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CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA
JOJO SCHWARZAUER, CLERK

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

**KIRBY PLESSALA, and
DENEEN PLESSALA, individually and
derivatively on behalf of INNOVATIVE
MEDICINE PARTNERS, LLC,**

Plaintiffs,

v.

**PETER FALKNER,
CARLA FALKNER,
SYNERGY MANAGEMENT & CO.,
LLC, and
INNOVATIVE MEDICINE
PARTNERS, LLC,**

Defendants.

CIVIL ACTION NO.:

VERIFIED COMPLAINT

COMES NOW Dr. Kirby Plessala and Dr. Deneen Plessala (together, the “Plessalas”) and state claims (1) in their individual capacities against Defendants Peter Falkner and Carla Falkner (together, the “Falkners”), and (2) derivatively on behalf of Necessary-party Defendant Innovative Medicine Partners, LLC (“IMP”) against the Falkners and Synergy Management & Co., LLC. The claims against these Defendants are more specifically set forth below.

INTRODUCTION

1. This is a straightforward case of corporate managers using investor moneys to get rich and fund their lavish lifestyle, rather than for their intended purpose. Necessary-party Defendant IMP is an Alabama limited liability company created for the purpose of developing the medical device ideas, including those of Plaintiff Dr. Kirby Plessala and other physicians. From the outset, the Falkners (first Carla, then Peter) have been the Managers of IMP; but even while

his wife Carla was Manager, Peter Falkner has always been the de facto person in charge of business strategy, company finances, and investor fundraising.

2. Over the past five years, the Falkners have raised over ten million dollars from investors to fund the development of IMP's various medical device technologies, including several medical device ideas that originated with Dr. Kirby Plessala. The Falkners often leveraged the Plessalas' good name in the medical community to garner trust and entice these investments. Rather than prudently and appropriately using those investor funds to complete development of the technologies, the Falkners instead chose to pay themselves extravagantly: approximately **\$5 million** of the approximately **\$10 million** raised, plus at least tens of thousands more as indirect payments for the Falkners' personal expenses, like flights, hotels, meals, and even supplements. These payments the Falkners made to themselves far exceeded what would have been reasonable, fair market value for the work they did and also were inconsistent with the representations the Falkners made to the Plessalas and to investors concerning how investor proceeds would be used.

3. As a result of the Falkners' misuse of investor funds, none of the medical device technologies have completed development. Today, there is virtually no money left to continue to development: combined, accounts for IMP and its subsidiaries have less than \$5,000 in available funds. Meanwhile, IMP and its subsidiaries currently owe approximately \$1 million to creditors or vendors.

4. There also are no legitimate prospects for raising additional money to pay off debts or fund ongoing development, at least so long as the Falkners remain in charge. As a result, the Plessalas have been making capital contributions to IMP to cover essential costs for the maintenance of the Company's intellectual property portfolio.

5. The Falkners' conduct amounts to breaches of IMP's operating agreement, the duty of good faith and fair dealing, and their fiduciary duties, as well as conversion. The Falkners also fraudulently induced the Plessalas into going into business with them in the first place, by making false or misleading representations concerning their background, educational history, and prior business experience. The Falkners' conduct has caused significant damage to the Plessalas and IMP. It also has adversely and materially affected IMP's ability to fulfill its purpose. Unless the Falkners are immediately barred from acting as managers or otherwise having any control over IMP, IMP and the Plessalas will be irreparably injured.

PARTIES

6. Plaintiffs Kirby and Deneen Plessala are Alabama citizens who reside in Mobile County, Alabama. Each currently owns 25% of the membership interests of necessary party defendant IMP. Kirby Plessala is a board-certified obstetrician gynecologist with a full-time practice in Mobile. Deneen Plessala is a licensed pediatrician.

7. On information and belief, Defendants Peter and Carla Falkner are Alabama citizens who reside in Mobile County, Alabama.

8. Necessary-party Defendant IMP is a general purpose Alabama limited liability company that was created for the purpose of developing medical device ideas. In addition to the Plessalas, IMP currently has two other members—Defendants Peter and Carla Falkner. Like the Plessalas, the Falkners each own 25% of IMP's membership interests. Previously, Carla Falkner and Deneen Plessala each owned 50% of IMP's membership interests, but in or around March 2021, IMP's operating agreement was amended to create the current ownership structure, with each of the Plessalas and Falkners owning a 25% stake.

9. Peter Falkner is the current managing member and CEO of IMP and has been since March 2021. Prior to March 2021, Carla Falkner was the managing member of IMP.

10. IMP is the organizer and managing member of several subsidiary entities, which are collectively called the “InnoMeds.” In this Complaint, IMP and the InnoMeds are collectively referred to as the “Company.”

11. IMP is the Manager of each of the InnoMeds and also holds “Class I” membership units in each InnoMed, which are the only InnoMed membership units with any voting interests. For certain InnoMeds, IMP has caused Class II membership interests to be sold to raise financing. IMP has also provided Class III memberships in certain InnoMeds to certain consultants or advisors. Class II and Class III membership interests in the InnoMeds generally have the same economic rights as Class I membership interests, but have no voting rights.

12. Relevant here are InnoMed One, LLC (“InnoMed One”), InnoMed Two, LLC (“InnoMed Two”), InnoMed Five, LLC (“InnoMed Five”), InnoMed Seven, LLC (“InnoMed Seven”), and InnoMed Eight, LLC (“InnoMed Eight”), each of which also are general purpose Alabama limited liability companies. Each of the foregoing InnoMeds was formed for the purpose of inventing and developing one or more medical devices. The Falkners have solicited and obtained investment for InnoMeds One, Two, and Five. IMP has not obtained investment for any other InnoMed, but on information and belief, Peter Falkner has solicited investment for InnoMeds Seven and Eight. While IMP remains the manager and sole Class I member of InnoMeds One, Five, Seven, and Eight, IMP no longer has any ownership interest in or control over InnoMed Two.

