

EXHIBIT A



**Service of Process
Transmittal**

10/05/2018

CT Log Number 534180415

TO: Helen Hu
Invasix Inc.
100 Leek Cres. Unit 15
Richmond Hill, ON L4B 3E6

RE: Process Served in Delaware

FOR: INVASIX INC. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: LEAVITT WOMEN'S HEALTH CARE CORP, P.C., etc., Pltf. vs. INVASIX INC., etc. and ASCENTIUM CAPITAL LLC, etc., Dfts.

DOCUMENT(S) SERVED: Summons, Complaint

COURT/AGENCY: BONNEVILLE COUNTY - SEVENTH JUDICIAL DISTRICT COURT, ID
Case # CV20185032

NATURE OF ACTION: Wrongful conduct and liable to Plaintiff for the injury it suffered in connection with the purchase of the System.

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 10/05/2018 at 10:35

JURISDICTION SERVED : Delaware

APPEARANCE OR ANSWER DUE: Within 20 days after service

ATTORNEY(S) / SENDER(S): Jon A. Stenquist
PARSONS BEHLE & LATIMER
900 Pier View Drive, Suite 206
Idaho Falls, ID 83402
208-522-6700

ACTION ITEMS: SOP Papers with Transmittal, via UPS Worldwide Saver , 1ZX212780400662210
Image SOP
Email Notification, Yair Malca yairm@inmodemd.com

SIGNED: The Corporation Trust Company
ADDRESS: 1209 N Orange St
Wilmington, DE 19801-1120
TELEPHONE: 302-658-7581

2018 SEP -5 AM 10:14

Jon A. Stenquist, ISB #6724
Justin T. Blair, ISB #10453
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JStenquist@parsonsbehle.com
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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

LEAVITT WOMEN'S HEALTH CARE
CORP, P.C., an Idaho professional
corporation,

Plaintiff,

vs.

INVASIX INC., a Delaware corporation d/b/a
INMODE MD, d/b/a INMODE AESTHETIC
SOLUTIONS, d/b/a INMODE, and
ASCENTIUM CAPITAL LLC, a Delaware
limited liability company,

Defendants.

Case No. CV-2018-5032

SUMMONS

TO: ~~INVASIX INC. d/b/a INMODE AESTHETIC SOLUTIONS d/b/a INMODE~~

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF. THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

YOU ARE HEREBY NOTIFIED that in order to defend this lawsuit, an appropriate written response must be filed with the above-designated court within twenty (20) days after service of this Summons on you. If you fail to so respond, the Court may enter judgment against you as demanded by the Plaintiff in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice of or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time, and other legal rights protected.


An appropriate written response requires compliance with Rule 10(a)(1) and other Idaho Rules of Civil Procedure, and shall also include:

1. The title and number of this case.
2. If your response is an Answer to the Verified Complaint, it must contain admissions or denials of the separate allegations of the Verified Complaint and other defenses you may claim.
3. Your signature, mailing address, and telephone number, or the signature, mailing address, and telephone number of your attorney.
4. Proof of mailing or delivery of a copy of your response to Plaintiff's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named court.

DATED September 5, 2018.

Penny Manning, Clerk



Deputy Clerk

Case Assigned to
Dane H. Watkins, Jr.

BONNEVILLE COUNTY, IDAHO

2018 SEP -4 PM 3:46

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vs.

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INMODE MD, d/b/a INMODE AESTHETIC
SOLUTIONS, d/b/a INMODE, and
ASCENTIUM CAPITAL LLC, a Delaware
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Defendants.

Case No. CN-2018-5032

COMPLAINT

COMES NOW, Plaintiff Leavitt Women's Health Care Corp, P.C., an Idaho professional corporation ("Plaintiff"), and brings the following complaint against Invasix Inc., a Delaware

corporation d/b/a InMode Md, d/b/a InMode Aesthetic Solutions, d/b/a InMode, and Ascentium Capital LLC, a Delaware limited liability company (together "Defendants"):

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is an Idaho professional corporation with its principal place of business in Idaho Falls, Idaho.

2. Upon information and belief, Defendant Invasix Inc., is a Delaware corporation that contracts and otherwise does business in the State of Idaho under the names InMode, InMode MD, and/or InMode Aesthetic Solutions ("InMode").

3. Defendant Ascentium Capital LLC, is a Delaware limited liability company that contracts and otherwise does business in the State of Idaho ("Ascentium").

4. This Court has jurisdiction over Plaintiff's claims pursuant to Idaho Code § 5-514.

5. Venue is proper in this Court pursuant to Idaho Code § 5-404.

6. The amount in controversy is less than \$75,000.00.

GENERAL ALLEGATIONS

1. InMode specializes in the manufacturing and sale of the Votiva System, a device, or set of devices, designed to treat women suffering with feminine health issues and sexual disfunction ("System").

2. Upon information and belief, InMode obtains customer financing for System purchases through Ascentium.

3. Plaintiff operates a medical practice specializing in women's healthcare.

4. Sometime in May 2018, InMode solicited Plaintiff, and the parties began negotiating Plaintiff's purchase of the System.

5. During this process, Plaintiff and InMode's representatives corresponded at length, both in person and over the phone, about the System.

6. InMode provided a brochure, which contained no information regarding "Contraindications" (symptoms or conditions that make a treatment or procedure inadvisable).

7. On multiple occasions, Plaintiff asked InMode's representatives about the System's contraindications, expressly stating it planned to use the System on a large number of its patients having previously undergone certain procedures and/or suffering from certain conditions who otherwise would not have this type of treatment available to them.

8. InMode's representative expressly stated that the System was perfect for, and made to be used on, such patients, and further stated the he (the representative) could not think of any patient on whom the System could not be used.

9. Plaintiff searched InMode's website for information regarding the System's contraindications but was unable to access certain pages without a passcode.

10. Plaintiff called InMode for help accessing the website and was told that customers are only given access once they have purchased the System, but was again assured that the System was designed for the types of patients Plaintiff had previously described to the InMode representatives.

11. Relying on these representations, Plaintiff signed a Customer Purchase Agreement for the purchase of the System ("Contract").

12. The Contract consisted of one (1) page and contained no information regarding the System's contraindications, and at no time prior to the signing of the Contract had InMode presented Plaintiff with any information or literature regarding contraindications beyond the representations and assurances made by InMode's representatives, as outline above.

13. Neither did the Contract include a forum selection clause or return policy, and at no time did InMode present Plaintiff with any document containing a forum selection clause or return policy.

14. In connection with its purchase of the System, InMode had Plaintiff sign an Equipment Finance Agreement with Ascentium for the full purchase price of \$144,425.00 ("Finance Agreement"), by which Plaintiff undertook certain financial obligation to Ascentium.

15. Sometime later, Plaintiff received delivery of the System, which was accompanied by certain materials and literature, not previously made available to Plaintiff, and which listed some 26 contraindications not previously disclosed to Plaintiff.

16. The list of contraindications included the very types of prior medical procedures and conditions for which InMode's representatives expressly stated the System was designed.

17. Had InMode's representatives told Plaintiff the truth, or previously provided these contraindications, Plaintiff would never have contracted with InMode and Ascentium to purchase the System.

18. Concerned about these contradictions, Plaintiff did not remove the System from its packaging, and immediately contacted InMode to: 1) explain that these new materials and

literature directly contradicted the representations and assurances InMode had previously made to Plaintiff; and 2) express Plaintiff's intention to return the System.

19. In response, InMode acknowledged that the materials sent with the System contradicted the representations it made to Plaintiff, but nevertheless refused to accept the return of the System and to refund the purchase price.

20. By that time, Ascentium had already electronically withdrawn \$458.00 from Plaintiff's bank account.

21. Plaintiff has attempted to resolve this matter with both InMode and Ascentium without litigation.

22. InMode refuses to accept return of the System and refund the purchase price.

23. Ascentium refuses to return the \$458.00 it has already withdrawn from Plaintiff's bank account and to release Plaintiff from its obligations under the Finance Agreement.

24. Ascentium continues to send invoices to Plaintiff, and has threatened to take actions against Plaintiff if it does not make its payments pursuant to the Finance Agreement.

25. The Defendants have acted in concert to fraudulently induce Plaintiff to contract with them for the purchase of the System, and Plaintiff is entitled to rescission of both the Contract and Finance Agreement and to have returned the \$458.00 withdrawn from its bank account.

26. Defendants' actions have harmed Plaintiff in an amount to be proven at trial but which shall not exceed \$74,999.00.

FIRST CLAIM FOR RELIEF
(Fraud in the Inducement)

27. Plaintiff realleges each and every fact and allegation stated hereinabove as if fully set forth herein.

28. InMode intentionally made certain material misrepresentations of fact concerning the System. These representations were false and include, but are not limited to, representations that the System was specifically designed to treat Plaintiff's patients suffering from certain conditions or who have undergone certain medical procedures, who otherwise do not have this type of treatment available to them. These misrepresentations were material in that Plaintiff would not have purchased the System had they known the representations were false.

29. These misrepresentations were intentional because InMode knew or should have known of the statements' falsity at the time they were made, specifically that the patient conditions and prior procedures for which InMode expressly claimed the System was designed, were in fact contraindications.

30. InMode intentionally omitted and withheld material terms it claims are part of the Contract, including but not limited to InMode's return policy and a forum selection clause ostensibly granting Delaware courts exclusive jurisdiction over Contract disputes.

31. InMode intentionally omitted and withheld these terms from the solicitation and negotiation process, knowing that disclosing such terms would deter Plaintiff from entering into the Contract and Finance Agreement.

32. InMode intended for Plaintiff to rely upon these misrepresentations and omissions during the solicitation to induce Plaintiff to agree to the purchase of the System and to enter in to the Contract and Finance Agreement.

33. Ascentium, acting in concert with InMode, knew, or should have known of InMode's material and false representations.

34. Plaintiff did not know that InMode's representations and statements were false or that the additional contract terms existed, and did, in fact, rely to its detriment upon the fraudulent misrepresentations and omissions of InMode and were enticed thereby to enter into the Contract and the Finance Agreement.

35. The reliance of Plaintiff was justifiable in that the material facts and omissions related to the System, and the purchase thereof, were only known to InMode, who was in a position of superior knowledge and who knew such material facts not to be within the reach of the diligent attention, observation, and judgment of Plaintiff.

36. Plaintiff has suffered as a result of InMode's fraudulent inducements by taking upon itself contractual obligations without receiving the corresponding benefits for which it bargained.

37. By reason of the conduct alleged herein, InMode is liable for the aforesaid wrongful conduct and liable to Plaintiff for the injury it suffered in connection with the purchase of the System. Upon information and belief, Defendant InMode acted in concert with Defendant Ascentium in fraudulently inducing Plaintiff to enter into the Contract and Finance Agreement,

and Defendants are thus jointly and severally liable to Plaintiff, and Plaintiff is therefore entitled to rescind both the Contract and the Finance Agreement and to have the \$458.00 returned to it.

SECOND CLAIM FOR RELIEF
(Fraudulent Misrepresentation)

38. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

39. InMode made various fraudulent misrepresentations to Plaintiff including, but not limited to: (1) representations that said goods would make possible Plaintiff's treating of patients who suffer from certain conditions or who have previously undergone certain medical procedures; and (2) the omission or withholding of key contractual provisions at the time Plaintiff signed the Contract.

40. The System cannot be used in Plaintiff's medical practice as the parties intended and on such patients as represented by InMode.

41. These fraudulent misrepresentations were material to Plaintiff's decision to purchase the System.

42. InMode and Ascentium knew or should have known the falsity of the fraudulent misrepresentations, as its own materials, which were delivered to Plaintiff only after negotiations were complete and the Contracts signed, directly contradicted such representations.

43. InMode made the fraudulent misrepresentations to Plaintiff during the course of negotiations for the purchase of the System and intended that Plaintiff rely on such fraudulent misrepresentations in deciding to purchase the System.

44. At the time of purchase, Plaintiff was ignorant as to the falsity of such fraudulent misrepresentations.

45. Plaintiff justifiably relied on InMode's fraudulent misrepresentations in deciding to purchase the System. Had Plaintiff known that the System could not be used as InMode represented, Plaintiff would not have purchased the System.

46. By reason of the conduct alleged herein, InMode is liable for the aforesaid wrongful conduct and liable to Plaintiff for the injury it suffered in connection with the purchase of the System. Upon information and belief, Defendant InMode acted in concert with Defendant Ascentium in fraudulently inducing Plaintiff to enter into the Contract and Finance Agreement, and Defendants are thus jointly and severally liable to Plaintiff, and Plaintiff is therefore entitled to rescind both the Contract and the Finance Agreement and to have the \$458.00 returned to it.

THIRD CLAIM FOR RELIEF

(Alternative - Breach of Warranty of Fitness for a Particular Purpose).

47. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

48. InMode sold Plaintiff goods to be used in Plaintiff's medical practice.

49. In the process of selling said goods, Defendant warranted that said goods were fit for the particular purpose, namely to treat Plaintiff's patients who suffer from certain conditions or who have previously undergone certain medical procedures.

50. InMode knew that Plaintiff required the goods to be used to treat such Plaintiff's patients, and expressly represented to Plaintiff the goods were designed for such uses.

51. InMode's goods are, in fact, not designed or suitable for such uses.

52. Plaintiff relied on InMode's skill and judgment in selecting and providing goods for such uses.

53. InMode knew that Plaintiff intended to use its treat Plaintiff's patients who suffer from certain conditions or who have previously undergone certain medical procedures.

54. InMode's actions caused Plaintiff to incur certain losses, financial obligations, and other damages to be proven at trial and not to exceed \$74,999.00.

55. InMode is responsible for all said losses, financial obligations, and damages.

FOURTH CLAIM FOR RELIEF
(Alternative - Breach of Express Warranty)

56. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

57. InMode sold Plaintiff goods to be used in Plaintiff's medical practice.

58. In the process of selling said goods and services, InMode expressly warranted that said goods would make possible Plaintiff's treating of patients who suffer from certain conditions or who have previously undergone certain medical procedures.

59. InMode's goods and services do not make possible Plaintiff's treating of patients who suffer from certain conditions or who have previously undergone certain medical procedures.

60. Plaintiff in fact relied on InMode's skill and judgment.

61. InMode's actions caused Plaintiff to incur certain losses, financial obligations, and other damages to be proven at trial and not to exceed \$74,999.00.

62. InMode is responsible for all said losses, financial obligations, and damages.

FIFTH CLAIM FOR RELIEF
(Alternative - Promissory Estoppel)

63. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

64. InMode sold Plaintiff goods to be used in Plaintiff's medical practice.

65. In the process of selling said goods, InMode promised that said goods would make possible Plaintiff's treating of patients who suffer from certain conditions or who have previously undergone certain medical procedures.

66. InMode had reason to know that Plaintiff intended to use its goods treat patients who suffer from certain conditions or who have previously undergone certain medical procedures.

67. InMode's promises in the process of selling Defendant's goods did not make possible Plaintiff's treating of patients who suffer from certain conditions or who have previously undergone certain medical procedures.

68. Plaintiff in fact relied on InMode's promises.

69. InMode knew that Plaintiff intended to rely on its promises relating to the use of InMode's goods.

70. Due to InMode's failure, Plaintiff incurred certain losses, financial obligations, and other damages to be proven at trial and not to exceed \$74,999.00.

71. InMode's actions caused Plaintiff to incur certain losses, financial obligations, and other damages to be proven at trial and not to exceed \$74,999.00.

72. InMode is responsible for all said losses, financial obligations, and damages.

SIXTH CLAIM FOR RELIEF
(Alternative - Good Faith and Fair Dealing)

73. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

74. InMode and Plaintiff contracted for the sale of goods to be used to treat certain patients in Plaintiff's medical practice.

75. InMode had an obligation to deal with Plaintiff in good faith and fair dealing in making honest and truthful representations about the goods' uses.

76. InMode falsely represented to Plaintiff that its goods were designed to treat certain patients in Plaintiff's medical practice

77. InMode's goods did not make possible the treatment of certain patients in Plaintiff's medical practice.

78. By failing to provide said goods as intended by the Parties and as expressly represented, InMode breached its obligation to deal with Plaintiff in good faith and fair dealing.

79. InMode's actions caused Plaintiff to incur certain losses, financial obligations, and other damages to be proven at trial and not to exceed \$74,999.00.

80. InMode is responsible for all said losses, financial obligations, and damages.

SEVENTH CLAIM FOR RELIEF

(Unfair and Deceptive Practices – Idaho Code §§ 48-601 *et seq.*)

81. Plaintiff incorporates by reference each of the preceding paragraphs as if fully set forth herein.

82. InMode and Ascentium's actions as alleged herein constitute unfair methods of competition and unfair and deceptive acts and practices under the Idaho Consumer Protection Act, Idaho Code Section 48-601 *et seq.*

83. InMode's false representations regarding the System's uses constitute acts or practices which are misleading, false, and deceptive.

84. InMode's untrue representations include but are not limited to: (1) representations that said goods would make possible Plaintiff's treating of patients who suffer from certain conditions or who have previously undergone certain medical procedures; and (2) the omission or withholding of key contractual provisions at the time Plaintiff signed the Contract.

85. InMode's untrue representations and omissions constitute an unconscionable method, act, or practice in the conduct of trade or commerce.

86. Ascentium's actions, in concert with InMode constitute an unconscionable method, act, or practice in the conduct of trade or commerce.

87. InMode's untrue representations and omissions caused Plaintiff to suffer damages in an amount to be proven at trial and not to exceed \$74,999.00.

88. Defendants are responsible for all said damages.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury as to all issues so triable pursuant to Rule 38(b) of the Idaho Rules of Civil Procedure, and will not stipulate to less than twelve (12) jurors.

WHEREFORE, Plaintiff respectfully requests the Court grant judgment in favor of Plaintiff and against Defendants, as follows:

1. As to Plaintiff's First and Second Claims for Relief, an order: 1) rescinding both the Contract and the Finance Agreement; 2) for specific performance, requiring InMode to accept return of the System and to refund the full purchase price of \$144,425.00 to Ascentium; 3) for Ascentium to return the \$458.00 it withdrew from Plaintiff's bank account;

2. As to Plaintiff's Third, Fourth, Fifth, and Sixth Claims for Relief (alternative claims), an order finding InMode liable to Plaintiff for damages in the amount of \$458.00 and for equitable indemnification, requiring InMode to indemnify, defend, and hold harmless Plaintiff regarding Plaintiff's obligations to Ascentium both under law and under the terms of the Finance Agreement;

3. As to Plaintiff's Seventh Claim for Relief, an award of damages associated with InMode and Ascentium's breaches of the Idaho Consumer Protection Act in an amount to be proven at trial not to exceed \$74,999.00;

4. An award of punitive damages pursuant to I.C. § 48-608(1);

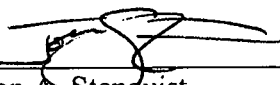
5. An award of attorneys' fees pursuant I.C. §§ 12-120(3), 12-121, and 48-608(5);

and

6. An award of such costs and other relief as this Court deems appropriate.

DATED September 4, 2018.

PARSONS BEHLE & LATIMER

By 
Jon A. Stenquist
Attorneys for Plaintiff