UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

BKK Solutions, LLC f/k/a BCK Medical Holdings, LLC, Plaintiff, v. Sensiva Health LLC, Tarun Jolly, Jim Silliman, and Ben Williamson, Defendants.	:	Civil Action No._____ District Judge _____ Magistrate Judge _____

COMPLAINT

1. In late 2020, at the height of the Covid-19 pandemic, Defendant Sensiva Health, LLC ("Sensiva") rushed development of new personal testing kits, known as the "reAct" kit, which were designed to detect the presence of Covid-19 in users. These kits, however, would prove to be ineffective and unsuitable for any market because they did not detect Covid-19 accurately and had much shorter shelf lives than was represented on the packaging. Unsurprisingly, reAct kits were never authorized for sale by the FDA and, indeed, Sensiva abandoned its efforts to obtain such regulatory approval.

2. Sensiva's losses from this failed venture were minimal or non-existent, however, because Sensiva and its controlling persons ("Defendants") had duped Plaintiff BKK Solutions, LLC ("BKK") into investing more than $10 million in this doomed business, with such investment covering Sensiva's costs of production, shipping, storage and marketing. Sensiva fraudulently obtained this investment from BKK through numerous misrepresentations and omissions.

3. Specifically, Defendants, who knew full well that BKK had no expertise in the FDA's regulatory approval process, directly assured BKK on multiple occasions that regulatory approval was guaranteed and imminent because, at any time, Sensiva could submit reAct for approval through a special process with the United States Department of Health and Human Services ("HHS"), which Sensiva represented was an alternative to the FDA approval process and would provide "automatic" approval within two weeks. Although BKK did not know it at the time, this alternate approval process through HHS was pure fiction, invented by Defendants to give BKK a false impression that reAct shortly would receive regulatory approval.

4. Sensiva also failed to disclose known issues with reAct that rendered it ineffective and unmarketable, including its inability to detect the presence of Covid-19 accurately and its short shelf life. Instead, Sensiva provided an express warranty that reAct would be free from material defects. Sensiva also continued to misrepresent the quality of the reAct kits even after the tests were criticized by the FDA, international governmental regulators, and customers. Sensiva did not disclose any issues with the reAct kits to BKK until one year after BKK's investment, at which point Sensiva disclosed that the kits could not be sold in the United States, contrary to their own prior guidance. By that point in time, Sensiva had developed a *competing* product in secret, which was functionally the same as reAct but that, apparently, did not include the same product defects as reAct.

5. Based on Sensiva's fraudulent misrepresentations, BKK invested $9.8 million in early 2021 to cover *all* of Sensiva's production costs for approximately 1.6 million units of the reAct kits, all of which have proven to be unmarketable and useless. In further reliance on Sensiva's fraudulent misrepresentations, BKK continued to invest over $150,000 throughout 2021 to pay

third parties to transfer, store, and market this ineffective product, both domestically and internationally.

6. BKK *never* would have made such a significant investment in Sensiva if it had known either that (i) automatic approval by HHS was *not* a real process that Sensiva could pursue, or that (ii) reAct was *not* free from material defects, as had been warranted expressly.

7. BKK seeks recovery for damages, lost profits, and all other appropriate amounts under Sections 10(b) and 20(a) of the Securities Exchange Act, as well as under Louisiana state law causes of action that this Court may consider pursuant to its supplemental jurisdiction.

JURISDICTION AND VENUE

8. BKK asserts claims that arise under Section 10(b) of the Securities Exchange Act, 15 U.S.C. § 78j(b), Rule 10b-5 promulgated thereunder by the SEC, 17 C.F.R. § 240.10b-5, and Section 20(a) of the Exchange Act, 15 U.S.C. § 78t-1. Accordingly, this Court has subject matter jurisdiction over these claims under 28 U.S.C. § 1331 and 15 U.S.C. § 78aa.

9. BKK also asserts claims under Louisiana state law. Such claims are so related to the claims arising under the Exchange Act that they form part of the same case or controversy under Article III of the United States Constitution. Accordingly, this Court may assert supplemental jurisdiction over such claims pursuant to 28 U.S.C. § 1367(a).

10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act, 15 U.S.C § 78aa.

11. BKK and Sensiva are parties to a Distribution and Reseller Agreement dated December 24, 2020 (the "Agreement").[1] Section 32 of the Agreement states that all parties consent to the

[1] In an abundance of caution as concerns any claim of confidentiality, the Agreement is not attached hereto. The provisions discussed herein do not concern any purportedly confidential information.

"exclusive jurisdiction" of "State or Federal Courts in Orleans Parish, Louisiana" regarding the claims asserted herein.

PARTIES

12. Plaintiff BKK is a Florida limited liability company, which was formerly known as BCK Medical Holdings, LLC.

13. Defendant Sensiva is a Louisiana limited liability company.

14. Defendant Tarun Jolly ("Jolly") is a Louisiana resident who is an owner and principal for Sensiva. When Sensiva was founded in March 2020, Jolly was its sole member and manager. Jolly has since continued to sign corporate filings on behalf of Sensiva. Although Plaintiff presently is unaware of Jolly holding a formal title at Sensiva, Jolly acted as the primary decision maker with respect to the events and activities alleged herein. Upon information and belief, Jolly is the majority or largest owner of Sensiva and assisted in the development of the reAct kits, along with Jim Silliman.

15. Defendant Jim Silliman ("Silliman") is the Chief Executive Officer for Sensiva. Upon information and belief, he is a resident of Louisiana.

16. Defendant Ben Williamson ("Williamson") is the Chief Operating Officer for Sensiva. Upon information and belief, he is a resident of Florida.

17. Defendants Jolly, Silliman, and Williamson each exercised control over Sensiva and are referred to as "Control Defendants" herein.

BACKGROUND

I. Sensiva Attempts To Capitalize On Public Demand For Covid-19 Test Kits With A Product That Would Require Outside Investment

18. In late 2020, market demand for effective, safe, and reliable Covid-19 testing kits greatly exceeded supply in the United States and throughout the world. In this context, many companies were working quickly to develop testing kits that could be sold to the public.

19. Sensiva, which describes itself on its website as a "healthcare solutions company," developed plans for a saliva-based test kit, which would have the brand name "reAct." The reAct tests purportedly were designed to provide consumers with both (i) a quick testing result through a saliva-based rapid antigen test, and (ii) a more thorough testing result from a PCR laboratory testing of a saliva sample. Sensiva's marketing materials for the reAct tests suggested that they could provide accurate and reliable results in as little as three minutes, allowing clients to test large groups of people in very short amounts of time. Sensiva also advertised reAct as being able to detect all variants of COVID-19.

20. Sensiva, however, faced several significant issues that prevented it from commercializing the reAct test in late 2020/early 2021.

21. *First*, in late 2020, Sensiva had not received approval from the FDA to sell reAct in the United States. In fact, Sensiva did not even apply for approval until December 17, 2020.

22. *Second*, upon information and belief, Sensiva knew or should have known that the reAct tests suffered from severe efficacy and quality control issues. Specifically, the tests did not provide an effective means of detecting Covid-19 and, even when they worked, they had much shorter shelf lives than Sensiva stated publicly. These issues created a substantial risk that Sensiva might never be able to obtain FDA approval for reAct.

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