13. Defendant Synergy Management & Co., LLC (“Synergy”) is a general purpose Alabama limited liability company. Synergy was organized by Defendant Carla Falkner. On information and belief, Carla Falkner is Synergy’s only member.

JURISDICTION AND VENUE

14. This Court has original jurisdiction over this action pursuant to Alabama Code §§ 12-11-30 and 12-11-31 because the matter in controversy exceeds \$10,000 exclusive of interests and costs. This action is also equitable in nature under Alabama Rule of Civil Procedure 23.1.

15. This Court has personal jurisdiction over all of the Defendants. On information and belief, Defendants Peter and Carla Falkner are Alabama citizens. Defendant Synergy is an Alabama limited liability company, and on information and belief its sole member, Carla Falkner, is an Alabama citizen. Necessary-party defendant IMP is an Alabama limited liability company, and, on information and belief, all four of its members are Alabama citizens.

16. Venue is proper in Mobile County, Alabama because, among other things, (1) Plaintiffs Kirby and Deneen Plessala reside in Mobile County, (2) on information and belief, Defendants Peter and Carla Falkner reside in Mobile County, (3) the principal place of business for Defendant Synergy Management & Co., LLC is in Mobile County, (4) the principal place of business for Necessary-party defendant IMP is in Mobile County, and (5) a substantial part of the events or omissions giving rise to the claims asserted herein occurred in Mobile County.

FACTUAL ALLEGATIONS

I. Creation of IMP

17. The genesis of the Plessalas and Falkners' business relationship dates back to 2016. At that time, Dr. Kirby Plessala was (and still is) a practicing OB-GYN in Mobile, Alabama. Peter and Carla Falkner learned that Kirby Plessala had an idea for a medical device, which potentially could reduce complications and increase fertility outcomes for a particular infertility treatment.

18. The particular infertility treatment was intrauterine insemination, or IUI, wherein insemination fluid is placed directly into the uterus using a small catheter. With the IUI procedure, a known complication is the "reflux" or "regurgitation" of insemination fluid back into the vagina.

The current standard of care to prevent or reduce reflux in an IUI procedure is through the use of a “vaginal sponge,” which is essentially a large tampon wrapped in a sterile plastic bag. The vaginal sponge, however, can be uncomfortable or even painful for women, causing trauma to the vagina or cervix. It also is not always effective at reducing reflux or regurgitation, which could reduce the fertility rate of the IUI procedure.

19. Dr. Kirby Plessala’s medical device idea was for a more comfortable, less traumatic, and more effective device to combat reflux during the IUI procedure. Called “SemSecure,” Dr. Plessala envisioned a temporary cervical plug that would better fit the female anatomy and more effectively stay in place after an IUI procedure, reducing the possibility that insemination fluid injected into the female cervix and uterine cavity during the procedure would be able to leak back into the vaginal canal. SemSecure was specifically designed to address a variety of known issues of using a vaginal sponge in an IUI procedure, including compatibility with female anatomic makeup, ease of placement, securing the insemination fluid, and comfort and ease of extraction.

20. After the Falkners learned about Kirby’s medical device idea, they told the Plessalas that they could help turn that idea into an actual FDA-cleared medical device. They touted what they claimed were Peter Falkner’s extensive experience developing medical devices. For example, Peter Falkner claimed to have spent the prior thirty years of his career bringing medical devices to market and managing medical device companies.

21. As a result of the Falkners’ representations, the Plessalas decided to partner with them to develop the “SemSecure” medical device. Over the next several months. Dr. Kirby Plessala, who continued to maintain his full-time medical practice, worked with Peter Falkner in

his off hours to develop the SemSecure idea, which included developing a working prototype that Dr. Kirby Plessala then used to test on his own patients.

22. While that work was ongoing, the Falkners made another proposition to the Plessalas. At a dinner in August 2016, the Falkners proposed to the Plessalas that the four of them create a company to develop the medical device ideas of not only Dr. Kirby Plessala, but also other physicians. According to Peter Falkner, the Falkners and Plessalas could finance the endeavor principally by soliciting investment from investors. The Falkners again touted Mr. Falkner's educational credentials and purported background in developing medical devices and managing medical device companies. During the dinner as well as thereafter, the Falkners particularly touted Peter Falkner's supposed extensive experience and expertise securing patents for medical devices, organizing and conducting medical field tests, raising investment funds from private investors, running and owning similar businesses, and successfully bringing medical devices to market. The Falkners also touted Carla Falkner's purported extensive business experience running what she claimed was a large, successful family-controlled corporation.

23. Although the Plessalas had reservations about the idea, given their personal lack of experience in running a startup business or developing a medical device, they trusted the Falkners' representations that the Falkners would be primarily responsible for running the business and raising investor moneys, leaving the Plessalas to principally focus on the medicine and science. As a result, the Plessalas agreed to enter into business with the Falkners. The resulting company, IMP, was born.

24. As it turned out, however, many of the Falkner's representations concerning their background and experience were false or misleading. In particular, on information and belief, the Falkners significantly overstated Peter Falkner's prior experience in medical device development.

For example, Mr. Falkner repeatedly held himself out as having significant management or executive experience at medical device companies. But on information and belief, Mr. Falkner actually had little to no such relevant experience. Although he had prior experience working in the medical device industry, on information and belief, he was never a manager or executive of a medical device company. And on information and belief, the Plessalas also have found no evidence that Mr. Falkner had any prior experience raising funds from investors.

