



with its products and to pre-pay to the Distributor the commissions it would earn on the sale of those products.

5. Upon information and belief, in mid-2015, MiMedx entered into discussions to acquire the Distributor.

6. In the second half of 2015, before the merger occurred, the Distributor's sales of Osiris's products significantly decreased.

7. On January 13, 2016, MiMedx acquired the Distributor. The Distributor became MiMedx's wholly owned subsidiary.

8. MiMedx acquired the Distributor's assets, including its cash and the Osiris products in the Distributor's possession, and the Distributor's liabilities. MiMedx also obtained access to Osiris's confidential information.

9. Due to MiMedx's influence, the Distributor did not sell \$2.2 million of Osiris's products that it had acquired from Osiris before the merger, and those products subsequently expired in the Distributor's warehouse. After the merger, MiMedx and the Distributor, under MiMedx's direction, refused to reimburse Osiris for the expired products.

10. Before the merger, Osiris had pre-paid the Distributor \$1.28 million in commissions for products the Distributor took possession of and was supposed to sell. However, after the merger, the Distributor – now under MiMedx's control – did not sell Osiris's products and did not repay the commissions it received for those products, causing an additional loss to Osiris of \$1.28 million.

11. Upon information and belief, MiMedx and the Distributor then used Osiris's trade secrets, including its customer lists and sales information, to sell MiMedx's competing products to Osiris's customers instead of the Osiris products that MiMedx was in possession of and had

already received commission payments for. MiMedx thus improperly gained a competitive advantage vis-à-vis Osiris and was unjustly enriched. It is not possible to ascertain Osiris's damages related to the resulting loss of sales and reputational harm or the unjust benefit to MiMedx.

12. In March 2016, MiMedx also instructed the Distributor, its wholly owned subsidiary, to cease making payments it owed to Osiris under a September 2015 payment plan related to the sale of Osiris's Ovation product to an entity related to the Distributor. As a result, Osiris suffered a loss of \$2,950,075.

13. Osiris attempted to recover the money owed and negotiated in good faith with MiMedx and its wholly owned Distributor. However, due to MiMedx's interference, Osiris was unable to recover its loss of \$6,430,075.

14. In May 2016, Osiris was forced to file an arbitration claim against the Distributor to recover the money owed. MiMedx participated in the arbitration prior to its divestiture of the Distributor in August 2017. Osiris expended \$321,341.21 in attorney fees related to the arbitration.

15. Osiris sustained at least \$6,751,416.21 in compensatory damages and costs, including (i) \$2.2 million in products that expired in MiMedx's custody; (ii) \$1.28 million in unreimbursed commissions; (iii) \$2,950,075 under the Ovation Payment Plan; and (iv) \$321,341.21 in attorney fees related to the arbitration. Osiris also incurred additional unascertainable damages, reputational damage and competitive disadvantages from MiMedx's misappropriation of Osiris's confidential information.

16. MiMedx and the Distributor are jointly and severally liable for Osiris's damage because they are joint tortfeasors responsible for Osiris's injuries. Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. § 3-1401.

### **JURISDICTION AND VENUE**

17. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332(a)(1). Complete diversity exists between the Plaintiff and Defendant, and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

18. This Court has personal jurisdiction over Defendant under Maryland Code §6-103(b)(4) because Defendant's tortious conduct caused injury to Osiris, a Maryland-incorporated company, and that injury relates to Defendant's regular business and operations in Maryland.

19. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(1) as the Court has personal jurisdiction over MiMedx with respect to this action.

### **PARTIES**

20. Osiris is incorporated and has its primary place of business in Maryland. It is a leading regenerative medicine company that develops and markets products to serve the wound and orthopedic markets. Osiris's products include Ovation, a bone repair and regeneration product, and Grafix, a product treating wounds and inflammation. Osiris utilizes distributors to provide products to hospitals and clinics.

