



IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

**INNOVATIVE MEDICINE
PARTNERS, LLC, INNOMED ONE,
LLC, CARLA W. FALKNER and
DENEEN T. PLESSALA**

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Plaintiffs/Counterdefendants

CASE NO. CV-18-900205

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v.

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**JACK SOLBERGER, DONNA BAIN
SMITH, SOLBERGER & SMITH, L.L.P., *
and JACK SOLBERGER, P.C.**

*

Defendants/Counterclaimants.

DEFENDANTS' ANSWER AND COUNTERCLAIM

COME NOW The Defendants identified in Plaintiff's Complaint as Jack Solberger, Donna Bain Smith, Solberger & Smith, L.L.P and Jack Solberger, P.C., and in response to the allegations contained therein state as follows:

1. Defendants admit jurisdiction is proper in this Court. All other allegations are denied.
2. Defendants admit venue is proper in this Court. All other allegations are denied.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.

10. Denied.

11. The allegations contained in this paragraph are not directed toward these Defendants, and as such no response is required. To the extent that the allegations contained in this paragraph are directed toward these Defendants, they are denied.

12. Admitted.

13. Defendants are without sufficient information to admit or deny the allegations contained in this paragraph, and as such they are denied.

14. These Defendants admit that they were approached by Plaintiffs to provide accounting related services and that they were also solicited by Plaintiffs to become investors in IMP. All other allegations are denied.

15. These Defendants admit that they reached an agreement to provide accounting services to IMP and its subsidiaries, and that they each individually purchased an interest in IMP. All other allegations contained in this paragraph are denied.

16. These Defendants admit that they each paid \$10,000.00 in return for 5% membership interests (each) in IMP. Defendants agreed to provide accounting services to IMP and its subsidiaries on a delayed payment basis. Defendants deny that they ever agreed to provide free accounting services to IMP. All other allegations contained in this paragraph are denied.

17. These Defendants admit that a meeting was held in January 2017 wherein they paid for and received their membership interests in IMP, and an amended IMP limited liability company agreement was executed. All other allegations contained in this paragraph are denied.

18. These Defendants admit that they performed their accounting services in a competent, ethical and professional manner and that they deal in good faith with their clients. All other allegations in this paragraph are denied.

19. Defendants admit that they provided accounting services to IMP and to IMP's subsidiaries under a delayed payment arrangement. Defendants deny that they did not charge or invoice IMP or its subsidiaries. All other allegations contained in this paragraph are denied.

20. Denied.

21. Denied.

22. Denied.

23. These Defendants agree that on or about August 15, 2017 they notified IMP that they would no longer perform any professional services for IMP or its subsidiaries. Defendants deny that this breached a contract or an agreement, and deny all other allegations contained in this paragraph.

24. Denied.

25. These Defendants admit that they are full members of IMP, that they expect to receive all rights and privileges of membership, and that they informed Plaintiffs as much. All other allegations contained in this paragraph are denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. These Defendants admit one or more Plaintiffs attempted to purchase their interests in IMP, and that they refused to sell them. All other allegations are denied.

32. Denied.

33. Denied.

COUNT ONE
BREACH OF CONTRACT

34. Defendants reiterate their responses to the previous allegations as if fully set forth herein.

35. Denied.

36. Denied.

COUNT TWO
CONVERSION

37. Defendants reiterate their responses to the previous allegations as if fully set forth herein.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

COUNT THREE
DEFAMATION – LIBEL

43. Defendants reiterate their responses to the previous allegations as if fully set forth herein.

44. Denied.

45. Denied.

46. Denied.

COUNT FOUR
INTENTIONAL INTERFERENCE WITH CONTRACTURAL RELATIONS

47. Defendants reiterate their responses to the previous allegations as if fully set forth herein.

48. Denied.

49. Denied.

50. Denied.

COUNT FIVE
BREACH OF FIDUCIARY DUTIES

51. Defendants reiterate their responses to the previous allegations as if fully set forth herein.

52. Denied.

53. Denied.

COUNT SIX
DECLARATORY JUDGMENT

54. Defendants reiterate their responses to the previous allegations as if fully set forth herein.

55. Admitted.

56. Admitted.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.
63. Defendants deny Plaintiffs are entitled to any relief requested in Paragraph 63, including the relief requested in sub-parts a-f.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint, in each and every allegation contained therein, fails to state a claim for which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs Deneen Plessala and Carla Falkner lack standing to assert any of their claims.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs Deneen Plessala and Carla Falkner are not real persons in interest.

FOURTH AFFIRMATIVE DEFENSE

The Defendants did not proximately cause the damages complained of by Plaintiffs.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs have suffered no damage.

SIXTH AFFIRMATIVE DEFENSE

Defendants plead setoff/ recoupment.

SEVENTH AFFIRMATIVE DEFENSE

Defendants plead that they are entitled to indemnification.

EIGHTH AFFIRMATIVE DEFENSE

Defendants plead the Doctrine of Reasonably Equivalent Value.

NINETH AFFIRMATIVE DEFENSE

The damages suffered by the Plaintiffs, if any, were proximately caused by the independent, intervening actions of a third party.

TENTH AFFIRMATIVE DEFENSE

Defendants please the Doctrine of Unclean Hands.

ELEVENTH AFFIRMATIVE DEFENSE

The damages suffered by Plaintiffs, if any, were caused in whole or in part by the Plaintiffs themselves.