25. Further, on information and belief, Mr. Falkner's representations about his educational credentials were also false and misleading. Mr. Falkner claimed he had an undergraduate degree from Auburn University and a master's degree from UAB. But on information and belief, Mr. Falkner has neither such degree. According to records provided to the Plessalas from the National Student Clearinghouse, while Mr. Falkner was, at one point, enrolled at Auburn and then UAB, there is no record that he obtained degrees from either institution.

26. In addition, on information and belief, Carla Falkner's representations about her background and experience running what she claimed was a large, successful, family-controlled corporation were also false and misleading. On information and belief, Carla Falkner did not manage her father's business, MC Williams Contracting; her only role was as "Secretary/Treasurer."

27. In addition, Peter Falkner also repeatedly touted to the Plessalas that the management and founders of the medical device companies he had allegedly managed—including himself—had "gotten rich" off of the income generated from licensing or royalty fees. But while touting his supposed ability to live off of licensing fees from prior medical device ideas he claimed to have brought to market, Mr. Falkner did not tell the Plessalas the highly material fact that he was in the midst of a personal bankruptcy proceeding under Chapter 7. According to filings made

in that proceeding, Mr. Falkner's personal income in 2015 was just \$42,000, while his liabilities exceeded \$630,000. In other words, while pushing the Plessalas to embark on a business venture that would require the raising of investor funds, Mr. Falkner failed to disclose that without the IMP business venture, he had no other source of personal income that would be sufficient to cover his liabilities. And while touting his supposed prior successes in bringing medical devices to market and achieving royalty revenues, as well as his supposed ability to manage a company, including its finances, he failed to tell the Plessalas that he was in the midst of a bankruptcy proceeding for being unable to manage his personal finances or pay his personal debts.¹ The Falkners similarly did not tell the Plessalas that Carla Falkner also had a personal bankruptcy proceeding in or around 2012.

28. The Plessalas never would have agreed to partner with the Falkners had they known any of the foregoing facts that were concealed from them by suppression or misrepresentation, including Mr. Falkners' overstated credentials, lack of relevant educational experience, and both Falkners' history of personal bankruptcies. But the Plessalas did not know that information because the Falkners misleadingly concealed it. Instead, the Plessalas trusted the Falkners' representations about their background and experience. And the Plessalas trusted the Falkners' representations that the Falkners had the experience necessary to run a medical device startup. The Plessalas reasonably relied on the Falkners false or misleading statements and as a result of those statements, the Plessalas agreed to partner with the Falkners in forming IMP and also to give the Falkners control over the management of IMP.

¹ Peter Falkner's bankruptcy proceeding closed on September 8, 2016, but was subsequently reopened in September 2021 so that Mr. Falkner could attempt to avoid a judicial lien. The case closed again in January 2022. *See In re Falkner*, Pet. No. 15-02514 (Bankr. S.D. Ala. 2015) (Oldshue, J.). At no point in time has Mr. Falkner ever disclosed to the Plessalas the existence of this bankruptcy proceeding.

II. Management and Structure of IMP

29. From there, Peter Falkner largely orchestrated the corporate strategy, either directly or through his wife, Carla. First, Peter Falkner developed the Company's plan to use the InnoMed subsidiaries to develop each medical device idea. Intellectual property for a medical device idea would be assigned to an applicable InnoMed. Then, investor funds would be raised via selling non-voting membership interests in that InnoMed to investors, rather than selling membership interests for IMP. IMP would maintain control over each InnoMed, as managing member and the holder of all membership interests with voting rights. Neither the Plessalas nor the Falkners would have any direct ownership interest in any InnoMed. Peter Falkner explained that in his experience in the medical device industry, this was always how he had developed medical devices.

30. Then, Peter Falkner devised the specific ownership structure of IMP. Initially, only Deneen Plessala and Carla Falkner had ownership interests in IMP. According to Peter Falkner, he wanted a "female face" for the Company, which, he claimed, better positioned the Company to take advantage of certain programs targeted to provide support for women-owned businesses. Later, in March 2021, the IMP operating agreement was amended to give each of Peter and Carla Falkner and Kirby and Deneen Plessala a 25% stake in IMP.

31. The Falkners and Plessalas also divvied up their respective roles in the venture. Carla Falkner, who had no medical or science background or relevant experience developing medical devices, acted as the Company's initial Manager. As Manager, Carla Falkner had control over the management, business, and affairs of the Company. Other than certain corporate actions specifically identified in IMP's operating agreement that required a unanimous vote, Carla Falkner had the full and complete duty and right to manage and control the Company's day-to-day affairs. This included the discretion to make all decisions and take any necessary or appropriate action in

connection with the Company's business. Carla Falkner had principal control over all Company bank, credit card, and financial accounts, and thus control over who would be paid, when, and how much.

32. Peter Falkner, at his own request, was initially neither a member, director, officer, or even employee of IMP, despite the fact that he was the only one of the four founders who claimed to have experience running a medical device company. Instead, until March 2021, Peter Falkner's official role was as a "consultant" to IMP and the InnoMeds via Carla Falkner's company, Synergy. In fact, for the first several years of the Company's existence, both Peter and Carla Falkner were principally compensated indirectly, via Synergy.

33. Despite not having any formal title, Peter Falkner was the de facto person in charge of the Company from the outset. He developed budgets, identified third party vendors to hire for both business and medical device development tasks, and controlled decision-making over how much money to raise, from whom to seek it, and on what terms. Peter Falkner was in charge of all investment solicitation for the InnoMeds, negotiations over the terms of investment, disclosures to investors and potential investors, and regulatory filings.

