

IN THE CIRCUIT COURT FOR THE
SEVENTEENTH JUDICIAL CIRCUIT, IN
AND FOR BROWARD COUNTY,
FLORIDA

FRASER JOHN PERRING; GABRIEL
BERNARDE; AND AIDAN LAU,

CASE NO. _____

Plaintiffs,

v.

MIMEDX GROUP, INC.; and PARKER H.
PETIT,

Defendants.

COMPLAINT FOR DAMAGES

COMES NOW, Plaintiffs Fraser John Perring, Gabriel Bernarde, and Aidan Lau (together, “Plaintiffs”), file this Complaint for Damages against Defendants MiMedx Group, Inc. (“MiMedx”) and Parker H. “Pete” Petit (“Petit”), and state as follows:

I. INTRODUCTION

1. This is an action against Defendants MiMedx and Petit for engaging in malicious prosecution and making defamatory and libelous statements about Plaintiffs and their organization, Viceroy Research (“Viceroy”).

2. MiMedx, a public company, which at all relevant times was owned and controlled by Petit, has engaged in fraudulent and illegal practices in furtherance of Petit’s and other senior management’s scheme to inflate MiMedx’s stock value. The misconduct included improper revenue recognition and reporting practices, paying illegal bribes to doctors and distributors who prescribed or sold their products, bullying and retaliating against employees and others who complained about or criticized the illegal conduct, and lying under oath to the U.S. Securities and

Exchange Commission (“SEC”). An integral part of Defendants’ scheme was to attack and attempt to discredit anyone who complained about or reported the illegal conduct.

3. Plaintiffs published a series of exposés describing their belief that MiMedx was a fraudulent and corrupt enterprise, and detailing the evidence supporting this belief. In reaction, MiMedx and Petit made public and defamatory statements about Plaintiffs, falsely stating that, among other things, Plaintiffs were fraudulently manipulating the market, engaged in illegal and criminal practices, and that their reports were untruthful and based on false evidence. Defendants then sued Plaintiffs in a series of federal lawsuits, falsely alleging that Plaintiffs’ reports were false.

4. Plaintiffs reports, however, were truthful. This has been borne out not only by the evidence in the reports themselves, but by, among other things, MiMedx’ subsequent public admissions that MiMedx and Petit (1) orchestrated a scheme to improperly manipulate MiMedx’s timing and recognition of revenue, (2) likely illegally bribed doctors and distributors, (3) bullied employees who raised concerns about the misconduct, and (4) lied to stakeholders, auditors, and the SEC about these practices. As a result, MiMedx has withdrawn five years of financial reports and fired Petit and other conspiring management.

5. Further, and importantly here, Defendants’ frivolous lawsuits against Plaintiffs were dismissed in Plaintiffs’ favor. Even though Plaintiffs prevailed in the lawsuits, they and Defendants’ defamatory statements have caused Plaintiffs substantial damages, including legal fees and costs, and a loss of millions of dollars in business and investment opportunities. Plaintiffs therefore bring this action to recover these damages.

II. THE PARTIES

6. Plaintiff Fraser Perring is an individual who resides in the United Kingdom and New York City, New York, and is sui juris.

7. Plaintiff Gabriel Bernarde is an individual who resides in Australia and is sui juris.

8. Plaintiff Aidan Lau is an individual who also resides in Australia and is juris.

9. Plaintiffs are co-founders of Viceroy—an online publication that expresses views on the economic outlook of various companies and the evidence supporting those views. Viceroy commonly expresses negative or bearish views of companies that the rest of the market views positively or bullishly. As disclosed in their publications, Plaintiffs typically have a financial interest in the companies about which they report and benefit financially if the price of their stocks decline.

10. Defendant MiMedx is a Florida corporation engaged in the business of processing, marketing, and selling wound treatments made from amniotic membranes—the tissue that protects a fetus—that it processes and grinds into a powder that can be applied topically or by injection. MiMedx is a publicly held corporation that, before it was delisted for fraudulent revenue reporting, traded on the NASDAQ exchange under ticker symbol “MDXG.” MiMedx’s customers have included the U.S. Department of Veterans Affairs (“VA”) and other government agencies, who have since discontinued purchasing MiMedx’s products for lack of proven efficacy.

11. Defendant Petit is an individual residing in Georgia and the former Chairman and CEO of MiMedx. Petit was fired as CEO and ousted from the board for participating in the illegal schemes described herein.

