

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEVIN T. LAVERY, M.D.,

Plaintiff,

Case No. _____

v.

PURSUANT HEALTH, INC.,

Defendant.

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COMPLAINT

NOW COMES the Plaintiff, Kevin T. Lavery, M.D., by and through his attorneys, Inosencio Fisk, and for his *Complaint* against the Defendant, Pursuant Health, Inc., a Delaware corporation (“Pursuant Health”), states as follows:

1. The Plaintiff, Kevin T. Lavery, M.D. (“Dr. Lavery”) is a resident of the State of Michigan whose place of residence is located within Jackson County, Michigan.

2. Dr. Lavery is a renowned ophthalmologist, physician, and leader in the medical field of vision and eyesight.

3. Dr. Lavery is board-certified by the American Board of Ophthalmology, is a member of the American Academy of Ophthalmology, and an inventor of a medical screening apparatus and method used in the field of human vision and eyesight.

4. Dr. Lavery has authored clinical studies and scholarly papers, and he also has performed tens of thousands of surgeries that have helped people afflicted with eye trauma and vision disorders such as glaucoma and diabetic retinopathy.

5. As the inventor of a medical screening apparatus and method used in the field of human vision and eyesight, Dr. Lavery filed a Patent Application in 2001 (“the Application”). A copy of the Application is attached hereto, and made part hereof, as **Exhibit 1.**

6. Dr. Lavery obtained a patent on his invention, U.S. Patent No. 6,594,607 (“the Patent”) in 2001. A copy of the Patent is attached hereto, and made part hereof, as **Exhibit 2.**

7. The Defendant, Pursuant Health, Inc., (“Pursuant Health”) is a corporation duly organized under the laws of the State of Delaware.

8. Dr. Lavery brings this action against Pursuant Health to protect his legal rights regarding valuable intellectual property consisting of the Patent and all proprietary information, trade secrets, and other intellectual property rights held by Dr. Lavery attendant to the Patent (collectively referred to hereafter as “the Intellectual Property”).

9. Pursuant Health has misappropriated and illegally profited from its use of the Intellectual Property.

10. Dr. Lavery seeks substantial compensatory and punitive damages, as well as comprehensive declaratory and injunctive relief, to remedy gross misconduct committed by Pursuant Health with respect to the failure of Pursuant Health to pay Dr. Lavery a perpetual intellectual property royalty (“the Perpetual Intellectual Property Royalty”) owed to him for Pursuant Health’s use of the Intellectual Property.

11. On October 11, 2007, Dr. Lavery entered into an Amended and Restated Operating Agreement (“Operating Agreement”) with SoloHealth, LLC, a Delaware limited liability company (“SoloHealth”).

12. At the time Dr. Lavery entered into the Operating Agreement with SoloHealth, he became a Member of SoloHealth.

13. The only other Member of SoloHealth when Dr. Lavery joined the company was Bart Foster (“Foster”).

14. At the time Dr. Lavery entered into the Operating Agreement with SoloHealth, he also entered into a Contribution Agreement (“the Contribution Agreement”) with SoloHealth. A copy of the Contribution Agreement (without its Exhibit A and Exhibit C included) is attached hereto, and made part hereof, as **Exhibit 3**.

15. As part of the Contribution Agreement, Dr. Lavery agreed to contribute certain intellectual property to SoloHealth. **Exhibit 3**.

16. The intellectual property Dr. Lavery contributed to SoloHealth pursuant to the Contribution Agreement included “U.S. Patent No. 6,594,607” and “[a]ll proprietary information, trade secrets, and other intellectual property rights held by Lavery and attendant to the Patent”. **Exhibit 3**.

17. As part of the Contribution Agreement, SoloHealth agreed to contribute capital and business expertise, and seek funding from other investors, to establish and fund its activities. To implement their plan, Dr. Lavery and Foster, the sole member of SoloHealth, agreed to amend and restate the Operating Agreement of SoloHealth.

18. At the outset of the business relationship between Dr. Lavery and Foster, they combined their various talents, skills, and resources to develop and market Dr. Lavery’s medical screening apparatus and method (“the Invention”) to prospective customers.

19. One of the most important results of the business relationship between Dr. Lavery and Foster was SoloHealth’s commercial exploitation of the Invention.

20. The Invention was eventually marketed by SoloHealth under the name “EyeSite”.

21. SoloHealth intended to use the Invention to provide access to health and wellness kiosks for consumers in existing retail locations throughout North America.

22. The health and wellness kiosk developed in conjunction with the Invention and the Intellectual Property continues to be manufactured by Pursuant Health. The kiosk is based on highly secret, proprietary information that Dr. Lavery developed and which is a valuable trade secret.

23. The Invention was patented in the United States by Dr. Lavery under Patent No. 6,594,607. **Exhibit 2.**

24. Pursuant Health’s products include a self-service vision testing kiosk as well as a self-service health and wellness kiosk for testing blood pressure, body mass index, and vision.

25. Between the end of 2009 and the end of 2010, SoloHealth managed to grow its revenues by a multiple of five (5).

26. By the end of March 2010, SoloHealth launched EyeSite® in nine (9) metro markets nationwide.

27. Between April 2010 and June 2010, SoloHealth was awarded a \$1,200,000 grant by the National Institutes of Health.

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