34. In March 2021, Peter Falkner became IMP's official Manager and CEO. Under the IMP operating agreement, as Manager, Peter Falkner currently has the overall management and control over the business and affairs of the Company. Other than certain corporate actions specifically identified in IMP's operating agreement, Peter Falkner has the full and complete duty and right to manage and control the Company's day-to-day affairs and the right to make all decisions and take any necessary or appropriate action in connection with the Company's business. Until recently, Carla Falkner maintained primary control over Company accounts and spending.

35. In contrast to the Falkners, the Plessalas' primary roles with IMP and the InnoMeds have been to contribute to the development of each medical device. Kirby Plessala maintained his full-time medical practice, but contributed medical device ideas, worked with engineers to design and develop prototypes of those ideas, and conducted clinical trials of certain medical devices on his own patients. Deneen Plessala, meanwhile, elected to forego a return to private practice as a pediatrician, and instead used her medical background to become the company's principal clinical researcher. She also assisted with a variety of administrative tasks, including helping to maintain corporate records, such as investor lists and subscription agreements. From time to time, Deneen also facilitated communications and coordination with various third-party vendors.

III. The InnoMeds

36. IMP has created, and then assigned intellectual property to, eight separate InnoMeds. Relevant here are InnoMeds One, Two, and Five, the only three for which investor money was raised, as well as InnoMeds Seven and Eight, for which no investor money has yet been raised.

37. InnoMed One was used to develop Kirby Plessala's idea for the "SemSecure" device discussed above. The intellectual property for that device was assigned to InnoMed One and funding for the development of that device was raised through InnoMed One.

38. InnoMed Two was used to develop an idea by a different physician (Dr. Matthew McIntyre, a urologist) for a novel type of catheter. The intellectual property for that device was assigned to InnoMed Two and funding for the development of that device was raised through InnoMed Two. InnoMed Two was subsequently renamed and its intellectual property was later assigned to a different company. IMP no longer has any interest in InnoMed Two.

39. InnoMed Five was used to develop a different idea of Dr. Kirby Plessala's, for a device used to make abrasions on the endometrial lining of the uterus, which potentially can improve fertility by enhancing the likelihood of egg implantation. The intellectual property for that abrasion device was assigned to InnoMed Five and funding for the development of that device was raised through InnoMed Five.

40. InnoMed Seven was used to develop several other ideas of Dr. Kirby Plessala's, including for a new method to perform the IUI procedure, complete kits for performing the IUI procedure using that method, and for kits related to two different endometrial abrasion procedures. Intellectual property for those ideas has been assigned to InnoMed Seven. On information and belief, Peter Falkner has solicited investment into InnoMed Seven, but on information and belief, no investor funds have yet been raised for that entity.

41. InnoMed Eight was used to develop two other ideas of Dr. Kirby Plessala's, a home semen collection device and a cannulated cervical dilator. Intellectual property for those ideas has been assigned to InnoMed Eight. On information and belief, Peter Falkner has solicited investment into InnoMed Eight, but on information and belief, no investor funds have yet been raised for that entity.

IV. Falkners' Use of Investor Funds

42. In total, across InnoMeds One, Two, and Five, the Falkners have raised over \$10 million since 2017. The approximate breakdown of this fundraising by entity and by year is as follows:

	InnoMed One	InnoMed Two	InnoMed Five
2017	\$1,000,000	\$370,944	-
2018	\$825,000	\$832,806	-
2019	\$423,000	\$2,594,924	\$50,000
2020	\$175,000	-	\$1,485,000
2021	\$2,262,550	-	\$115,000

TOTAL	\$4,685,550	\$3,798,674	\$1,650,000
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43. At no point in time prior to raising investment did the Falkners ever cause IMP or any of the InnoMeds to file any notification with the U.S. Securities Exchange Commission (the “SEC”), the Alabama Securities Commission (the “ASC”), or any other regulator that securities in InnoMeds One, Two, and Five were being offered for sale to investors. Even after discovering in 2020 that the InnoMeds should have filed but failed to file Forms D with the SEC prior to selling securities, the Falkners continued to sell securities in InnoMeds One and Five, while soliciting investment in InnoMeds Seven and Eight, without causing those entities to file Forms D.

44. In addition to the amounts raised for the InnoMeds identified above, the Plessalas also provided a \$100,000 loan to IMP in May 2019. This loan has never been repaid. IMP also obtained and maxed out a \$250,000 line of credit from Regions Bank, which was personally guaranteed by Carla Falkner and Deneen Plessala. Despite having sufficient funds to repay that line of credit in years prior, on information and belief, the Falkners have caused IMP to pay only the minimum payment amounts.

45. On information and belief, the Falkners have paid themselves, either directly or as compensation to Carla Falkner’s company, Synergy, nearly \$5 million of the approximately \$10 million raised for the InnoMeds.

46. Specifically, on information and belief, between 2017 and 2021, the Falkners paid themselves:

- a. nearly \$1.87 million from InnoMed One;
- b. over \$1.56 million from InnoMed Two;
- c. nearly \$1.23 million of the \$1.65 million raised for InnoMed Five; and
- d. over \$113,000 from IMP.

In addition, on information and belief, in 2022, the Falkners have paid themselves an additional \$225,000 from InnoMed One and/or InnoMed Five. Many of these payments are identified in financial records as being for “research and development” or “consulting,” rather than as compensation for “management.”

47. The amounts the Falkners have paid themselves were well above market rates for the work the Falkners did for IMP and the InnoMeds.