21. MiMedx is incorporated in Florida and has its primary place of business in Georgia. It regularly conducts business and has significant operations in Maryland. MiMedx is one of Osiris's primary competitors in wound and orthopedic medicine and manufactures OrthoFlo and EpiFix – products similar in purpose to Osiris's Ovation and Grafix, respectively. MiMedx also utilizes distributors to promote its products.

**STATEMENT OF FACTS**

**Ovation and Grafix Sales**

22. The Distributor sold Osiris's products, Ovation and Grafix, pursuant to a distribution agreement. Among other things, Osiris prepaid commissions to the Distributor. Osiris was entitled to recover, and the Distributor was required to reimburse, any prepaid commissions for Osiris's products not sold through to end users.

23. Osiris provided large quantities of products to the Distributor in 2014 and 2015 and prepaid commissions to the Distributor for those products.

24. Upon information and belief, in mid-2015, MiMedx and the Distributor began discussing a potential merger, and the Distributor's sales of Osiris's products significantly decreased.

25. The January 2016 merger agreement provided the Distributor with additional earn-out consideration if its sales personnel sold specified quantities of MiMedx's products prior to December 31, 2017. The Distributor could potentially earn the equivalent of the gross profit margin from all sales of MiMedx products. This provision thus incentivized the Distributor to cease sales of Osiris's products, large quantities of which were in its possession.

26. Under MiMedx's direction, the Distributor did not sell \$2.2 million of Osiris's products it received on consignment. These products then expired while in MiMedx and the Distributor's custody. Osiris did not receive payment for the expired products and was not repaid the commissions it had pre-paid for these products.

27. MiMedx and the Distributor returned some unexpired products in October 2015 and January 2016. Osiris did not receive the commissions it had prepaid for those products.

28. Despite Osiris's attempts to collect the commissions, it is still owed \$1.28 million in prepaid commissions for expired and returned products.

**Osiris's Confidential Information**

29. Under the distribution agreement, the Distributor was prohibited from disclosing Osiris's trade secrets, including its customer lists and sales information. The Distributor was only allowed to use Osiris's confidential information, including its trade secrets, to fulfill its obligations under the distribution agreement and was prohibited from using Osiris's information for any other purpose. The Distributor's obligations to maintain the confidentiality of Osiris's trade secrets survived the distribution agreement's termination.

30. MiMedx knew, or should have known, that under the distribution agreement, the Distributor was obligated to maintain the confidentiality of Osiris's trade secrets.

31. Upon information and belief, MiMedx induced the Distributor to disclose Osiris's trade secrets and to use this information to promote and sell MiMedx's competing products to Osiris's customers.

32. MiMedx thus improperly obtained a competitive advantage vis-à-vis Osiris and was unjustly enriched by using Osiris's trade secrets to sell its own products.

**Ovation Payment Plan**

33. In December 2014, the Distributor sold a portion of Osiris's Ovation product to an entity related to the Distributor. By August 2015, the related entity owed Osiris \$5,900,150.

34. Following negotiations, the Distributor committed to assuming financial responsibility for the Ovation product in its related entity's possession. On September 23, 2015, the Distributor sent an email to Osiris confirming that it would pay the related entity's balance of \$5,900,150 in ten monthly installments of \$590,015 beginning in October 2015 and continuing

through July 2016. This agreement was memorialized in a September 28, 2015 letter (the “Ovation Payment Plan”).

35. Osiris received the first five monthly payments from October 2015 through February 2016 pursuant to the Ovation Payment Plan.

36. After the acquisition, the Distributor failed to make the March 2016 payment. On March 4, 2016, Osiris inquired about the missed payment, and the Distributor told Osiris that it was “waiting to hear back from MiMedx[‘s] CEO on this.”

37. Upon information and belief, MiMedx then instructed the Distributor to discontinue payments under the Ovation Payment Plan.

38. As a result, the Distributor did not make the last five payments as required, and Osiris is still owed \$2,950,075.

#### **Osiris’s Attempted Recovery of Damages**

39. Osiris attempted to recover the money owed and negotiated with MiMedx and the Distributor in good faith. However, due to MiMedx’s interference, Osiris was not able to recover the amounts owed.

