

CAUSE NO. DC-18-17175

**DEBBIE JAMES and KATLYNN
CLINICH,
Plaintiffs,**

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IN THE DISTRICT COURT

v.

E-101ST JUDICIAL DISTRICT

INVASIX, INC.,

Defendant.

DALLAS COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs Debbie James and Katlynn Clinich (“Plaintiffs”) file this Original Petition and would show the Court as follows:

I.

PARTIES AND VENUE

1. Plaintiff Debbie James is a citizen of the State of Missouri, residing in Kansas City, Missouri.

2. Plaintiff Katlynn Clinich is a citizen of the State of California, residing in Woodland Hills, California.

3. Defendant Invasix, Inc. (“Invasix”) is a corporation formed under the laws of California, with its principal United States office in Irvine, California. Defendant Invasix, Inc. may be served through its registered agent, C.T. Corporation System, 818 West Seventh St. 2nd Floor, Los Angeles, CA 90017.

4. Jurisdiction is proper in this Court because the Plaintiffs' claims exceed the jurisdictional limit for the Court and because, Invasix has sufficient minimum contacts within the State of Texas such that the Court enjoys general jurisdiction over matters against Invasix. More particularly, Invasix maintains employees and/or independent contractors in the State of Texas, sells medical devices in the State of Texas, enters into contracts with health care providers in the State of Texas and otherwise purposefully avails itself of the resources of the State of Texas.

5. Venue is proper in Dallas County because it is "the county in which all or a substantial part of the events or omissions giving rise to [Plaintiff's] claim[s] occurred." Tex. Civ. Prac. & Rem. Code §15.002(a)(1). More particularly, venue is proper because Invasix, by and through its agent and counsel, sent emails containing offers for the settlements Plaintiffs seek to enforce to Plaintiffs' counsel in Dallas County, made phone calls by and through its agent and counsel, to Plaintiffs' counsel in Dallas County and, most importantly, Invasix agreed to make the settlement payments at issue to Plaintiffs through their counsel, Christiansen Davis, LLC, in Dallas County. *See Siemens Corp. v. Bartek*, No. 03-04-00613-CV, 2006 Tex. App. LEXIS 3533, at *26-28 (App.—Austin Apr. 28, 2006 ("Texas courts have stated that the receipt of telephone calls and letters in a particular county weighs in favor of a finding that venue is appropriate in that

county.”); *KW Constr. v. Stephens & Sons Concrete Contractors, Inc.*, 165 S.W.3d 874, 881 (Tex. App.—Texarkana 2005) (cause of action for breach of contract accrued in county where contract payments to be made).

II.

RULE 47 COMPLIANCE

6. Plaintiff seeks damages within the jurisdictional limits of this court. At this juncture, and pending discovery in this matter, Plaintiff seeks monetary relief over \$200,000.00 but not more than \$1,000,000.00.

III.

DISCOVERY LEVEL

7. Plaintiff elects Discovery Level II for this proceeding.

IV.

FACTUAL BACKGROUND

8. Plaintiffs suffered permanent facial disfigurement and personal injury caused by the Fractora procedure, a radio frequency-based cosmetic surgery performed with a Fractora device (the “Product”) designed, manufactured and sold in North America by Invasix.

9. Plaintiffs hired Amy E. Davis and the law firm of Christiansen Davis, LLC to represent them for the purpose of seeking redress from Invasix for their injuries.

10. Ms. Davis undertook negotiations on Plaintiffs' behalf to resolve their claims outside of court. Invasix hired Arthur Liederman and the law firm of Morrison Mahoney, LLP to negotiate on its behalf.

11. On September 14, 2018 at 3:07 p.m. CST, Liederman relayed offers to settle Plaintiffs' claims in exchange for payment of certain enumerated amounts. The same day, at 5:58 p.m. CST, Davis accepted the offers by the statement, "Good news: This email confirms settlement of the James claim for \$_____ and the Clinich claim for \$_____. I will send propose[d] settlement agreements for your review next week, using the form to which [Invasix by and through its insurance carrier and agent] and I agreed [for a similar] claim."¹ At 7:15 p.m. CST, Liederman wrote simply, "Agreed."

12. Later on October 9, 2018, after Davis asked to discuss the status of execution of the written settlement agreements, Liederman replied, "Nothing to discuss. The cases are settled. You and I are waiting for the settlement funding for James. As for Clinich I am working with [counsel for the doctor who performed the Fractora procedure] on the settlement release wording."

13. Nevertheless, on October 15, 2018, after Davis made demands on behalf of other clients injured by the Fractora procedure, Liederman informed Davis that Invasix no longer considered the Plaintiffs' claims settled. He explained

¹ The amounts have been omitted for purposes of confidentiality.

that Invasix wanted to consider the new demands before it would “consent to the settlements and sign the documents.”

14. All conditions precedent to the Settlement Agreements occurred or have been waived. Plaintiffs performed or are prepared to perform under the Settlement Agreements.

15. Although the parties intended to memorialize the settlements in written agreements, the fact that those agreements had not yet been executed by Invasix is not conclusive on intent to contract. *Murphy v. Seabarge, Ltd.*, 868 S.W.2d 929, 933 (Tex. Ct. App. 2014, Houston-14th Dist.) (citing *Scott v. Ingle Bros. Pacific, Inc.*, 489 S.W.2d 554, 556-57 (Tex. 1972) (finding a fact issue existed whether sales contract contained enforceable agreement for employment even though no separate written employment agreement was executed, as stated in the contract); *Foreca, S.A. v. GRD Development Co., Inc.*, 758 S.W.2d 744, 746 (Tex. 1988) (holding "subject to legal documentation" provision in handwritten document did not establish as a matter of law that no agreement was reached)).

16. The question is whether the parties had a meeting of the minds as to the material terms of the agreements. *See Murphy*, 868 S.W.2d at 933; *Foreca, S.A.*, 758 S.W.2d at 746. As indicated by the Liederman emails prior to the repudiation, the parties had reached an agreement as to the essential settlement terms. In fact, the parties were only awaiting funding of the James’ claim and

acceptance of the written release language by the doctor with regard to the Clinich claim.

V.

BREACH OF CONTRACT CAUSE OF ACTION

17. Plaintiffs reallege the foregoing factual allegations.

18. As more fully set forth herein, Invasix repudiated and violated the Settlement Agreements. As a result, Plaintiffs has been damaged in an amount within the jurisdictional limits of the Court for which they seek recompense.

VI.

REQUEST FOR ATTORNEYS' FEES

19. Plaintiffs request an award of attorneys' fees under Chapter 38 of the Texas Civil Practice and Remedies Code.

VII.

REQUEST FOR DISCLOSURES

20. Plaintiffs hereby request Defendant serve within fifty (50) days of service of this Original Petition disclosures pursuant to Texas Rule of Civil Produce 194.

VIII.

REQUEST FOR RELIEF

WHEREAS, Plaintiffs respectfully request that Defendant be cited to appear and answer herein and that, upon final hearing and trial, Plaintiffs be granted judgment for actual damages, attorney's fees, costs, pre-judgment and post-judgment interest at the maximum rates allowable by law and any other or further relief to which Plaintiffs may be legally or equitably entitled.

Dated: November 13, 2018.

Respectfully submitted,

CHRISTIANSEN DAVIS LLC

By:



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