TWELVETH AFFIRMATIVE DEFENSE

Defendants plead justification.

THIRTEENTH AFFIRMATIVE DEFENSE

To the extent that the Plaintiffs have suffered damages, they failed to mitigate them.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are false.

FIFTEENTH AFFIRMATIVE DEFENSE

It would be contrary to public policy to allow Plaintiffs to recovery on their claims.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendants plead Plaintiffs' acquiescence.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs may not recover due to the illegality of their actions.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs may not recover due to their failure to perform.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiffs may not recover due to their unethical, unlawful, illegal and bad faith behavior.

TWENTIETH AFFIRMATIVE DEFENSE

Defendants plead the doctrines of waiver, estoppel, acquiescence, and consent.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs may not recover because of their unconscionable conduct.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs may not recover due to their fraudulent inducement of Defendants to enter into their business relationship.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiffs Deneen Plessala and Carla Falkner may not recover due to their lack of privity.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Defendants plead the doctrines of impossibility, prevention, and frustration.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiffs may not recover due to the lack of consideration.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiffs may not recover due to lack of condition precedent.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs may not recover on their conversion claim due to the possessory interest of the Defendants.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs may not recover on their conversion claim due to the non-existence of the property they seek.

TWENTY-NINETH AFFIRMATIVE DEFENSE

Plaintiffs may not recover on their conversion claim against the Defendants due to Plaintiffs unlawful and illegal acts.

THIRTIETH AFFIRMATIVE DEFENSE

Plaintiffs may not recover from Defendants due to their acceptance of the return of certain goods.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs may not recover from the Defendant because certain goods were never in the Defendants possession.

THIRTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs may not recover on their defamation/ libel claims because the alleged statements are not libel per se.

THIRTY-THIRD AFFIRMATIVE DEFENSE

Plaintiffs may not recover on their defamation/libel claims because the alleged statements are true.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiffs may not recover on their defamation/libel claims because its alleged statements were merely statements of opinion.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiffs may not recover on their defamation/libel claim because of Defendants' qualified privilege.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiff's may not recover on their defamation/libel claim because they have failed to state with specificity what the alleged defamatory statement was, or who it was published to.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs may not recover because they have suffered no injury.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs may not recover because of the lack of causation.

THIRTY-NINETH AFFIRMATIVE DEFENSE

Plaintiffs may not recover for intentional interference with contractual relations because they have failed to plead the name of the person or party Defendants allegedly interfered with.

FORTIETH AFFIRMATIVE DEFENSE

Plaintiffs may not recover for intentional interference with contractual relations because Defendants cannot interfere with a relationship that already existed between Plaintiffs, themselves, and a third party. Defendants were not strangers to any business relationships between these parties.

FORTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs may not recover for intentional interference with contractual relations because Defendants cannot interfere with a relationship that already existed between themselves and a third party.

FORTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs may not recover for intentional interference with contractual relations because any alleged actions taken by Defendants were done to protect their interests.

FORTY-THIRD AFFIRMATIVE DEFENSE

Any alleged interference by Defendants was justified.

FORTY-FOURTH AFFIRMATIVE DEFENSE

Defendants did not intentionally interfere with any contractual relations between Plaintiffs and third parties.

FORTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to plead circumstances that create a fiduciary duty.

FORTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to specify how, or why, a fiduciary duty allegedly exists between Plaintiffs and Defendants.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to a jury on their claim for declaratory judgment.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to attorney's fees.

FORTY-NINETH AFFIRMATIVE DEFENSE

To the extent that the Counterclaim Plaintiffs' Complaint demands punitive damages and such damages might or could be awarded against these Counterclaim Defendants in this action, the award of punitive damages under Alabama Law and procedure violates the 4th, 5th, 6th, 8th, and 14th Amendments of the Constitution of the United States and §§ 1, 6, 10, 13, 15, and 22 of Article I of the Alabama Constitution of 1901, on the following separate and several grounds:

- (a) The standard governing when punitive damages may be awarded against a the 14th Amendment of the United States Constitution and Article I of the Alabama Constitution;
- (b) The award of punitive damages under the law of Alabama in a civil action the provisions of Article I of the Constitution of the State of Alabama;
- (c) The award of punitive damages under Alabama law against a civil defendant, without providing to that defendant all of the protections guaranteed to a person accused of a crime, violates the Due Process Clause of the 14th

Amendment and the requirements of the 5th and 6th Amendments of the Constitution of the United States;

(d) The award of punitive damages under Alabama law against a defendant for the wrong doing of another person violates the Due Process Clause of the 14th Amendment of the Constitution of the United States;

(e) The award of punitive damages against a principal for the misconduct of an agent violates the Due Process Clause of the 14th Amendment and constitutes cruel and unusual punishment in violation of the 8th Amendment of the United States Constitution;

(f) The award of punitive damages in Alabama under any standard of proof less stringent than “beyond a reasonable doubt” violates both the Due Process Clause of the 14th Amendment and the prohibition against cruel and unusual punishment in the 8th Amendment of the Constitution of the United States;

(g) The Alabama standards defining wanton conduct are impermissibly vague and the award of punitive damages based upon a claim of wantonness under Alabama law violates the Due Process Clauses of the 14th Amendment of the United States Constitution and violates the provisions of Article I of the Constitution of the State of Alabama;

(h) The award of punitive damages under Alabama law violates the Excessive Fines Clause of the 8th Amendment to the United States Constitution and the Excessive Fines Clause of the Alabama Constitution;