48. On information and belief, the amounts the Falkners paid themselves also were well above the amounts the Plessalas and investors had been told the Falkners would pay themselves for their work. For example, many investors were informed at the time of investment that the founders of IMP would be compensated for the work they did managing the Company and developing its technologies, *if* the Company was able to raise sufficient funds both to pay the founders while also covering other budgeted developmental expenses, like clinical trials, engineering work, and regulatory filings. However, on information and belief, the Falkners have repeatedly paid themselves *first* as new investor funds were raised and have failed to retain sufficient investor funds to pay third party vendors or other essential development costs.

49. Plus, on information and belief, the Falkners have also used investor funds raised for one InnoMed entity to pay for work done by the Falkners for another InnoMed entity. For example, on information and belief, the Falkners have used investor funds raised for InnoMeds One and/or Five to pay for work the Falkners performed for InnoMeds Seven and/or Eight, even though no investor funds have been raised for InnoMeds Seven and/or Eight.

50. Throughout the life of the Company, the Plessalas were unaware at the time of precisely how much the Falkners were paying themselves. In Spring of 2020, Peter Falkner told the Plessalas that no founder, including the Falkners, would be paid because there were insufficient

funds to pay the founders. On information and belief, Peter Falkner also told at least some potential investors the same thing in 2020 and 2021: that the founders were not being paid for their work at all. While this statement was true for the Plessalas, who have only been paid \$15,000 in total since April 2020, despite continuing to work for the Company, it was not true for the Falkners. Instead, on information and belief, the Falkners have collectively paid themselves millions of investor dollars since Spring of 2020.

51. On top of the amounts that the Falkners have paid themselves (or Synergy) as compensation, on information and belief, the Falkners have also used Company funds to pay for tens to hundreds of thousands of dollars' worth of personal expenses, including meals, flights, gas, car washes, clothes, home repairs, supplements, and other personal expenses. As just a few examples, on information and belief, the Falkners used Company funds to pay for over \$28,000 in plane tickets via British Airways to England so that Carla Falkner could record music at the Abbey Road Studios for her personal music career. In total, more than \$120,000 of IMP expenses are allocated to the Falkners' "travel." In addition, the Falkners also used Company funds to pay thousands of dollars for concert or event tickets, including \$1,754.99 for Kenny Chesney tickets, \$1,525.81 for Luke Bryan tickets, and \$3,066.45 for tickets to the Country Music Awards. Other personal expenses that the Falkners used Company funds to pay for include clothing (\$5,229.32 to the "Locker Room," a men's clothing store), event photography for Carla Falkner's music business (\$3,323.19), supplements (\$1,613.86 to Gundry MD), and various automobile expenses.

52. The Falkners also failed to pay some key vendor invoices and expenses that should have been paid as a priority when investor funds were received, creating past due amounts and incurring more company debt.

V. The Falkners have exhausted investor funds and have no ability to raise more.

53. As a direct result of the Falkners' excessive compensation and misuse of investor funds, none of the InnoMed medical device ideas have completed development. For example, for InnoMed One, just two major steps remain to obtain FDA clearance: (1) conducting biocompatibility and sterility testing of the device and its packaging; and (2) submitting the FDA application. In 2021, sufficient funding was raised to complete these final developmental steps. Yet, neither step occurred, while the Falkners paid themselves approximately \$1 million (or more) of the investor funds that had been raised. Today, InnoMed One has virtually no money left to continue development.

54. Similarly, InnoMed Five also has virtually no money left to continue development. Although \$1.6 million was raised from investors, the Falkners have paid themselves as compensation nearly \$1.23 million of the investor funds. Meanwhile, InnoMed Five remains mired in the initial prototype stage of development. Had the Falkners not paid themselves so excessively, a working prototype could have been developed and other developmental milestones reached.

55. While having insufficient capital to continue development of its medical device ideas, the Company also has accrued significant indebtedness. In total, the Company owes approximately \$1 million to vendors and creditors, including \$250,000 to Regions Bank via a line of credit and \$300,000 to an investor, William Dull.

56. Put simply, the end result of the Falkners' misuse of investor funds is that the Company has no money left to fulfill its purpose of developing medical device technologies and faces significant outstanding debts. So long as the Falkners remain in charge, the Company's ability to raise additional funds to either pay off indebtedness or to continue product development is significantly impaired.

57. In particular, the Falkners' conduct has triggered an Alabama Securities Commission ("ASC") investigation. In addition, as a result of the Falkners' conduct, certain investors have made demands for the Falkners to resign as managers, to forfeit their equity in IMP, and to repay all moneys over and above \$160,000 that the Falkners paid themselves since 2021. Because of the ASC investigation, as well as the investor demand, the Company's ability to raise additional financing to pay off debt and continue the development of the technologies is significantly impaired.

58. In short, because of the Falkners' misuse of investor funds, IMP and the InnoMeds are in limbo. While the Plessalas are currently injecting their own money into the Company to pay expenses and maintain the Company's intellectual property portfolio, the Company cannot advance the development of its technologies and achieve a return for investors so long as the Falkners remain in charge. Unless and until Peter Falkner is removed as manager of IMP, the Company and the Plessalas face irreparable injury.

59. Yet, notwithstanding the ASC investigation and the investor demand, Peter Falkner continues to solicit investment in the Company without disclosing the existence of the investor demand of ASC investigation. In addition, over the past 8+ months, Peter Falkner has been aggressively attempting to sell the Company or its assets, courting numerous potential buyers or investors. In so doing, Peter Falkner has been marketing the sale of an entirely *new* company to which the assets of IMP and the InnoMeds would be transferred prior to any sale.