40. Thus, on May 23, 2016, Osiris filed an arbitration demand against the Distributor, pursuant to the distribution agreement, to recover money owed. MiMedx participated in the arbitration prior to its divestiture of the Distributor in August 2017.

41. As of March 2018, Osiris and the Distributor remain in arbitration proceedings. In its attempts to collect the amounts owed through arbitration, Osiris has already incurred \$321,341.21 in attorney fees and costs.

**CAUSES OF ACTION**

**COUNT 1**  
**Breach of Contract**  
**Ovation and Grafix Sales**

42. Plaintiff re-alleges and incorporates by reference the allegations in the foregoing paragraphs.

43. Osiris and the Distributor were parties to the distribution agreement. MiMedx was aware of the distribution agreement when it acquired the Distributor and thus knowingly assumed the Distributor's obligations to Osiris.

44. MiMedx breached the distribution agreement by using Osiris's trade secrets, including its customer lists and sales information, to sell its competing products instead of the Osiris products in its possession, and by refusing to reimburse Osiris for the prepaid commissions on those products.

45. By reason of these actions, Osiris incurred \$3.48 million in compensatory damages and additional unascertainable, but foreseeable, compensatory damages from MiMedx's unjust enrichment and competitive advantage.

**COUNT 2**  
**Conspiracy to Breach Contract**  
**Ovation and Grafix Sales**

46. Plaintiff re-alleges and incorporates by reference the allegations in the foregoing paragraphs.

47. Osiris and the Distributor were parties to the distribution agreement. MiMedx was aware of the distribution agreement when it acquired the Distributor and thus knowingly assumed the Distributor's obligations to Osiris.

48. MiMedx and the Distributor agreed to breach the distribution agreement by using Osiris's trade secrets, including its customer lists and sales information, to sell MiMedx's

competing products instead of the Osiris products in its possession, and by refusing to reimburse Osiris for the prepaid commissions on those products.

49. By reason of these actions, Osiris incurred \$3.48 million in compensatory damages and additional unascertainable, but foreseeable, compensatory damages from MiMedx's unjust enrichment and competitive advantage.

**COUNT 3**  
**Tortious Interference with Contract**  
**Ovation and Grafix Sales**

50. Plaintiff re-alleges and incorporates by reference the allegations in the foregoing paragraphs.

51. Osiris and the Distributor were parties to the distribution agreement. MiMedx was aware of the distribution agreement when it acquired the Distributor.

52. MiMedx improperly induced the Distributor to misuse Osiris's trade secrets, including its customer lists and sales information, to promote MiMedx's products to Osiris customers for financial gain and to obtain an improper competitive advantage vis-à-vis Osiris.

53. MiMedx instructed the Distributor not to reimburse Osiris for \$2.2 million in expired products and \$1.28 million in prepaid commissions.

54. By reason of these actions, MiMedx interfered in the Distributor's contract with Osiris, causing \$3.48 million in compensatory damages and additional unascertainable, but foreseeable, compensatory damages from its unjust enrichment and competitive advantage.

**COUNT 4**  
**Civil Conspiracy to Interfere with Contract**  
**Ovation and Grafix Sales**

55. Plaintiff re-alleges and incorporates by reference the allegations in the foregoing paragraphs.

56. Osiris and the Distributor were parties to the distribution agreement. MiMedx was aware of the distribution agreement when it acquired the Distributor.

57. MiMedx improperly induced the Distributor to misuse Osiris's trade secrets, including its customer lists and sales information, to promote MiMedx's products to Osiris's customers for financial gain and to obtain an improper competitive advantage vis-à-vis Osiris.

58. MiMedx instructed the Distributor not to reimburse Osiris for \$2.2 million in expired products and \$1.28 million in prepaid commissions.

59. The Distributor agreed to breach the distribution agreement.

60. By reason of these actions, MiMedx and the Distributor conspired to interfere in the Distributor's contract with Osiris, causing \$3.48 million in compensatory damages and additional unascertainable, but foreseeable, compensatory damages from its unjust enrichment and competitive advantage.