(i) The award of punitive damages as claimed by the Counterclaim Plaintiffs would violate the Defendant’s rights to substantive and procedural due process of law;

(j) The award of punitive damages based upon the evil intent of another, who was acting in an unauthorized or ungratified manner, violates the Due Process Clause of the 14th Amendment and the Equal Protection Clause of the same Amendment;

(k) The procedures currently followed in Alabama fail to provide the means for awarding separate judgments against joint tortfeasors;

(l) The current procedures under Alabama law permit the multiple awards of punitive damages for the same alleged act;

(m) Alabama law allows the award and imposition of punitive damages without requiring proof beyond a reasonable doubt that the Defendant intended to cause the Plaintiff’s injuries;

- (n) The procedures and standards in Alabama do not adequately direct and limit the jury's discretion in awarding punitive damages in a civil action;
- (o) The procedures and standards in Alabama do not adequately direct and limit the trial court's discretion in reviewing the award and amount of punitive damages in a civil action;
- (p) Alabama law does not provide a clear and consistent appellate standard of review of an award of punitive damages; and the review of punitive awards by the Alabama Supreme Court does not remedy the defects in the award of punitive damages under Alabama law and does not protect civil defendants from arbitrary, unreasonable, and standardless punitive awards;
- (q) The procedures allowed and authorized under Alabama law permit the admission of evidence relative to the amount of punitive damages in the same proceeding during which liability and compensatory damages are determined, without a bifurcation of the trial into a separate liability phase and a punitive damage phase, and this practice deprives defendants of procedural and substantive due process of law under the Due Process Clause of the 14th Amendment of the United States Constitution;
- (r) The existing Alabama practice which allows the award of punitive damages against multiple defendants without apportionment of said damages based upon the culpability of each defendant deprives the defendant of equal protection of the law guaranteed under the 14th Amendment of the United States Constitution and deprives the defendant of due process of the law guaranteed under the same Amendment of the United States Constitution.

FIFTIETH AFFIRMATIVE DEFENSE

Defendants reserve the right to amend their affirmative defenses and to add additional affirmative defenses.

COUNTERCLAIMS OF JACK SOLBERGER, DONNA SMITH AND SOLBERGER & SMITH, L.L.P.

COME NOW Jack Solberger, Donna Smith and Solberger & Smith, L.L.P. (“Counterclaimants”) and assert their counterclaims as follows:

1. Counterclaimant Jack Solberger is, and was at all material times an adult resident of Mobile County, Alabama.

2. Counterclaimant Donna Smith is, and was at all material times an adult resident of Mobile County, Alabama.

3. Counterclaimant Solberger & Smith, L.L.P. is, and was at all material times a limited liability partnership located in, and operating in Mobile County, Alabama. Jack Solberger and Donna Smith are both certified public accountants, and they are and were at all material times the two principals of Solberger & Smith, L.L.P.

4. Counterclaim Defendant Innovative Medicine Partners, LLC (“IMP”) is and was at all material times a limited liability company organized under the laws of the State of Alabama, with its principal place of business in Mobile County, Alabama.

5. Counterclaim Defendant InnoMed One, LLC is, and was at all material times a limited liability company organized under the laws of the State of Alabama, with its principal place of business in Mobile County, Alabama.

6. Counterclaim Defendant Carla E. Falkner is, and was at all material times an adult resident of Mobile County, Alabama.

7. Counterclaim Defendant Deneen T. Plessala is, and was at all material times an adult resident of Mobile County, Alabama.

8. The events made the basis of these counterclaims took place in Mobile County, Alabama. Venue is proper in the Circuit Court of Mobile County, and this Court has jurisdiction over the Counterclaim Defendants.

FACTS

9. In December, 2016, Peter Falkner and Carla E. Falkner, who are husband and wife, and Deneen Plessala contacted Counterclaimants and asked them to provide office space and staff, and to perform accounting bookkeeping and tax preparation services for IMP. The

Falkners and Plessala also asked Jack Solberger and Donna Smith to invest in IMP. These parties had no prior relationship.

10. In their initial meetings in December 2016 and early January 2017, the Falkners and Plessala described IMP as an entity that would assist medical professionals to bring medical inventions and devices to market. At the time, IMP was developing three different devices, all invented by Mobile area doctors.

11. The Falkners and Plessala described these devices as ground breaking, and “can’t miss” investment opportunities. It was decided that IMP would act as an umbrella organization, and that it would own the majority interests in separate subsidiaries, which would be known as InnoMed One, LLC, InnoMed Two, LLC, and InnoMed Three, LLC. Each subsidiary would be formed to promote a single medical device by obtaining and owning the patent on that device, and by then seeking investors who would purchase membership interests in that company. These investment funds would be used to pay for the costs associated with obtaining the patent, research and development, promotion, testing, and other costs associated with bringing a medical device to market. They would also pay the salaries of Peter Falkner and Carla Falkner to run the companies, and the costs of any consulting, legal and accounting fees.

12. Counterclaimants were told that IMP would own the majority of the membership units of, and maintain a controlling interest in, each InnoMed entity, and that it would earn a majority of the profits and revenues derived from each InnoMed entity when it earned revenue from the sale or license of its patent. Peter Falkner would act as the manager for IMP and each of its subsidiaries.