III. JURISDICITON AND VENUE

12. This Court has subject-matter jurisdiction over this action because the amount in controversy exceeds \$15,000.

13. This Court has personal jurisdiction over Defendant MiMedx because it is a Florida corporation. Further, this Court has personal jurisdiction over Defendants MiMedx and Petit because they filed the frivolous lawsuit at issue in Florida and made the defamatory statements at issue in Florida.

14. Venue is proper in this Court because Defendant MiMedx has or usually keeps an office for transaction of its customary business in this Broward County, and Plaintiffs' cause of action accrued in Broward County.

IV. GENERAL FACTUAL ALLEGATIONS

A. Defendants' Engaged in Illegal, Fraudulent, and Coercive Practices, Which Are Confirmed by Public Investigations, Reports, and Public Filings.

15. MiMedx was once an apparent successful and promising enterprise, and, according to some reports, had the largest share of the wound-healing market in the U.S. Beginning in 2012, MiMedx reported skyrocketing increases in sales revenue year over year, which helped propel its stock from just over one dollar a share in 2012 to over 16 dollars a share at its peak in January 2018.

16. But in reality, this success and spike in revenue was a sham, which MiMedx perpetuated through a series of schemes. One such scheme is a practice known as "channel stuffing." Channel stuffing is a fraudulent practice whereby a company ships more products to distributors or customers than what has been sold and books them as sales. MiMedx would, among other things, ship products to entities who purchased the product on consignment, such as the VA,

and book them as sales even though the entities had not yet purchased the product. As a result, MiMedx's public reports of revenue and profits were grossly inflated.

17. Additionally, MiMedx perpetuated sales through bribery schemes. Specifically, in violation of law, MiMedx paid illegal bribes to doctors, nurses, and others healthcare providers, including employees of the VA, to induce them to prescribe and use MiMedx's products. MiMedx failed to report these and numerous other financial payments to doctors as required by law.

18. These and other MiMedx illegal practices started coming to light in about 2016 after numerous MiMedx employees began complaining internally about the company's practices. Upon hearing these complaints, Defendant Petit and other senior MiMedx management launched a scheme dubbed "Project Snow White" aimed at discrediting and retaliating against these employees. Rather than focus on the merits of the allegations, Petit and other senior management tried to develop evidence of wrongdoing against the employees, by, among other things, installing a secret video surveillance system that recorded these employees without their knowledge or consent. MiMedx used the evidence gathered to justify discipline, re-assignment, and, in some cases, termination of these employees. Finding no support from MiMedx, many of these employees began reporting the misconduct to law enforcement, including the U.S. Department of Justice ("DOJ") and the SEC, who promptly began investigations.

19. Additionally, in 2017 a number of others, including Plaintiffs, began gathering the mounting evidence of MiMedx's misconduct and publishing about it. Specifically, Plaintiffs, through Viceroy, published a series of widely disseminated articles that stated their belief that MiMedx was engaged in channel stuffing and illegal bribery schemes, as evidenced by, among other things, reports from current and former MiMedx employees, confidential interviews, and numerous government investigations into MiMedx's conduct.

20. As will be discussed in more detail below, despite the undeniable truth of Plaintiffs' publications and the evidence cited therein, Petit and MiMedx launched a smear campaign against Plaintiffs and other MiMedx critics, knowingly making false statements about them and filing frivolous lawsuits in an attempt to intimidate and silence them.

21. Despite MiMedx's attempts to silence their employees and other critics, MiMedx's illegal conduct has been confirmed by a number of government actions, as well as the company's own public statements and filings.

22. For example, on February 20, 2018, MiMedx announced that due to an investigation by an internal audit committee into, among other things, the accounting treatment of distributor contracts, the company "will not be in a position to release its financial results" for 2017.

23. Then, on May 8, 2018, a federal grand jury indicted three VA health care providers for accepting bribes from MiMedx in exchange for ordering, purchasing, and using MiMedx products on VA patients in violation of anti-bribery laws.

24. Next, on June 7, 2018, MiMedx announced that due to an internal investigation into accounting treatment of sales and distribution practices, the company needed to restate all consolidated financial statements from 2012 through 2017, and that all communications and financial information published in late 2017 and 2018 should no longer be relied upon. MiMedx also announced the departure of several top executives, including its CFO.

25. On July 2, 2018, MiMedx announced that several executives, including Petit, had resigned. The resignation was based on information discovered in the company's ongoing investigation and the board's business judgment.

