



IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

PETER FALKNER and CARLA FALKNER

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PLAINTIFFS,

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v.

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CASE NO.: 02-CV-2024- 900997

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**OVUM MEDICAL, LLC; INNOVATIVE
MEDICINE PARTNERS, LLC; KIRBY
PLESSALA; DENEEN PLESSALA and
ALICE CRISCI,**

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DEFENDANTS.

FIRST AMENDED COMPLAINT

COME NOW, Peter Falkner and Carla Falkner, Plaintiffs in the above-styled cause, and file the following Complaint against Defendants Ovum Medical, LLC (“Ovum”), Innovative Medicine Partners, LLC (“IMP”), Kirby Plessala, Deneen Plessala and Alice Crisci (“Crisci”):

BACKGROUND

1. Plaintiffs Peter Falkner and Carla Falkner (collectively referred to as “the Falkner’s”) are adult residents of the state of Alabama.

2. Ovum is a foreign limited liability corporation doing business in Mobile County, Alabama.

3. Kirby Plessala and Deneen Plessala (collectively referred to as “the Plessala’s”) are adult residents of Mobile County, Alabama.

4. Innovative Medicine Partners, LLC (“IMP”) is an Alabama limited liability corporation doing business in Mobile County, Alabama.

5. Upon information and belief, Crisci is a founding member of Ovum and is doing business in Mobile County, Alabama.

6. Until recently, the Falkner's were 50% owners of IMP, InnoMed One, LLC, InnoMed Five LLC, InnoMed Seven, LLC ("InnoMed Seven") and InnoMed Eight, LLC (collectively referred to as "the InnoMeds"). InnoMed Seven owned patents for certain medical devices and/or methods to increase fertility outcomes. The InnoMeds are Alabama limited liability companies. Peter Falkner was one of the concept thought holders, designers and developers of patent pending devices applied in design, utility, methods of use and kits for infertility procedures as co-inventor and co-patent holder of all patents, including design, utility, method and kits that were assigned to IMP and to all InnoMeds, subsidiaries and other companies controlled by IMP.

7. On September 8, 2022, the Plessala's, who at the time were also 50% owners of IMP and the InnoMeds, filed suit derivatively on behalf of IMP against the Falkner's in the Circuit Court of Mobile County, Alabama, case number 02-CV-2022-901579.

8. On September 29, 2022, Benjamin Murphy, William Dull, Lindsay Blankenship, Alexander Blankenship, Gail Wilson and Louie Wilson (collectively "The Investors"), individually and derivatively on behalf of InnoMed One, LLC and InnoMed Five, LLC, filed suit against the Falkner's in the Circuit Court of Mobile County, Alabama, case number 02-CV-2022-901720. Court cases 02-CV-2022-901720 and 02-CV-2022-901579 are collectively referred to herein as "the Lawsuits").

9. On or about November 8, 2023, the parties to the Lawsuits entered into a Settlement Agreement and General Mutual Release ("the Settlement Agreement") to settle all claims set forth in the Lawsuits.

10. The portion of the Settlement Agreement pertinent to the claims set forth in this complaint provides as follows:

a. Subject to the Floor defined subparagraph (b) below and the Cap defined in this paragraph below, the Earnout Right shall be triggered, if at all, by the occurrence of any of the following three events (each a “Triggering Event”): (1) change of control of IMP or the InnoMeds (or any successor(s)), (2) the sale of any of the Existing Intellectual Property, or (3) the payment by IMP or the InnoMeds (or any successor(s)) of a distribution of cash, other than distributions made for tax purposes, from the commercialization of Existing Intellectual Property to investors/members/owners. If a Triggering Event occurs, IMP will pay the Falkners, collectively, in an amount capped at \$5,000,000 in the aggregate across any payments made at any point in time to the Falkners pursuant to this Earnout Right (the “Cap”), 15% of any net proceeds distributed to members of IMP or the InnoMeds from such Triggering Events(s), after the Floor has been met.

11. As part of the Settlement Agreement, the Falkner’s agreed to assign to IMP and/or to the InnoMeds their collective 50% interest in IMP and the InnoMeds and “any intellectual property of any kind and character, developed, in whole or in part, by the Falkner’s in the fertility space since IMP’s inception, completely relinquishing any and all rights of any kind and character thereto.”

12. The patents owned by InnoMed Seven, unless transferred to another entity, includes a method patent for a procedure that utilizes Endometrial Abrasion to substantially increase a female’s chance of getting pregnant.

13. Upon information and belief, Ovum, the Plessala’s and Crisi (collectively “the Ovum Defendants”) have been using and are using the InnoMed Seven patents and possibly others owned by IMP and/or the InnoMeds, to make money without fair compensation to IMP, which in turn, denies the Plaintiffs the compensation that they are entitled to under the

Settlement Agreement. IMP is complicit in this arrangement that allows the Ovum Defendants to use the InnoMed patent without receiving fair compensation.

14. Upon information and belief, the Defendant Ovum has numerous partners and associated entities that are utilizing the methods, devices and procedures of the InnoMeds' patents to make profit, part of which is not being paid to the Plaintiffs pursuant to the terms of the Settlement Agreement.

COUNT ONE
BREACH OF CONTRACT

15. Plaintiffs adopt and reallege the allegations set forth in in paragraphs 1-14 of the Complaint as is set forth fully and completely herein.

16. IMP has breached the terms of the Settlement Agreement by allowing the Ovum Defendants the use of the InnoMeds patents without fair compensation in order to avoid compensating the Investors and the Plaintiffs.

17. As a proximate result of Defendant IMP's breach of contract, Plaintiffs have been caused to suffer damage, including but not limited to the proceeds that Plaintiffs are entitled to under the Settlement Agreement.

WHEREFORE, the above-premises considered, Plaintiffs demand judgment against Defendant IMP for compensatory damages, attorney's fees, costs of court and such other relief allowed by Alabama law.

COUNT TWO
TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS

18. Plaintiffs adopt and reallege the allegations set forth in in paragraphs 1-17 of the Complaint as is set forth fully and completely herein.

19. The Ovum Defendants have tortiously interfered with Plaintiffs' rights under the Settlement Agreement. The Ovum Defendants have actual knowledge of the Settlement Agreement and willfully and intentionally interfered with said contract without justification.

20. As a proximate result of this interference, Plaintiffs have suffered or will suffer damage, including but not limited to, lost proceeds from the settlement, mental anguish and emotional distress.

21. The Ovum Defendants acted with malicious intent and/or reckless indifference to Plaintiffs' rights, thereby entitling Plaintiffs to an award of punitive damages.

WHEREFORE, the above-premises considered, Plaintiffs demand judgment for compensatory and punitive damages against Defendants Ovum, the Plessala's and Crisi for an amount in excess of \$50,000, plus costs and other damages allowed under Alabama law.

Respectfully submitted,

/s/ Thomas H. Benton, Jr.

THOMAS H. BENTON (BEN028)

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DEFENDANTS TO BE SERVED VIA CERTIFIED MAIL BY CLERK:

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