13. In order to entice Counterclaimants to invest in IMP, provide office space and to perform bookkeeping and accounting services for it and the subsidiaries, the Falkners and

Plessala described and promoted Peter Falkner as an accomplished business professional with extensive experience and expertise securing patents for medical devices, organizing and conducting medical field tests, raising investment funds through private-placement offerings to investors, having experience running and owning similar successful businesses, and generally having success bringing medical devices to market. They also described Carla Falkner as having extensive business experience, said that she had successfully run a large family controlled corporation, and explained that she would also participate in the management of IMP as its president.

14. Counterclaimants were told by the Falkners and Plessala that Peter Falkner and Carla Falkner would be paid no more than a combined \$20,000.00 a month for Peter Falkner to be the manager and Carla Falkner to be president of IMP and its three subsidiaries.

15. The Falkners and Plessala also explained that Deneen Plessala and Kirby Plessala, her husband and inventor of the device owned by InnoMed One, would be paid to act as medical consultants. However, at Peter Falkner's request, the Plessalas agreed that they would not receive any payments until the particular InnoMed company they consulted for was fully funded. For example, Counterclaimants were told that InnoMed One needed to raise \$225,000.00 to pay all expected costs associated with bringing it to market. Thus, when it raised \$225,000.00 it would be fully funded.

16. Counterclaimants were told by the Falkners and Plessala that the InnoMed One device, known as SemSecure, was further along in development than the other two projects and would be through trials and ready to market and sell by September, 2017. Therefore, InnoMed One, and IMP would have revenue and income by that date.

17. Counterclaimants were told by the Falkners and Plessala that the companies would be run in a professional manner, that the employment and consulting relationships would be formalized and reduced to writing, that the companies would follow corporate and legal formalities, and that the Counterdefendants would follow their accounting advice.

18. Based upon these and other representations, Jack Solberger and Donna Smith purchased separate five percent (5%) interests in IMP on January 3, 2017 for \$10,000.00 each, (a total of \$20,000.00). On that same date they executed a “Revised and Restated Limited Liability Company Agreement” for IMP, and InnoMed One, LLC, InnoMed Two, LLC, and InnoMed Three, LLC were formed. Later, in May 2017 InnoMed Four, LLC and Innovallure Healthcare Branding, LLC were formed.

19. Solberger & Smith, L.L.P and the Falkners, Plessala, and IMP agreed that Solberger & Smith L.L.P would provide accounting, bookkeeping, tax preparation and related services to IMP and its subsidiaries at its normal rates. However, based upon the arrangement entered by the Plessalas for delayed payment, and at Peter Falkner’s urging, Solberger & Smith, L.L.P agreed that it would wait to be paid by each InnoMed Company until it was fully funded. They would be paid by IMP when the first medical device from any subsidiary was sold. They were told, again, that the InnoMed One device was a “can’t miss” investment, and that it would be sold by September 2017. Counterclaimants never agreed to work for free, for IMP or any of the subsidiaries, and they were assured they would be paid.

20. Solberger and Smith were given the titles of Chief Financial Officer. However, they were never given the full authority to act as CFOs, and Solberger & Smith L.L.P was never given the full information and access necessary to act as the accounting firm for IMP and its subsidiaries. They were not allowed to write checks, and they did not oversee or control the

payment or transfer of funds. They had to rely on Carla and Peter Falkner to provide them with the information necessary to keep books and records. Many times this information was never provided. At other times it was late, or at best incomplete.

21. Carla and Peter Falkner worked off their mobile phones, used their personal computers or no computers at all, and generally were unorganized and did not keep good records. When they used Counterclaimants' offices they were disruptive, demanding, and generally were hard to deal with.

22. Counterclaimants made several requests to Counterdefendants to allow them to keep the books and accounts, and to better organize the records of the company, all of which were ignored. These requests included having Peter Falkner enter into an employment contract with IMP and its subsidiaries to act as the manager for those companies with a definite salary so he could be entered on payroll tax accounts; entering an agreement between IMP and Carla Falkner to act as President of IMP and set a definite amount for her pay; entering consulting contracts with each of the Plessalas and require them to submit actual invoices; formalizing verbal agreements, or agreements made by email or text messaging; and keeping minutes of member meetings.

23. Counterclaimants repeatedly asked that all monetary transfers from the InnoMed companies to IMP be made by check, and not electronically, so they could keep up with them and enter them on the books. They also asked that payments to Peter Falkner from IMP be distinguished from payments to Carla Falkner, and that these payments be made by check. Peter Falkner and Carla Falkner intentionally refused these requests, or to do anything to make it easier to track the transfer of funds from the InnoMed entities to IMP, or from IMP to

themselves, all of which made it impossible for Counterclaimants to do their jobs and aided the Falkners in hiding the amount of funds they transferred to themselves.

24. The Falkners admitted that they wanted to be paid in this confusing way because Peter Falkner was recently divorced and he wanted to keep his ex-wife from determining his income. Counterclaimants refused to help the Falkners in this regard, and told them that Peter's income for 2016 and 2017 would have to be reported on the IMP tax returns.

25. In March 2017 Peter Falkner told Counterclaimants for the first time that he was owed \$43,000.00 in back pay for work he did in 2016, before their involvement with the company.