26. In September of 2018, the company further announced that its board of directors and an internal compensation committee had determined that (1) Petit's and the other executive's departures were deemed to be "for cause" for engaging in conduct detrimental to the business or reputation of the company, (2) they had therefore forfeited their rights under the MiMedx's stock incentive plan, and (3) that the company would take action to recoup previously paid compensation to Petit and the other terminated executives.

27. Next, on November 8, 2018, the NASDAQ delisted MiMedx and suspended all trading of MiMedx's stock.

28. Then, on May 23, 2019, MiMedx announced the findings of an independent investigation of the audit committee of MiMedx's board of directors. The committee concluded, among other things, that:

- MiMedx, as previously stated, would need to restate financial statements for 2012 through 2016 and would need to further restate its unaudited financial reports for 2017;
- MiMedx engaged in conduct that appears to have been designed to manipulate the timing and recognition of revenue, including instances of shipping types and volumes of product not needed by the customer and recording revenue, typically near the end of a reporting period, and facilitating such sales through "side deals" that changed the payment terms or permitted returns and exchanges in subsequent accounting periods;
- Petit and other former executives were aware of an improper course of dealing with MiMedx and its largest distributor, which led to improper revenue recognition under generally accepted accounting practices ("GAAP");
- Petit and other former executives made material misstatements and omissions to the SEC, and that at one point, Petit falsely testified under oath during a deposition when discussing the company's largest distributor;
- Petit and other former executives engaged in a pattern of taking action against employees who raised concerns about the company's practices. Petit directed an internal investigation dubbed "Project Snow White" that sought to uncover wrongdoing committed by such employees, rather than the merits of their allegations. As part of this, a secret video surveillance system was installed to

record interviews and employee discussions without their knowledge or consent. All of this was done in an effort to discredit whistleblowers or find some wrongdoing to justify re-assignment, discipline, or termination; and

- Petit and other executives set an inappropriate “tone at the top” at MiMedx and emphasized short-term business goals over compliance and ethics, purposely took action to disregard revenue recognition rules under GAAP and manipulated the timing and recognition of revenue, acted against employees who raised concerns about the company’s practices, and marginalized the company’s legal and accounting departments and advisors.

29. Additionally, the audit committee investigated whether MiMedx engaged in illegal bribery, and concluded that certain customer accounts presented potential compliance risks and warranted additional review, and that the company will determine whether it should recognize any loss contingencies under GAAP.

B. Defendants Defamed Plaintiffs, Filed Suits Against Them, and Lost.

30. As discussed above, while MiMedx was unraveling, Defendants Petit and MiMedx launched a counterattack against all public critics, including Plaintiffs and their research firm, Viceroy.

31. In so doing, Petit and other MiMedx executives made multiple defamatory statements about Plaintiffs in press releases, news conferences, webpages, media interviews, and shareholder meetings, among other public forums.

32. Specifically, despite knowing that Plaintiffs’ reports about MiMedx’s illegal conduct and the evidence cited therein were true, beginning in October 2017, Petit and other MiMedx executives repeatedly and publicly stated that:

- Plaintiffs publications were “false and fraudulent,” “outright lies,” “unlawful,” “illegal,” “against the law,” “criminal,” and constituted “market manipulation”;
- A MiMedx internal audit committee had confirmed that Plaintiffs’ reports were false; and

- Plaintiffs were posing as Petit and others in social media accounts and sending out false posts about MiMedx.

33. As demonstrated above, Plaintiffs' reports about Petit's and MiMedx's involvement in illegal channel stuffing, bribery, and employee intimidation were completely true, and Petit and MiMedx, as the orchestrators of the illegal conduct, knew them to be so. Nevertheless, Petit and MiMedx publicly and falsely stated that Plaintiffs were liars, criminals, and engaged in illegal market manipulation, all of which were untrue.

34. In addition to making false and defamatory statements, MiMedx, at Petit's direction, filed a series of frivolous lawsuit against Plaintiffs and other public critics to attempt to bully and silence them. The first case was filed on October 4, 2018 in the United States District Court for the Southern District of New York, case styled *MiMedx Group, Inc., et al. v. Sparrow Fund Mgmt. LP, et al.*, Case No. 1:17-cv-07568-PGG-KHP (the "New York Lawsuit"). The lawsuit named Viceroy as a party, asserting various tort claims against Viceroy for its publications, including defamation, false light, and tortious interference with business relations.

35. Shortly after the New York Lawsuit was filed, several of the Plaintiffs moved to dismiss the case for failure to state a claim upon which relief can be granted. On January 12, 2018, the assigned magistrate judge issued a report and recommendations that the case be dismissed against the moving parties. In so doing, the court held that MiMedx's defamation claims failed as a matter of law for failure to plead an actionable false statement of material fact or the requisite scienter. On September 29, 2018, the district court affirmed the magistrate's dismissal.

36. On March 9, 2018, after the magistrate judge issued the recommendation that the case be dismissed, MiMedx, at Petit's direction, dismissed the New York Lawsuit against Viceroy without prejudice and, shortly before the dismissal, filed a similar action against Plaintiffs in the United States District Court for the Middle District of Florida, case styled *MiMedx Group, Inc. v.*

Fraser John Perring, et al., Case No. 3:18-cv-00327-TJC-PDB (the “Florida Lawsuit”). The Florida Lawsuit asserted claims of libel and violation of the Florida Deceptive & Unfair Trade Practices Act.

37. On July 5, 2018, Plaintiff Perring moved to dismiss the action, relying heavily on the evidence in the public record establishing that his reports about MiMedx were truthful and accurate. MiMedx, however, insisted on pressing forward with the case, causing Plaintiffs to incur substantial legal expenses and costs.

38. Then, on October 19, 2018, MiMedx suddenly and without explanation dismissed the case against all Plaintiffs.

39. While the frivolous lawsuits were both dismissed in Plaintiffs favor, Plaintiffs have nevertheless suffered substantial damages. In addition to the unnecessary legal fees and costs Plaintiffs had to incur to defend themselves against MiMedx’s baseless allegations, the suits, as well as the other defamatory statements made by MiMedx and Petit, caused significant reputational damage to Plaintiffs, which caused them to lose several key financial backers. As a result, Plaintiffs lost significant business and investment opportunities, which have resulted in damages to Plaintiffs in excess of \$15 million.

V. CLAIMS FOR RELIEF

COUNT I: MALICIOUS PROSECUTION

40. Plaintiffs incorporate the above allegations as if fully stated herein.

41. Defendants commenced both the New York and Florida Lawsuits against Plaintiffs and their company, Viceroy.

42. Defendants legally caused the commencement of the New York and Florida Lawsuits as well as the following elements described herein, including damages incurred by Plaintiff.

43. Both proceedings resulted in a bona fide termination in favor of Plaintiffs.

44. Defendants lacked probable cause to commence and prosecute the lawsuits.

45. Defendants filed and prosecuted the lawsuits with malice. Specifically, despite knowing the claims were meritless, Defendants filed the suits to attempt to intimidate, harass, and bully Plaintiffs into silence.

46. As a result, Plaintiffs have sustained substantial damages, including legal fees and costs, and lost business and investment opportunities as a direct result of the reputational harm they sustained from the New York and Florida Lawsuits.

COUNT II: DEFAMATION AND LIBEL

47. Plaintiffs incorporate the above allegations as if fully set forth herein.

48. Defendants' statements identified herein constitute actionable defamation in that they represent false statements of fact, are defamatory by implication, or consist of opinions supported by undisclosed detrimental facts. Many of these statements were written, and are thus libelous in nature.

49. Defendants published statements that were false and malicious.

50. Defendants acted with knowledge, reckless disregard, and negligence with respect to the falsity of their published statements

51. Defendants' statements were defamatory.

52. Defendants' statements injured Plaintiffs' reputations and exposed them to negative views, including with respect to a substantial and respectable minority of the community.

53. Plaintiffs have suffered actual and special damages as result of the defamatory statements, including the cost to protect and rehabilitate their reputations in the community, substantial legal costs incurred in defending against the New York and Florida Lawsuits, and lost business and investment opportunities resulting from the reputational damage sustained.

54. Defendants acted with intentional or reckless disregard for the truth or falsity of their statements about Plaintiffs, as described herein.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment in their favor awarding them damages, including special damages and, upon appropriate leave of court, punitive damages, their reasonable attorneys' fees and costs in prosecuting this action, and for any other relief the Court deems just and appropriate.

VII. DEMAND FOR JURY TRIAL

Plaintiffs request a jury trial on all issues so triable.

June 17, 2019

Respectfully Submitted,

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