UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LAVVAN, INC., Plaintiff, v. AMYRIS, INC., Defendant.	No. _____ **JURY TRIAL DEMANDED**

COMPLAINT

LAVVAN, Inc. ("Lavvan"), brings this action against Amyris, Inc. ("Amyris").

I. INTRODUCTION

> "Not one partner has ever stood with us and said, *We're only going to do what the contract says*. . . . if that ever happened, we would be out of business today . . . ."
>
> – Amyris CEO John Melo

1. This case seeks to remedy the predictable consequences that stem from a business partner's view that it need not concern itself with the terms of the agreement it entered, and from that partner's deliberate decision to misappropriate valuable intellectual property entrusted to it under that agreement for its own gain.

2. In 2019, Amyris addressed its short-term woes by publicly announcing that it would be entering a new industry by forming a promising exclusive partnership with Lavvan and securing from Lavvan a much-needed multi-million-dollar cash influx. Amyris then quickly proceeded to denounce the deal's terms privately and to try to change and frustrate—and ultimately to breach—those terms, all at the expense of Lavvan and its investors. In fact, Amyris has rejected the agreement's most fundamental terms so thoroughly that Amyris evidently never meant to honor the contract at all. In the course of repudiating the agreement, Amyris

misappropriated Lavvan's trade secrets and used intellectual property licensed exclusively to Lavvan to compete against, rather than collaborate with, its supposed partner.

3. Amyris apparently saw the contract as a short-term fix for its deep and dire financial troubles—as Amyris's CEO would come to describe it, the deal was a decision for Amyris to 'cut off its arm to save its body.' The news of Amyris's potentially lucrative partnership with Lavvan, in a rapidly growing and extremely attractive industry (biosynthetic cannabinoids), would stave off investors' worries about the company's hundreds of millions of dollars in losses, crushing debt load, and languishing stock price. But to get the deal it wanted to announce, Amyris had to agree to give Lavvan exclusive rights to valuable intellectual property, as well as control over decisions about how and when the partnership would commercialize its collaborative research and development.

4. As Lavvan came to learn, ceding such control threatens to expose the rotten core of Amyris's business, which has long depended on accounting schemes designed to hide massive manufacturing losses Amyris quietly absorbs in the development of its products. These schemes allow Amyris to portray itself as a leading player in the field of biotechnology, even while its financials tell a very different story of a company that cannot seem to turn a profit.

5. Accordingly, after having secured the benefits of Lavvan's upfront $10 million payment and the positive stock-market effects of announcing its partnership, Amyris now hopes to ignore its contractual obligations, seize for itself Lavvan's rights, and usurp for itself all of the benefits of the partnership—in flagrant violation of Lavvan's intellectual property rights and the Parties' operative agreement.

6. All the while, Amyris continues to feed the market—and its auditors and bankers—false and misleading information about the status of the partnership, its obligations and

limitations under the partnership, and the scope of the Parties' intellectual property rights, desperate to pump its stock price by maintaining a false appearance of progress. Amyris's CEO has admitted that his habit of over-promising is "like an addiction" and "something he could not control."

7. Amyris's flagrant violations of the fundamental terms of its agreement now extend to the infringement of patents over which Lavvan holds exclusive licenses, as well as the appropriation of Lavvan's trade secrets. Amyris's conduct has left Lavvan with no choice but to seek this Court's intervention to remedy the significant damage Lavvan and its investors have suffered.

II. CASE OVERVIEW

8. In March 2019, Lavvan and Amyris entered into a Research, Collaboration and License Agreement (with its subsequent written amendments as of May 20, 2019, and March 11, 2020, the "RCL Agreement") to biosynthetically develop rare chemicals found in cannabis plants, known as cannabinoids, for commercial use.[1] The RCL Agreement provided Amyris with the ability to earn $300 million in milestone payments over several years as well as a profit-sharing arrangement based on Lavvan's commercial sales of these biosynthetic cannabinoids. The RCL Agreement provided the framework to leverage Amyris's intellectual property and infrastructure to position Lavvan as a dominant first-to-market and lowest-cost producer of biosynthetic cannabinoids in an anticipated multi-billion dollar industry.