26. In June 2017, Peter Falkner announced there was a cash emergency in IMP and he desperately sought Counterclaimants' assistance to obtain a \$100,000.00 loan. Counterclaimants agreed to help and approached one of their existing clients, and obtained his agreement to provide IMP a \$100,000.00 loan. However, the lender only agreed to provide the loan on the condition that Solberger and Smith each personally guaranty it. Solberger and Smith told the Falkners and Plessala that they would only take the risk of personally guarantying this debt if they each obtained a two percent (2%) membership interest in InnoMed One for doing so. The Falkners and Plessala, individually, and in their corporate capacities on behalf of IMP and InnoMed One agreed to these terms, and the loan was made.

27. Later, when Solberger and Smith attempted to obtain documentation of their 2% interests in InnoMed One, they were intentionally ignored. Now, Counterdefendants deny agreeing to issue membership interests to Solberger and Smith, and they deny Solberger and Smith are members of InnoMed One.

28. It eventually became clear to Counterclaimants that Peter and Carla Falkner were paying themselves much more than \$20,000.00 per month. From the records Counterclaimants had access to, they determined that during the 7 ½ months they were involved with the companies the Falkners paid themselves approximately 66% of all investor capital in IMP and its subsidiaries. They paid themselves the following amounts for the following months:

- a. January 2017 - \$55,000.00
- b. February 2017 - \$30,000.00
- c. March 2017 - \$40,000.00
- d. April 2017 - \$10,000.00
- e. May 2017 - \$50,000.00
- f. June 2017 - \$50,000.00
- g. July 2017 - \$30,000.00

29. Counterclaimants determined that the Falkners began transferring company funds to themselves the very day they purchased their interests in IMP, on January 3, 2017. With no notice or corporate action, Carla Falkner transferred Solberger and Smiths' \$20,000.00 purchase price paid to IMP from IMP's account to their personal account that day.

30. In May, 2017 Pixallure, a Mobile County business, paid IMP \$10,000.00 for a 50% interest in Innovallure Healthcare Branding, LLC. This money was supposed to pay for Innovallure's start up costs, including Solberger & Smith L.L.P.'s invoices for accounting work. It was not, and instead it was transferred directly to the Falkners.

31. Although most of the transfers were from the IMP account, the Falkners have taken funds directly from subsidiary accounts. In June, 2017 Carla Falkner transferred

\$10,000.00 from an InnoMed Four bank account directly to her personal account. At the time Solberger and Smith were not even aware InnoMed Four had a bank account, and they didn't have access to it. They later learned that the inventor of the InnoMed Four device loaned that subsidiary \$20,000.00 and that these funds were only to be used for research and development.

32. In May, 2017 Counterclaimants confronted the Falkners about their exorbitant pay, and demanded that they only pay themselves a total of \$20,000.00 a month. In response, the Falkners produced a one page "Agreement" between Peter Falkner, Carla Falkner, and IMP, wherein IMP agreed to pay the Falkners \$20,000.00 per month collectively, with \$20,000.00 increases for each subsidiary. At the same time the Plessalas produced their own Agreement with IMP that purports to pay them \$500.00 an hour collectively. Both agreements purport to have terms of 5 years. Although both agreements purport to be dated September 2, 2016, neither they, nor their existence were disclosed to Counterclaimants until May, 2017.

33. In June, 2017 Peter Falkner decided that even though InnoMed One had raised \$225,000.00, and thus was fully funded, it needed to raise an additional \$250,000.00. These additional funds were needed to pay for costs associated with development of the SemSecure device. Had the Falkners not paid themselves such large amounts of capital out of InnoMed One, it would not have been necessary to raise these funds. This decision was not made in the best interest of IMP or InnoMed One, but instead was only made so the Falkners would have a source of income. The additional \$250,000.00 was raised by the end of July, 2017.

34. In July, 2017 Peter Falkner informed Donna Smith he and Carla were entitled to receive a combined \$90,000.00 a month in compensation. Solberger and Smith strongly disagreed.

35. In late July, 2017 with no notice to, or input from Counterclaimants, Peter Falkner decided to increase the Plessala's hourly consulting rate to \$1,000.00.

36. On August 9, 2017 Carla Falkner informed Counterclaimants that they would no longer have any direct access to the bank records of IMP or its subsidiaries. This decision was unilaterally made by Carla Falkner and Deneen Plessala as a result of Counterclaimants' complaints over the Falkners exorbitant pay to themselves. When Counterclaimants protested, and pointed out that there had never been a meeting to approve this measure, they were informed by Carla Falkner that no meeting was necessary.

37. On August 11, 2017, when InnoMed One was fully funded, Carla Falkner wrote a check to Deneen Plessala for \$15,500.00 out of the InnoMed One account for consulting work. However, Counterdefendants refused to pay Solberger & Smith L.L.P. for its fees incurred working on InnoMed One. In all, Deneen Plessala and Kirby Plessala were paid \$46,780.00 from IMP and its subsidiaries through August 11, 2017.

38. To this day IMP has not generated any revenue or made any money. None of its subsidiaries have generated any revenue or made any money. The only sources of the funds paid by IMP or its subsidiaries to Peter Falkner and Carla Falkner are funds invested by new members or loans.

39. The offering statements and promotional materials shown to investors do not disclose the amount of income, or the percentage of investment income paid to Peter Falkner and Carla Falkner. The investors have never been told that the majority of their funds have been used to fund the Falkners lifestyle.