60. If Peter Falkner's efforts in this regard result in the encumbrance of the Company's assets (including its intellectual property), that could cause irreparable injury to IMP and the Plessalas, by making it impossible or extremely difficult for the Company to finish developing those technologies to obtain an investor return. In addition, so long as Peter Falkner remains

manager of IMP, the Company faces irreparable injury, because it is unable to raise additional, necessary financing to pay off debts and continue development of its medical device ideas.

DERIVATIVE AND DEMAND EXCUSAL AND FUTILITY

61. The Plessalas repeat and incorporate by reference all factual allegations set forth above.

62. Certain claims asserted herein are direct claims and therefore no demand is necessary.

63. For claims being asserted derivatively, the Plessalas have satisfied all statutory and procedural requirements of applicable law. The Plessalas have standing to bring this action as they are current owners of IMP membership interests and Deneen Plessala has at all times relevant to Defendants' wrongful course of conduct discussed herein been a member of IMP. Other than the Defendant Falkners, there are no remaining IMP members.

64. To the extent demand would be required under Rule 23.1 of the Alabama Rules of Civil Procedure, the Plessalas also satisfied the demand requirement by sending a demand letter on July 19, 2022, which described the basis for the Plessalas' claims and the wrongdoing engaged by the Falkners.

65. But any demand requirement under Rule 23.1 of the Alabama Rules of Civil Procedure should be excused on futility grounds, in any event. It is undisputed that Peter Falkner is the managing member of IMP. It is also undisputed that under the IMP operating agreement, the Company cannot initiate litigation unless at least 3 of the 4 members of IMP vote in favor of doing so. In other words, in addition to the Plessalas, at least one of Peter and Carla Falkner would need to vote in favor of initiating a lawsuit for the Company to bring an action.

66. This lawsuit accuses Peter and Carla Falkner—2 of IMP’s 4 members—of significant wrongdoing. Peter and Carla Falkner face significant potential damages in their individual capacities, which means they are interested in the outcome of this lawsuit. As a result, Peter and Carla Falkner are not independent and cannot be expected to evaluate independently, objectively, and fairly the allegations of this suit or direct IMP to file a lawsuit asserting—or otherwise investigating—the claims that are being made against themselves. Finally, the misconduct described above is not and was not a valid lawful exercise of the duties, responsibilities, and authority granted to Peter and Carla Falkner as managing members of IMP.

67. Thus, it is undisputed (1) that one of Peter or Carla Falkner must vote in favor of IMP filing suit in order for IMP to bring a claim, (2) that both Peter and Carla Falkner are the alleged wrongdoers in this action, and (3) that, as a result, both Peter and Carla Falkner are interested in the outcome of this action and cannot be expected to fairly and independently evaluate the merits of the derivative claims asserted herein. Therefore, demand would be futile and is excused.

COUNT I – FRAUD IN THE INDUCEMENT
(Direct action against Peter Falkner and Carla Falkner)

68. The Plessalas repeat and incorporate by reference all factual allegations set forth above.

69. As detailed above, the Falkners made numerous false or misleading statements beginning in 2016 but repeated thereafter concerning (1) Peter Falkner’s past experience in the medical device industry and managing medical device companies; (2) Peter Falkner’s educational background; and (2) the Falkners’ personal financial affairs and bankruptcies.

70. As detailed above, in 2016, the Falkners represented to the Plessalas that Peter Falkner had spent the last thirty years of his career working with medical device companies, that

he had significant experience as a clinical researcher, that he had significant experience developing medical devices and bringing them to market, and that he had significant executive or management experience with medical device companies.

71. By electing to speak about Peter Falkner's past experience in the medical device industry, the Falkners had a duty to speak truthfully and not to make false or misleadingly incomplete statements.

72. The Falkners' representations concerning Peter Falkner's past experience in the medical device industry were false or misleading when made. On information and belief, the Falkners falsely or misleadingly overstated Peter Falkner's experience as a developer of medical devices and as a manager or executive at medical device companies.

73. The Falkners knew, should have known, or acted with reckless disregard for the fact that their representations concerning Peter Falkner's past experience in the medical device industry were false or misleading when made.

74. The Falkners' representations concerning Peter Falkner's past experience in the medical device industry were material.

75. The Plessalas reasonably relied on the Falkners' false or misleading representations concerning Peter Falkner's past experience in the medical device industry and those representations induced the Plessalas into agreeing to partner with the Falkners in creating IMP. Had the Plessalas known the truth that was concealed, they would not have agreed to partner with the Falkners.

76. In 2016, the Falkners also made false or misleading statements concerning Peter Falkner's educational background. They represented that Peter Falkner had an undergraduate degree from Auburn University and a master's degree from UAB. But records from the National

Student Clearinghouse provided to the Plessalas do not show that Peter Falkner has a degree from either institution.

77. The Falkners knew, should have known, or acted with reckless disregard for the fact that their representations concerning Peter Falkner's educational background were false or misleading when made.

78. The Falkners' representations concerning Peter Falkner's educational background were material. The Plessalas reasonably relied on the Falkner's representations concerning Peter Falkner's educational background and those representations induced the Plessalas into agreeing to partner with the Falkners in creating IMP. Had the Plessalas known the truth that was concealed, they would not have agreed to partner with the Falkners.

79. In 2016, the Falkners also misleadingly concealed from the Plessalas the Falkners' history of personal bankruptcies. By electing to tout Peter Falkner's supposed success in bringing medical devices to market and generating sufficient "royalty" or licensing income to "get rich," as well as by touting their abilities to manage a medical device company, including its finances and investor funds, the Falkners assumed a duty to disclose facts that materially qualified those statements.