#### **COUNT 5**

#### **Misappropriation of Osiris's Information: Maryland Uniform Trade Secrets Act**

61. Plaintiff re-alleges and incorporates by reference the allegations in the foregoing paragraphs.

62. Osiris's customer lists and sales information are trade secrets. This information has independent economic value to Osiris and is not generally known to or ascertainable by Osiris's competitors. Osiris took reasonable efforts, as evidenced by, among other measures, the inclusion of detailed confidentiality clauses in its distribution agreement, to maintain the secrecy of its customer lists and sales information.

63. The Distributor was obligated to only use Osiris's trade secrets, including customer lists and sales information, to fulfill its obligations to Osiris under the distribution agreement.

64. MiMedx used the Distributor's knowledge of Osiris's trade secrets for financial gain, even though it knew, or had reason to know, that the Distributor was contractually obligated to maintain the information's secrecy and limit its use.

65. Osiris did not consent to MiMedx's use of its trade secrets.

66. By reason of these actions, MiMedx obtained unjust enrichment, and Osiris incurred \$3.48 million in compensatory damages resulting from MiMedx's misappropriation of Osiris's trade secrets. Osiris also incurred additional unascertainable, but foreseeable, compensatory damages from MiMedx's unjust enrichment and competitive advantage.

**COUNT 6**  
**Unfair Competition**  
*(in the alternative)*

67. Plaintiff re-alleges and incorporates by reference the allegations in the foregoing paragraphs.

68. Osiris expended time, labor and money in developing its trade secrets, including its customer lists and sales information.

69. Osiris and MiMedx are competitors.

70. MiMedx improperly obtained access to Osiris's confidential information by inducing the Distributor to disclose Osiris's customer lists and sales information in breach of the distribution agreement.

71. MiMedx then misappropriated Osiris's information and used Osiris's trade secrets to market and sell MiMedx's competing products. MiMedx thus gained an unfair competitive advantage vis-à-vis Osiris.

72. Osiris incurred an unascertainable amount of compensatory damages and reputational harm and suffered a competitive disadvantage from MiMedx's misappropriation of Osiris's trade secrets.

**COUNT 7**  
**Civil Conspiracy to Misappropriate Osiris's Information: Maryland Uniform Trade Secrets Act**

73. Plaintiff re-alleges and incorporates by reference the allegations in the foregoing paragraphs.

74. Osiris's customer lists and sales information are trade secrets. This information has independent economic value to Osiris and is not generally known to or ascertainable by Osiris's competitors. Osiris took reasonable efforts, as evidenced by, among other measures, the inclusion of detailed confidentiality clauses in its distribution agreement, to maintain the secrecy of its customer lists and sales information.

75. The Distributor was obligated to only use Osiris's trade secrets, including customer lists and sales information, to fulfill its obligations to Osiris under the distribution agreement.

76. MiMedx and the Distributor agreed to misappropriate Osiris's confidential information to harm Osiris.

77. The Distributor disclosed Osiris's trade secrets, including its customer lists and sales information, to MiMedx, even though it knew that it had acquired that information through the distribution agreement, which gave rise to a contractual duty to maintain the information's secrecy and limit its use.

78. MiMedx used the Distributor's knowledge of Osiris's trade secrets for financial gain, even though it knew, or had reason to know, that the Distributor was contractually obligated to maintain the information's secrecy and limit its use.

79. Osiris did not consent to MiMedx's use of its trade secrets.

80. By reason of these actions, MiMedx obtained unjust enrichment, and Osiris incurred \$3.48 million in compensatory damages resulting from MiMedx's misappropriation of

Osiris's trade secrets. Osiris also incurred additional unascertainable, but foreseeable, compensatory damages from MiMedx's unjust enrichment and competitive advantage.

**COUNT 8**  
**Civil Conspiracy to Commit Unfair Competition**  
*(in the alternative)*

81. Plaintiff re-alleges and incorporates by reference the allegations in the foregoing paragraphs.

82. Osiris expended time, labor and money in developing its trade secrets, including its customer lists and sales information.