40. As a result of Peter Falkner, Carla Falkner, and Deneen Plessala's conduct it was impossible for Counterclaimants to do their jobs or continue to maintain a professional

relationship with the Cross and Counterdefendants. On August 15, 2017 Jack Solberger spoke with Peter Falkner and told him that Counterclaimants would no longer perform any further professional duties for IMP or its subsidiaries, and that to the extent necessary, Solberger and Smith each resigned as CFO's. However, he made it clear that they would remain members of IMP and InnoMed One. Later, on August 19, 2017 Counterclaimants wrote Peter Falkner to confirm this conversation and in the letter they reiterated several of their concerns.

41. On September 29, 2017 Counterclaimants, through their counsel requested certain documents pursuant to §10A-5A-4.09(a), including a list of the members of InnoMed One, and copies of the financial statements of InnoMed One and IMP for August and September 2017. On October 5, 2017 Counterdefendants, through their counsel responded by stating that Counterdefendant's no longer recognized Solberger or Smith as members of IMP, and that they were never members of InnoMed One. Counterdefendants have refused to produce the requested documents, in violation of §10A-5A-4.09(a) and (b).

42. Since the beginning of their relationship, Solberger & Smith, L.L.P. sent monthly invoices to IMP and each of its subsidiaries itemizing forth its costs and fees for bookkeeping, accounting and tax preparation work. Although some costs have been paid, none of Solberger & Smith, L.L.P.'s fees have been paid. These fees total:

- a. IMP - \$53,782.00
- b. InnoMed One - \$46,780.00
- c. InnoMed Two - \$17,149.00
- d. InnoMed Three - \$4,794.00
- e. InnoMed Four - \$10,217.00
- f. Innovallure - \$2,620.00

TOTAL: \$135,342.00

43. In the fall of 2017 Counterclaimants learned that in 2015 and 2016, prior to working with IMP, Peter Falkner worked as a landscaper and not as an entrepreneur bringing medical devices to market; that in 2015 Peter Falkner filed for protection under Chapter 7 of the United States Bankruptcy Code and that he was discharged in Bankruptcy on March 3, 2016; and that in 2011 Carla Falkner filed for protection under Chapter 7 of the United States Bankruptcy Code, and that on July 27, 2012, she was discharged in Bankruptcy.

COUNT ONE
BREACH OF CONTRACT

44. Counterclaimants reiterate the allegations contained in Paragraphs 1- 43 as if fully set forth herein.

45. Counterdefendants IMP and InnoMed One agreed to pay Counterclaimants for bookkeeping, accounting and tax preparation.

46. Counterclaimants performed bookkeeping, accounting and tax preparation for IMP and InnoMed One, and have billed them for their work. Counterdefendants have refused to pay for this work, in violation of their agreement.

WHEREFORE, the premises considered Counterclaimants demand judgment against each of the following Counterdefendants for breach of contract, for the following amounts, pre-judgment interest, costs, and any additional relief the Court may grant:

- a. IMP - \$53,782.00
- b. InnoMed One - \$46,780.00

COUNT TWO
WORK AND LABOR DONE/ACCOUNT STATED/OPEN ACCOUNT

47. Counterclaimants re-allege the allegations contained in Paragraphs 1-46 as if fully set forth herein.

48. At the request of Counterdefendants, Counterclaimants performed bookkeeping, accounting, and tax preparation work for IMP and InnoMed One.

49. Counterdefendants were invoiced on a regular basis. To date Counterdefendants have refused to pay any of Counterclaimants' fees.

WHEREFORE, the premises considered Counterclaimants demand judgment against each of the following Counterdefendants for work and labor done, for account stated, and on open account, for the following amounts, pre-judgment interest, costs, and any additional relief the Court may grant:

- a. IMP - \$53,782.00
- b. InnoMed One - \$46,780.00

COUNT THREE
MEMBER RECORD REQUEST AND BREACH
OF LIMITED LIABILITY COMPANY AGREEMENT

50. Counterclaimants re-allege the allegations contained in Paragraphs 1-49 as if fully set forth herein.

51. On September 29, 2017 Counterclaimants, through their counsel, wrote Counterdefendants to demand documents pursuant to Ala. Code §10A-5A-4.09. Defendants refused Counterclaimants' request for the stated reason that Counterclaimants were no longer members of IMP, and that they were never members of InnoMed One. This statement was false, and Counterdefendants knew that it was false.

52. Counterclaimants are entitled to the same information pursuant to the Limited Liability Company Agreements of IMP and InnoMed One.

53. Carla Falkner and Deneen Plessala did, without reasonable cause, refuse to allow Counterclaimants to inspect and copy records of IMP and InnoMed One which they were entitled to review.

54. Counterclaimants have been damaged as a result of Falkner and Plessalas' actions.

WHEREFORE, the premises considered, Counterclaimants seek judgment against Carla Falkner and Deneen Plessala pursuant to Ala. Code §10A-5A-4.09(b) in an amount equal to 10% of the fair market value of the interests they each hold in IMP and InnoMed One. In addition, Counterclaimants demand compensatory damages, punitive damages, consequential damages, and all other damages to which they are entitled, together with attorneys fees, interest, and costs.

COUNT FOUR
MINORITY OPPRESSION/SQUEEZEOUT

55. Counterclaimants re-allege the allegations contained in Paragraphs 1-54 as if fully set forth herein.

56. Solberger and Smith have been wrongly denied access to the records of IMP and InnoMed One. Counterdefendants wrongfully deny that they are members of IMP and InnoMed One, and Solberger and Smith are threatened with the loss of their membership units in each company by Counterdefendants in their attempt to silence them and squeeze them both out of each company.

