



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ACCUITY DELIVERY SYSTEMS, LLC,
ACCUITY DELIVERY SYSTEMS
HOLDINGS, LLC, AND FH ACCUITY
PURCHASER, LLC,

Plaintiffs,

v.

KODE HEALTH, INC., BRIAN DESSOY
AND BRADLEY SAWDON,

Defendants.

C.A. No. 2022-0996-LWW

DEFENDANTS' ANSWER AND VERIFIED COUNTERCLAIMS

Defendants Kode Health, Inc. (“Kode”), Brian Dessoy (“Dessoy”) and Bradley Sawdon (“Sawdon” and with Kode and Dessoy, collectively, “Defendants”), by and through its undersigned counsel, responds to the Verified Complaint (“Complaint”) filed by Plaintiffs Accuity Delivery Systems, LLC (“Accuity”), Accuity Delivery Systems Holdings, LLC (“Accuity Holdings”), and FH Accuity Purchaser, LLC (“Accuity Purchaser” and with Accuity and Accuity Holdings, collectively, “Plaintiffs”) and state as follows. Unless expressly admitted, all allegations in the Complaint are denied, including, without limitation, the headings, sub-headings, and footnotes contained in the Complaint. Pursuant to Court of Chancery Rule 8(d), allegations contained in the Complaint to which no

responsive pleading is required shall be deemed denied. Defendants reserve the right to amend or supplement this Answer to the Complaint.

NATURE OF THE ACTION

1. Accuity, among other things, provides medical documentation review and coding services to hospitals and physicians.

RESPONSE: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

2. This is an action to enforce restrictive covenants executed by Defendants Dessoy and Sawdon, under which they agreed, including through affiliates such as Kode, to refrain from engaging in any business similar to, or soliciting customers from, Accuity.

RESPONSE: The allegations contained in this paragraph contain Plaintiffs' characterization of this action, to which no response is required. To the extent that a response is required, Defendants deny the allegations in this Paragraph.

3. Despite such restrictions, after and, on information and belief, before terminating their employment with Accuity, Dessoy and Sawdon formed and continue to operate Kode, which primarily provides medical documentation review and coding services to hospitals and physicians. As such, Dessoy and Sawdon, directly and indirectly through Kode, are violating and intend to continue to violate their obligations to Plaintiffs.

RESPONSE: The allegations contained in this Paragraph state a conclusion of law, to which no response is required. To the extent that a response is required, Defendants deny the allegations in this Paragraph.

4. This action further seeks to prevent Kode's continued tortious interference with Dessoy and Sawdon's restrictive covenants or to benefit inequitably from their breaches of such covenants.

RESPONSE: The allegations contained in this Paragraph contain Plaintiffs' characterization of this action, to which no response is required. To the extent that a response is required, Defendants deny the allegations in this Paragraph.

THE PARTIES

5. Accuity is a Nevada LLC with a principal place of business at 10000 Midlantic Drive, Suite 400W, Mount Laurel, New Jersey.

RESPONSE: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

6. Accuity Holdings is a Delaware LLC with a principal place of business at 10000 Midlantic Drive, Suite 400W, Mount Laurel, New Jersey. Accuity is wholly owned by Accuity Holdings.

RESPONSE: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

7. Accuity Purchaser is a Delaware LLC with a principal place of business at 10000 Midlantic Drive, Suite 400W, Mount Laurel, New Jersey. Accuity Holdings is wholly owned by Accuity Purchaser.

RESPONSE: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

8. Kode is a Delaware corporation with a principal place of business located at 675 E 16th Street, Suite 220, Holland, Michigan.

RESPONSE: Defendants admit the allegations of this Paragraph.

9. Dessoy is an individual who resides, on information and belief, at 5840 E. Onyx Avenue, Paradise Valley, Arizona. Dessoy is, on information and belief, an owner and an officer of Kode.

RESPONSE: Defendants admit the allegations of this Paragraph.

10. Sawdon is an individual who resides at 6174 146th Ave., Holland, Michigan. Sawdon is, on information and belief, an owner and the president of Kode.

RESPONSE: Defendants admit the allegations of this Paragraph.

JURISDICTION

11. The Court has subject matter jurisdiction over this action because Plaintiffs are seeking equitable relief, including a permanent injunction. 10 *Del. C.* § 341.

RESPONSE: The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, the allegations in this Paragraph are denied.

12. The Court has personal jurisdiction over Kode because it is an entity incorporated under the laws of the State of Delaware.

RESPONSE: Defendant admits that it is incorporated under the laws of the State of Delaware. The remaining allegations in this Paragraph state a conclusion of law to which no response is required. To the extent a response is required, the remaining allegations in this paragraph are denied.

13. The Court has personal jurisdiction over Sawdon and Dessoy pursuant to 10 *Del. C.* § 3104.

RESPONSE: The allegations in this Paragraph of the Complaint state a conclusion of law to which no response is required. To the extent a response is required, the Defendants deny the allegations in this Paragraph.

14. The Court also has jurisdiction over Sawdon and Dessoy because the agreements they signed, which are described at length in the Verified Complaint below, contain valid forum selection clauses.

RESPONSE: This Paragraph of the Complaint refers to a document, the terms and contents of which speak for themselves. Defendants respectfully refer to that document for the true and correct contents therein and denies any allegations in this Paragraph inconsistent therewith.

FACTUAL BACKGROUND

15. Prior to September 25, 2020, both Dessoy and Sawdon were employed by Accuity and held ownership interests in Accuity Holdings.

RESPONSE: Defendants deny the allegations of this Paragraph, except it is admitted that prior to September 25, 2020, Dessoy and Sawdon were employed by Accuity and held profits interests in Accuity Holdings.

16. As of September 25, 2020, Accuity Purchaser and Accuity Holdings entered into the “Membership Interest Purchase Agreement” (the “Purchase Agreement”) by which Accuity Purchaser acquired, through a series of transactions, membership interests in Accuity Holdings, including those held by “Rollover Participants.” Each of Dessoy and Sawdon subsequently executed a “Direct Member Sales Agreement” (the “Sales Agreement”) and a “Redemption and Distribution Agreement” (the “Rollover Agreement”) pursuant to which, in general terms, each obtained substantial consideration for his existing equity interest, most of which each received in cash and the remainder of which was “rolled into” membership interests in the newly reorganized entity, Accuity Parent Holdings, LLC (“Accuity Parent”). Each of Dessoy and Sawdon also executed an employment agreement with Accuity that promised them positions of substantial responsibility and commensurate substantial compensation.

RESPONSE: This Paragraph of the Complaint refers to documents, the terms and contents of which speak for themselves. Defendants respectfully refer to those documents for the true and correct contents therein and deny any allegations in this Paragraph inconsistent therewith.

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