9. The division of labor under the RCL Agreement was straightforward: Amyris would develop for Lavvan yeast strains specifically engineered to produce a series of cannabinoids through fermentation, and Lavvan would have the exclusive right to then use those

[1] A true and correct copy of the RCL Agreement is appended to this Complaint as Exhibit A.

yeast strains to manufacture and commercialize the cannabinoids, as well as an exclusive license to all of Amyris's intellectual property reasonably necessary to develop or produce those cannabinoids. In exchange, Lavvan agreed to pay Amyris hundreds of millions of dollars in milestone and profit-sharing payments, in addition to the $10 million initial influx of cash Lavvan paid Amyris at the outset of their partnership. Specifically, Lavvan would pay Amyris incremental "milestone payments" as Amyris reached defined developmental goals that bring the cannabinoids closer to economical commercialization, as well as royalty payments based on Lavvan's commercial sales of those cannabinoids.[2]

10. Lavvan and Amyris (the "Parties") were thus embarking on a venture that would disrupt the current cannabis industry, and they were poised to be the frontrunning market leaders to fill the rapidly developing and high demand for these biosynthetic cannabinoids in a variety of markets, including health, beauty and cosmetics, food and beverage, and pharmaceuticals. Amyris announced the collaboration in February 2019 to great fanfare—and a 70% jump in its stock price, adding hundreds of millions of dollars to its market capitalization. This introductory announcement would prove to be the high point of the collaboration.

11. Lavvan has more than held up its end of the deal. After signing the RCL Agreement, Lavvan provided Amyris an upfront payment of $10 million. Lavvan also identified an array of prospective applications, markets, and customers, including developmental targets for profitable commercialization of cannabinoids based on market conditions, and proceeded to assemble a world-class team, including a group that had just built a $2.5 billion cannabis business that was acquired in the largest deal of its kind in the industry's history. And as Amyris

[2] For ease of exposition, references in this Complaint to "delivering CBD" or "delivering cannabinoids" refer to delivering the strain, production process, and associated IP needed to produce that cannabinoid (unless the context indicates otherwise).

reported (falsely, Lavvan later learned) that it was on schedule for its contracted developmental milestones, Lavvan conducted an exhaustive search throughout the United States and Canada for an appropriate fermentation facility to prepare to produce the biosynthetic cannabinoids from the yeast strains Amyris was supposed to deliver, and Lavvan ultimately spent hundreds of thousands of dollars contracting with a third-party manufacturer (the "Selected Manufacturer") for the initial engineering work in advance of full-scale manufacturing.[3]

12. Amyris had other plans, however, and did not come close to holding up its end of the deal. It has yet to reach even the first contractual developmental milestone in the RCL Agreement, despite its repeated false and misleading statements to Lavvan and to the public markets that Amyris was close to achieving some of those milestones many months ago. Among those unfulfilled promises, in December 2019, Amyris told Lavvan it would meet the first milestone by February 2020 "unless the lab burns down." Amyris's lab is still standing, yet half a year after that promised date, Amyris still has not met the milestone. As a practical matter, Amyris has quit complying with the RCL Agreement and gone in a very different direction.

13. In fact, just months after the Parties had entered into the RCL Agreement, Amyris CEO John Melo told Lavvan that Amyris had "seller's remorse." Historically, Amyris had entered into partnerships in which it retained control over decisions about manufacturing and commercialization. Lavvan deliberately negotiated a very different deal, and secured the exclusive license to the intellectual property necessary to manufacture and commercialize the relevant products, and control over those processes, as reflected in the RCL Agreement.

[3] Lavvan and the Selected Manufacturer entered into a Non-Disclosure Agreement under which the parties' relationship is confidential. To comply with that agreement, this Complaint uses the term "Selected Manufacturer" to identify the third-party manufacturer Lavvan selected.

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