80. The Falkners' history of personal bankruptcies materially qualified their statements about Peter Falkner successfully developing medical devices that generated sufficient royalty income to get rich, as well as the Falkners' statements touting their ability to manage a medical device company, including its finances and investor funds.

81. The Falkners knew about their history of personal bankruptcies at the time that they were touting to the Plessalas their ability to manage a medical device company.

82. The Falkners' history of personal bankruptcies was material.

83. The Plessalas reasonably relied on the Falkner's representations concerning their ability to manage a medical device company, including its finances and investor funds. The Falkners' failure to disclose their personal history of bankruptcies induced the Plessalas into agreeing to partner with the Falkners in creating IMP. Had the Plessalas known the truth that was concealed, they would not have agreed to partner with the Falkners.

84. The Plessalas have suffered injury as a proximate consequence of the Falkners misrepresentations and suppressions of such material facts.

85. The Plessalas have suffered significant damages from the Falkners misrepresentations and suppressions, including loss of income, contributions of their own time and money, loss of reputation and good will in the community, and mental anguish.

WHEREFORE, the Plessalas demand judgment in their favor and against the Falkners for actual, consequential, compensatory damages, punitive damages, costs, interest, attorneys' fees, injunctive relief, and all such other, further, and different relief in law and equity as this Court may deem appropriate.

COUNT II – BREACH OF OPERATING AGREEMENT
(Derivative action against Peter Falkner and Carla Falkner)

86. The Plessalas repeat and incorporate by reference all factual allegations set forth above.

87. The Falkners are members of IMP, each holding a 25% stake in the company.

88. Carla Falkner is the former Manager of IMP and Peter Falkner is the current Manager of IMP.

89. IMP has an Operating Agreement which governs its management and operation.

90. The Operating Agreement is a valid and binding a contractual agreement between the members of IMP, including the Plessalas and Falkners.

91. IMP has fully performed its obligations under the Operating Agreement.

92. In contrast, as explained in more detail above, the Falkners have not performed their obligations to IMP under the Operating Agreement. As the current and former Managers of IMP, the Falkners owe duties to IMP as set forth in the Operating Agreement and by law. The Falkners have failed to fulfill those duties. In particular, the Falkners have misused investor funds and failed to fully develop the Company's medical device technologies.

93. In addition, the Falkners have treated Company assets—including Company moneys—as if they were the Falkners' own personal assets and moneys. Investor funds raised into the InnoMeds constitute the property of the InnoMeds, not the Falkners. The Falkners decision to use those investor funds to pay themselves exorbitant compensation and to pay for their personal expenses constitute the misappropriation of those funds, in violation of IMP's operating agreement.

94. The Falkners failure to perform their aforementioned obligations under the operating agreement has resulted in significant harm to IMP, including the loss of capital and company value.

WHEREFORE, the Plessalas demand judgment in their favor and against the Falkners for actual, consequential, compensatory damages, punitive damages, costs, interest, attorneys' fees, preliminary and permanent injunctive relief, and all such other, further, and different relief in law and equity as this Court may deem appropriate.

COUNT III – BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING
(Derivative action against Peter Falkner and Carla Falkner)

95. The Plessalas repeat and incorporate by reference all factual allegations set forth above.

96. The Falkners are members of IMP, each holding a 25% stake in the company.

97. Carla Falkner is the former Manager of IMP and Peter Falkner is the current Manager of IMP.

98. As members and Managers of IMP, the Falkners owed IMP and its members a duty of good faith and fair dealing.

99. Members and managers of an LLC may not waive or otherwise exculpate themselves from the duty of good faith and fair dealing under Alabama law.

100. The Falkners, instead of acting in the best interests of IMP, its members, owners, and investors in the InnoMeds, misused investor funds and paid themselves exorbitant salaries and discretionary reimbursements, and paid exorbitant fees to Carla Falkner's company, Synergy. The Falkners also prioritized paying themselves first over completing development of the Company's medical device technologies.

101. The Falkners' conduct amounts to bad faith and willful misconduct, and a violation of the duty and covenant of good faith and fair dealing.

102. The Falkners' violation of the aforementioned duty and covenant has resulted in significant harm to IMP, including the loss of capital, company value, and the continuing inability of the company to raise additional investment funding.

WHEREFORE, the Plessalas demand judgment in their favor and against the Falkners for actual, consequential, compensatory damages, punitive damages, costs, interest, attorneys' fees, preliminary and permanent injunctive relief, and all such other, further, and different relief in law and equity as this Court may deem appropriate.

COUNT IV – BREACH OF FIDUCIARY DUTY
(Derivative action against Peter Falkner and Carla Falkner)

103. The Plessalas repeat and incorporate by reference all factual allegations set forth above.

104. The Falkners are members of IMP, each holding a 25% stake in the company.

105. Carla Falkner is the former Manager of IMP and Peter Falkner is the current Manager of IMP.

106. The Falkners have, and have had, the authority to direct and oversee the activities and affairs of IMP, including managing the business, raising capital from investors, and decision-making concerning the use of investor funds.

107. The Falkners exercise, and have exercised, their authority to direct and oversee the above-stated activities and affairs of IMP.

108. As persons exercising operational control and management of the activities and affairs of IMP, the Falkners owe a fiduciary duty of loyalty and care to IMP and its members.

109. The misappropriation of IMP's and the InnoMeds' assets by the Falkners, as described herein, constitutes a willful breach of the duty of loyalty.

110. The Falkners' payment of inappropriate compensation to themselves, including via Carla Falkner's company, Synergy, constitutes a willful breach of both the duty of care and loyalty.