83. Osiris and MiMedx are competitors.

84. MiMedx improperly obtained access to Osiris's confidential information by inducing the Distributor to disclose Osiris's customer lists and sales information in breach of the distribution agreement.

85. MiMedx and the Distributor agreed to misappropriate Osiris's information and used Osiris's trade secrets to market and sell MiMedx's competing products. MiMedx thus gained an unfair competitive advantage vis-à-vis Osiris.

86. Osiris incurred an unascertainable amount of compensatory damages and reputational harm and suffered a competitive disadvantage from MiMedx's misappropriation of Osiris's trade secrets.

**COUNT 9**  
**Breach of Contract**  
**Ovation Payment Plan**

87. Plaintiff re-alleges and incorporates by reference the allegations in the foregoing paragraphs.

88. Osiris and the Distributor were parties to the Ovation Payment Plan. MiMedx was aware of the Ovation Payment Plan when it acquired the Distributor and thus knowingly assumed Distributor's obligations to Osiris.

89. MiMedx and the Distributor ceased making the payments required by the Ovation Payment Plan.

90. By reason of these actions, Osiris incurred \$2,950,075 in foreseeable contractual damages.

**COUNT 10**  
**Conspiracy to Breach Contract**  
**Ovation Payment Plan**

91. Plaintiff re-alleges and incorporates by reference the allegations in the foregoing paragraphs.

92. Osiris and the Distributor were parties to the Ovation Payment Plan. MiMedx was aware of the Ovation Payment Plan when it acquired the Distributor and thus knowingly assumed Distributor's obligations to Osiris.

93. MiMedx and the Distributor agreed to breach the Ovation Payment Plan and ceased making the required payments.

94. By reason of these actions, Osiris incurred \$2,950,075 in foreseeable contractual damages.

**COUNT 11**  
**Tortious Interference with Contract**  
**Ovation Payment Plan**

95. Plaintiff re-alleges and incorporates by reference the allegations in the foregoing paragraphs.

96. Osiris and the Distributor were parties to the Ovation Payment Plan. MiMedx was aware of the Ovation Payment Plan when it acquired the Distributor.

97. MiMedx instructed the Distributor, its wholly owned subsidiary, to discontinue the monthly payments required under the Ovation Payment Plan.

98. By reason of these actions, Osiris incurred \$2,950,075 in foreseeable contractual damages.

**COUNT 12**  
**Civil Conspiracy to Interfere with Contract**  
**Ovation Payment Plan**

99. Plaintiff re-alleges and incorporates by reference the allegations in the foregoing paragraphs.

100. Osiris and the Distributor were parties to the Ovation Payment Plan. MiMedx was aware of the Ovation Payment Plan when it acquired the Distributor.

101. MiMedx instructed the Distributor, its wholly owned subsidiary, to discontinue the required monthly payments. The Distributor agreed to breach the Ovation Payment Plan and ceased making the required payments.

102. By reason of these actions, Osiris incurred \$2,950,075 in foreseeable contractual damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment as follows:

103. Compensatory damages in the amount of \$2.2 million for Osiris's products that expired in MiMedx and the Distributor's custody;

104. Compensatory damages in the amount of \$1.28 million in prepaid commissions for expired and returned products;

105. Injunctive relief and damages as the Court deems just and proper for MiMedx's misappropriation of Osiris's confidential information and the resulting unjust enrichment;

106. Exemplary damages as the Court deems just and proper for MiMedx's willful misappropriation of Osiris's trade secrets;

107. Compensatory damages in the amount of \$2,950,075 related to the Ovation Payment Plan;

108. Attorney fees and costs in the amount of \$321,341.21 expended in pursuit of recovery of these damages in Plaintiff's arbitration with the Distributor;

109. The costs and disbursements of this action, including reasonable attorney fees, accountant fees and expert fees;

110. Punitive damages as the Court deems just and proper; and

111. Additional relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff demands a jury trial.

DATED: April 2, 2018

Respectfully submitted,

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