57. Counterclaimants have been damaged as a result of Carla Falkner and Deneen Plessalas actions and they are being denied their benefits as members of each company.

WHEREFORE, the premises considered, Counterclaimants demand judgment against Carla Falkner and Deneen Plessala for compensatory damages, special damages, punitive damages, attorneys fees and costs and such other, further or different relief to which they may be entitled.

COUNT FIVE
FRAUD

58. Counterclaimants re-allege the allegations contained in Paragraphs 1-57 as if fully set forth herein.

59. The representations made by Carla Falkner and Deneen Plessala to Jack Solberger, Donna Smith, and Solberger & Smith, L.L.P. described herein were made with the intention that Counterclaimants rely on them, to deceive Counterclaimants, and to entice Counterclaimants to invest in IMP, perform bookkeeping, accounting and tax preparation work for IMP and its subsidiaries, and to entice Counterclaimants to help Counterdefendants find investors for the subsidiaries of IMP.

60. These statements were false and the Counterdefendants knew they were false, or in the alternative were recklessly made, or in the alternative were negligently made.

61. Counterclaimants reasonably relied on the statements and representations of Counterdefendants to their detriment, and as a proximate cause have been damaged.

WHEREFORE, the premises considered Counterclaimants demand judgment against Carla Falkner and Deneen Plessala for compensatory damages, consequential damages, punitive

damages, and to all other damages to which they are entitled, together with attorney's fees, interest and costs.

COUNT SIX
SUPPRESSION

62. Counterclaimants re-allege the allegations contained in Paragraphs 1-61 as fully set forth herein.

63. When Counterclaimants were considering investing in IMP and conducting business with IMP and its subsidiaries they were enticed to do so in large part based upon Peter Falkner and Carla Falkner's alleged business acumen and Peter Falkner's alleged expertise in successfully running similar businesses.

64. Based upon the fact that this project involved the promotion of sophisticated medical devices, and the selling of non-registered securities by private placement offerings to individual investors, Counterdefendants had a duty to disclose that in 2015, Peter Falkner worked as a landscaper, and not as an entrepreneur bringing medical inventions to market. They further had a duty to disclose that in 2015 Peter Falkner filed for protection under Chapter 7 of the United States Bankruptcy Code, and that he was discharged in Bankruptcy on March 3, 2016. They further had a duty to disclose that in 2011 Carla Falkner filed for protection under Chapter 7 of the United States Bankruptcy Code, and that she was discharged in bankruptcy on July 27, 2012.

65. Counterdefendants suppressed these material facts and did not disclose them to Counterclaimants.

66. Had Counterdefendants not suppressed these facts, Counterclaimants would not have invested in IMP, agreed to perform professional services for IMP or its subsidiaries, or agreed to help find investors for IMP's subsidiaries.

67. Counterclaimants have been damaged as a proximate cause of Counterdefendants' suppression of these facts.

WHEREFORE, the premises considered Counterclaimants demand judgment against Carla Falkner and Deneen Plessala for compensatory damages, punitive damages, consequential damages, and all other damages to which they are entitled, together with attorney's fees, interest, and costs.

COUNT SEVEN
BREACH OF FIDUCIARY DUTY

68. Counterclaimants re-allege the allegations contained in Paragraphs 1-67 as if fully set forth herein.

69. IMP and InnoMed One are Manager Managed limited liability companies formed under the laws of the State of Alabama. Peter Falkner is named as a manager of these companies in their last amended limited liability company agreements. Carla Falkner acted as a de facto manager for both of these companies, and she has signed and executed documents as the manager of these companies with the acceptance and approval of Peter Falkner and Deneen Plessala.

70. As managers, Peter Falkner and Carla Falkner owed fiduciary duties to the members of each company, including Jack Solberger and Donna Smith.

71. Carla Falkner individually, and in conspiracy with Peter Falkner, breached her fiduciary duty to Jack Solberger and Donna Smith by failing to act in good faith in her dealings with them, by actively working to attempt to reduce or eliminate their interests in IMP and

InnoMed One by denying their requests for corporate records, by refusing to pay the invoices of Solberger & Smith L.L.P., and by engaging in a pattern and practice designed to oppress their membership rights and eventually squeeze them out as members.

WHEREFORE, the premises considered Counterclaimants demand judgment against Carla Falkner for compensatory damages, punitive damages, special damages, and all other damages to which they are entitled, together with attorney's fees, interests, and costs.

COUNT EIGHT
DIRECT ACTION PURSUANT TO ALA. CODE §10A-5A-9.01 (INDIVIDUAL)

72. Counterclaimants re-allege the allegations contained in Paragraphs 1-71 as if fully set forth herein.

73. This cause of action is brought pursuant to Ala. Code §10A-5A-9.01(a) and (b).

74. Deneen Plessala and Carla Falkner own the majority of the outstanding membership units in IMP. Individually, and in collusion and conspiracy with Peter Falkner, they have actively sought to divest Jack Solberger and Donna Smith of their membership interests in IMP by falsely claiming that Solberger and Smith have been removed and/or ejected as members by undisclosed corporate action without notice and when no such action is possible.

75. Through their control of IMP, Deneen Plessala, Carla Falkner and Peter Falkner control the corporate actions of InnoMed One. By virtue of their assistance in obtaining a \$100,000.00 loan for IMP, and by personally guarantying the loan, Jack Solberger and Donna Smith each obtained 2% membership interests in InnoMed One.

76. This loan directly benefited InnoMed One. It particularly benefited Carla Falkner and Peter Falkner because they transferred \$10,000.00 of it from IMP's account into their personal bank account.

77. Plessala, Carla Falkner and IMP individually, and in collusion and conspiracy with Peter Falkner, are now improperly denying Solberger and Smith's membership interests in InnoMed One, contend that they never agreed to issue InnoMed One membership interests to them, and state that they are not and never have been members.

78. Solberger and Smith will suffer actual individual and personal harm unless relief is granted by this Court.

WHEREFORE, the premises considered Counterclaimants Jack Solberger and Donna Smith pray that this Court will protect their rights and interests in IMP and InnoMed One by ordering IMP, InnoMed One, Carla Falkner, and Deneen Plessala to acknowledge that they each own a 5% interest in IMP, each own a 2% interest in InnoMed One, and afford them all the rights and privileges under Alabama law as members in those companies. Solberger and Smith further pray that the court will enter an award of compensatory damages, punitive damages, consequential damages, and all other damages to which they are entitled, together with attorneys fees, interest and costs against Carla Falkner and Deneen Plessala for their active attempt to divest them of their membership interests.

COUNT NINE
DIRECT ACTION PURSUANT TO ALA. CODE §10A-5A-9.01 (Corporate)

79. Counterclaimants re-allege the allegations contained in Paragraphs 1-78 as if fully set forth herein.

80. At the time of the filing of this Answer and Counterclaim all of the members of IMP were already parties to this action. These members are Carla Falkner, Deneen Plessala, Jack Solberger and Donna Smith.

81. This action is brought on behalf of IMP, its members, its subsidiaries and its subsidiaries members against Carla Falkner and Deneen Plessala for waste pursuant to Ala. Code §10A-5A-9.01(c).

82. For the period of Solberger &Smith, L.L.P.'s active involvement with IMP and its subsidiaries, stretching from January, 2017 to mid-August 2017, Carla Falkner, individually and in conspiracy with Peter Falkner, treated the bank accounts of IMP and its subsidiaries as her own, ignored corporate governance, made unauthorized transfers of corporate funds to her personal bank accounts, paid her and her husband exorbitant salaries out of proportion with funds available and greatly in excess of the value of the services provided and the expected return on investment, and ignored the best interests of IMP, the subsidiaries of IMP, and the individual members of IMP by depleting virtually all capital and using it for her and her husband's own personal benefit.

83. The purported employment agreement that allegedly justifies these transfers was never voted on or approved by Counterclaimants, or any members of its subsidiaries, was never disclosed to all of the members of IMP, was never disclosed to any of the investors in any of the InnoMed entities, and is so vague and one sided it is unenforceable.

84. The investors in the individual InnoMed entities have been led to believe that their investment funds would be used for research and development, field trials, patent applications, and other associated costs. None of the promotional literature, subscription agreements, or any other materials shown to any investor discloses that the vast majority of all funds raised by IMP and its subsidiaries have gone directly to the Falkners and will continue to do so.

85. At all relevant times Deneen Plessala was aware of the actions of the Falkners, authorized and condoned them, and refused to take any action to prevent further waste.

86. IMP, its members, its subsidiaries, and the members of the subsidiaries have been damaged as a proximate cause of their waste.

WHEREFORE, the premises considered, on behalf of IMP, its members, its subsidiaries, and the members of the subsidiaries, judgment is demanded against Carla Falkner and Deneen Plessala for compensatory damages, punitive damages, consequential damages, and all other damages to which they are entitled, together with attorneys fees, interests and costs.

COUNT TEN
DECLARATORY JUDGMENT

87. Counterclaimants re-allege the allegations contained in Paragraphs 1-86 as fully set forth herein.

88. This count is brought pursuant to the Alabama Declaratory Judgment Act.

89. A justiciable controversy exists by and between Jack Solberger, Donna Smith, and Solberger & Smith, L.L.P. and Carla Falkner, Deneen Plessala, IMP, and InnoMed One.

90. It is within this Court's jurisdiction to resolve these issues and enter a declaratory judgment concerning the rights of the parties.

WHEREFORE, the premises considered, Counterclaimants respectfully pray that the Court enter an order declaring that:

- a. Jack Solberger and Donna Smith are each 5% members of IMP;
- b. Jack Solberger and Donna Smith are each 2% owners of InnoMed One;
- c. the alleged Agreements for compensation and/or consulting fees by and between IMP and Peter Falkner and Carla Falkner, and IMP, and Deneen Plessala and Kirby Plessala are void and unenforceable;

- d. the unilateral actions taken by Peter Falkner and Carla Falkner violate Alabama Law and the Limited Liability Company Agreements for IMP and InnoMed One;
- e. Peter Falkner and Carla Falkner be removed as Managers of IMP and InnoMed One;
- f. Counterclaimants be awarded their attorneys fees and costs in bringing these action on behalf of IMP, InnoMed One and the other members.

/s/ Jerome E. Speegle
 JEROME E. SPEEGLE (SPE011)
 Attorney for Defendants/Counterclaimants

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of March, 2018 the foregoing document was filed with the Clerk of this Court. I further certify that I have e-mailed a copy of the foregoing to the following:

Harry V. Satterwhite
 Satterwhite & Associates, LLC
 1325 Dauphin Street
 Mobile, AL 36604

/s/ Jerome E. Speegle