111. The Falkners intentionally, wantonly, or negligently breached their fiduciary duty to IMP by diverting capital and other assets of IMP or the InnoMeds for their own personal benefit.

112. IMP, its members, owners, and investors have suffered damages as a proximate result of the aforementioned breaches.

WHEREFORE, the Plessalas demand judgment in their favor and against the Falkners for actual, consequential, compensatory damages, punitive damages, costs, interest, attorneys' fees, injunctive relief, and all such other, further, and different relief in law and equity as this Court may deem appropriate, including preliminary and permanent injunctive relief.

COUNT V – CONVERSION
(Derivative action against Peter Falkner, Carla Falkner, and Synergy)

113. The Plessalas repeat and incorporate by reference all factual allegations set forth above.

114. IMP has a property interest and rights in its assets and resources, including, but not limited to, capital raised by IMP or IMP subsidiaries.

115. The Falkners have misused and wrongfully interfered with the aforementioned property rights by participating in, authorizing, and directing the distribution of Company assets to themselves and Carla Falkner's company, Synergy.

116. The Falkners have converted said property belonging to IMP or IMP's subsidiaries by misappropriating Company resources, including capital, in an amount equal to millions of dollars.

117. The Falkners misappropriation of IMP's property has resulted in significant harm to IMP, including the loss of capital, company value, and the continuing inability of the Company to raise additional investment funding.

WHEREFORE, the Plessalas demand judgment in their favor and against the Falkners for actual, consequential, compensatory damages, punitive damages, costs, interest, attorneys' fees, preliminary and permanent injunctive relief, and all such other, further, and different relief in law and equity as this Court may deem appropriate.

COUNT VI – DISSOCIATION

(Direct and Derivative action against Peter Falkner and Carla Falkner)

118. The Plessalas repeat and incorporate by reference all factual allegations set forth above.

119. The Falkners are members of IMP, each holding a 25% stake in the company.

120. Carla Falkner is the former Manager of IMP and Peter Falkner is the current Manager of IMP. Both Carla Falkner and Peter Falkner are current officers of IMP.

121. As described above, the Falkners have engaged and are engaging in wrongful conduct that has adversely and materially affected IMP's activities and affairs.

122. As described above, the Falkners have willfully and persistently committed material breaches of IMP's Operating Agreement and their duties and obligations under Alabama law as members and Managers of IMP.

123. As described above, the Falkners have engaged and are engaging in conduct related to IMP's activities and affairs that make it not reasonably practicable to carry on the activities and affairs with the Falkners as Managers or Members.

WHEREFORE, the Plessalas pray that the Court will disassociate the Falkners from their membership interests in IMP under Alabama Code § 10A-5A-6.02(e), award the Plessalas their attorneys' fees and costs, and award all such other, further, and different relief in law and equity as this Court may deem appropriate, including preliminary and permanent injunctive relief.

COUNT VII – CONSPIRACY

(Direct and Derivative action against Peter Falkner, Carla Falkner, and Synergy)

124. The Plessalas repeat and incorporate by reference all factual allegations set forth above.

125. Peter Falkner, Carla Falkner, Synergy, and possibly others have acted together, in concert with each other, in civil conspiracy to commit the violations and breaches of duty alleged herein, including conversion, thereby violating the aforesaid contractual and legal duties to IMP.

126. IMP was damaged and may continue to incur damages as a proximate result of the civil conspiracy committed by these Defendants.

WHEREFORE, the Plessalas demand judgment in their favor and against the Falkners for actual, consequential, compensatory damages, punitive damages, costs, interest, attorneys' fees,

injunctive relief, and all such other, further, and different relief in law and equity as this Court may deem appropriate.

Dated: September 8, 2022

/s/ Zachary A. Madonia

Zachary A. Madonia

J. Thomas Richie

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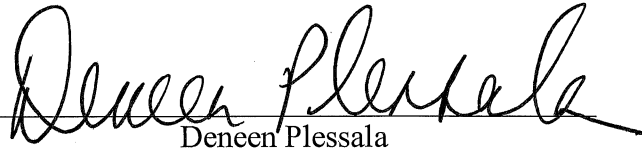
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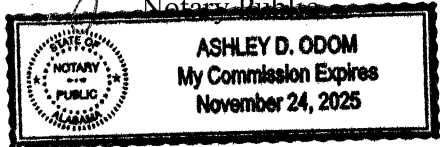
VERIFICATION

STATE OF ALABAMA)
)SS:
 COUNTY OF MOBILE)

Deneen Plessala, having been duly sworn, states that she has read the foregoing Verified Complaint and that the factual allegations therein are, to the best of her knowledge and belief, which are based upon her personal knowledge, as well as the records and reports of same, true and accurate. Where noted, allegations are based upon information and belief to the best of Deneen Plessalas' personal knowledge and belief.


 Deneen Plessala

SWORN TO BEFORE ME, and subscribed in my presence, this 8th day of September,
 2022.


 Notary Public


**PLAINTIFF DEMANDS A TRIAL BY JURY
 ON ALL ISSUES AND CLAIMS SO TRIABLE**

DEFENDANTS TO BE SERVED VIA PROCESS SERVER AS FOLLOWS:

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Mobile, AL 36604

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c/o Carla W. Falkner, Registered Agent
31 Lee Street
Mobile, AL 36604

Mrs. Carla Falkner
1013 August Street
Mobile, AL 36604

Innovative Medicine Partners, LLC
c/o Carla W. Falkner, Registered Agent
1013 August Street
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/s/ Zachary A. Madonia
OF COUNSEL