigel