

CAUSE NO. DC-18-17175

DEBBIE JAMES and KATLYNN CLINICH, Plaintiffs,	§ § § § § § § § §	IN THE DISTRICT COURT
v.		101st JUDICIAL DISTRICT
INVASIX, INC., Defendant.		DALLAS COUNTY, TEXAS

AFFIDAVIT OF AMY E. DAVIS

Amy E. Davis, being first duly sworn, deposes and states:

1. My name is Amy E. Davis. I am lead counsel representing Plaintiff Debbie James and Katlynn Clinich in the above-referenced matter (“Plaintiffs”) against Defendant Invasix, Inc. (“Invasix” or “Defendant”).
2. Defendant has contacted Plaintiff’s counsel as part of litigation and dispute resolution activities for nearly five (5) years. Plaintiff’s counsel initiated these activities by sending a demand letter on behalf of two victims of the Fractora procedure who are not plaintiffs in this suit to the then-President of Invasix, Brian Ludwig, on or about May 13, 2014.
3. But since that time, Defendant, through its employees and other agents, such as attorneys, have contacted Plaintiff’s counsel on occasions too numerous to count by email, letter, phone and four (4) times by in person meetings within the state of Texas.
4. With regard to Plaintiffs’ dispute alone, Defendant’s settlement counsel, Arthur Liederman, sent at least 77 emails, made roughly five (5) phone calls, signed and delivered three Tolling Agreements to Plaintiffs’ counsel over a nearly three (3) year period, since April 20, 2017.
5. Defendant has engaged in settlement negotiations with Plaintiffs’ counsel for the purpose of settling or attempting to settle disputes with ten (10) claimants, all of whom were injured by Defendant’s InMode device. Defendant made the first such communication through then-President, Ludwig, in roughly June 2014—roughly five (5) years ago. Since that time, Ludwig and lawyers from three (3) different law

firms have contacted Plaintiffs' counsel hundreds of times by email, phone and letter for the purpose of resolving disputes against the company, four (4) of which were successfully settled. Defendant's attorneys have drafted, signed and delivered executed numerous copies of tolling and settlement agreements Defendant's former-President has also traveled to Texas and, with Defendant's lawyers, attended a wholly voluntary in-person, pre-suit mediation.

6. Defendant voluntarily answered and generally appeared in two (2) separate lawsuits filed in Texas state court by Plaintiff's counsel on behalf of parties injured by Defendant's products: *Webb v. Invasix, Inc., et al.*, Cause No. DC-14-13654, formerly pending in the 14th Judicial District for Dallas County, Texas and *MarDock v. Invasix, Inc., et al.*, Cause No. DC-14-08609, formerly pending in the 14th Judicial District for Dallas County, Texas. Defendant announced ready for trial in the *MarDock* case (together, the "Prior Cases"); however, the parties successfully resolved the case before trial. In an effort to resolve the Prior Cases before suit, Defendant voluntarily attended a pre-suit mediation held in Texas. Ludwig, as President of North America, also attended another of three total mediations in the Prior Cases. However, the Court compelled his attendance in that instance as a sanction against Defendant. After those suits were filed, Defendant presented Ludwig for deposition in Texas although, under the Texas Rules of Civil Procedure, it could have insisted the plaintiffs depose him in California, where he resided at the time. Defendant presented Ludwig in Texas again for a continuance of that corporate representative, but the court compelled his attendance in Texas for the continuation because Defendant failed initially to properly prepare him as a corporate defendant.
7. The Prior cases involved fact-intensive claims of product liability and personal injury and a co-defendant against whom there were medical malpractice claims. Thus, Defendant was required to produce documents, witnesses and information concerning the design, manufacture, instructions for use and safe use of its products, as well as the training and supervision of its sales representative.
8. Per the terms of the settlement agreements with Plaintiffs, Defendant agreed to pay the settlement funds to Plaintiffs care of my law firm to be mailed to our firm in Texas.
9. As of November 11, 2018, Defendant listed its principal place of business with the Texas Secretary of State to be 200 West Beaver Creek Rd., Unit 14, Richmond Hill, Ont Can and its "jurisdiction" to be ON, CAN. Invasix's most current filing with the Texas Secretary of State, dated October 16, 2017, lists the same Canadian

address as its principal place of business. As of this filing, on March 14, 2019, Invasix's entity information continued to list the same Ontario address. However, on February 25, 2019, while Defendant's Special Appearance was pending, Defendant requested the "jurisdiction" listing be changed to Delaware. True and correct copies of this Texas Secretary of State information is incorporated by reference and attached as Exhibit A.1.

10. Defendant listed its principal place of business as Ontario, Canada in its initial registration with the California Secretary of State dated August 22, 2011 and in a filing dated November 9, 2017. True and correct copies of this California Secretary of State information is incorporated by reference and attached as Exhibit A.2.

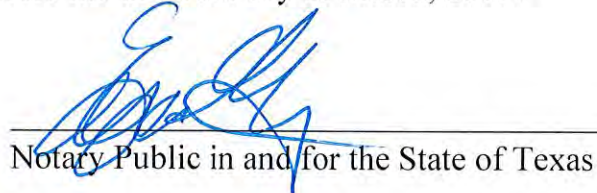
Further Affiant said naught.



AMY E. DAVIS

SUBSCRIBED and **SWORN TO** before me this 15th day of March, 2019.

[NOTARIAL SEAL]



Notary Public in and for the State of Texas