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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

HOME CARE PROVIDERS, INC.  
and  
DR. DEV A. BRAR

Plaintiffs,

v.

SHAWN R. BASHORE,  
Defendant.

Civil Action No. 1:17-CV-3804

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiffs, Home Care Providers, Inc. (“HCP”) and Dr. Dev A. Brar (“Dr. Brar”), individually and as the sole shareholder of HCP, for their complaint against Defendant Shawn R. Bashore, alleges as follows:

**SUBSTANCE OF THE ACTION**

1. This is an action for correction of inventorship of U.S. Patent No. 9,668,328 (the “ ’328 Patent”) under the Patent Act, for constructive fraud and conversion with respect to the ’328 Patent, and for enforcement of contract and/or quasi-contract rights arising from Defendant’s agreements with and representations to Plaintiffs.

2. Dr. Brar is the sole shareholder of HCP, and HCP is the sole shareholder of Nightingale Home Healthcare, Inc. (“Nightingale”) and is a real party in interest.

3. HCP through its affiliated entities provides a range of home health care services in central Indiana and around the country.

4. Over the past several years, Nightingale has begun to develop inventive software, products and materials that can be used in providing these or similar services.

5. Among such products is the subject matter of the '328 Patent. That subject matter was conceived by Dr. Brar, president of Nightingale. Dr. Brar charged Defendant, an employee of Nightingale with coordinating the communication and completion of various tasks as to the creation of prototypes.

6. When a patent application was prepared for the subject matter, Defendant represented that he was also an inventor of it, without informing or alerting the proper inventor Dr. Brar, misleading both the inventor and other coworkers.

7. All of Defendant's work concerning the subject matter of the '328 Patent occurred during the course and scope of Defendant's employment, at Dr. Brar's direction, and with Nightingale's resources. Defendant entered agreements as a part of his employment with Nightingale assuring that material he created as part of his employment would belong and be returned to Nightingale and/or its affiliates. Therefore, even if Defendant had created any portion of the subject matter of the '328 Patent, he was under an obligation to assign such matter, and any patent interest in it, to Nightingale.

8. Defendant was presented with an assignment of the application that issued as the '328 Patent while he was employed by Nightingale, and represented that he had signed it, but on information and belief did not. After Defendant resigned from Nightingale, he was approached again to fulfill his obligation to sign an assignment, and through counsel he refused. Nightingale has been advised that Defendant is attempting to profit from licensing the '328 Patent.

9. This Complaint asserts claims for (1) correction of inventorship of the '328 Patent under the Patent Act (35 U.S.C. § 256(b)); (2) constructive fraud in asserting rights in and conversion in exercising control over the '328 Patent; and (3) enforcement of Defendant's obligation to assign any interest he may have in the '328 Patent to Nightingale under principles of contract law. Plaintiffs bring this action to obtain injunctive relief to ensure the '328 Patent has the proper inventorship and thus remains valid, to ensure that title in the '328 Patent remains in Nightingale, to stop Defendant from illegally profiting from Nightingale's property, and to obtain any appropriate monetary damages, restitution or damages relating to the same.

#### **PARTIES, JURISDICTION AND VENUE**

10. Plaintiff HCP is a corporation of the State of Indiana, having a principal place of business at 3535 East 96th Street, Suite 130, Indianapolis, Indiana. Plaintiff Dr. Brar is an individual residing in this judicial district.

11. Defendant is an individual resident in Indiana. On information and belief, Defendant resides at 9725 Mill Creek Place, Carmel, Indiana.

12. This Court has original jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a) as it involves a claim presenting a federal question under 35 U.S.C. § 256, and based on supplemental jurisdiction (28 U.S.C. § 1367(a)).

13. This Court has personal jurisdiction over Defendant because Defendant resides within, and Defendant's actions complained of occurred within, Indiana and particularly the Southern District of Indiana.

14. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)(1)-(2) and (c)(1) because Defendant is domiciled in this judicial district, and a substantial part of the events or acts giving rise to the claims occurred in this judicial district, at least insofar as Defendant's employment and acts, and the harm to Nightingale, occurred in this judicial district.

#### **FACTS COMMON TO ALL COUNTS**

15. Defendant was employed by Nightingale from on or about June 9, 2014 to on or about February 5, 2016. Defendant's job title during that period was Information Technology Director. His responsibilities included supervision of employees, analyzing technology requirements and functional specifications, security of data and information, and other duties as needed and directed by Nightingale.

16. As part of his employment, Defendant entered an agreement entitled "Limited Non-Solicitation, Non-Competition and Non-Disclosure Agreement" dated June 9, 2014 (the "Non-Competition Agreement"). Among other things, the Non-Competition Agreement provided that

“Proprietary Information” includes “inventions,” and that the company “is and will at all times remain the exclusive owner of the Proprietary Information.” The Non-Competition Agreement also provides that Defendant cannot “directly or indirectly use [or] disclose . . . any Proprietary Information” without permission, that information, documents, “or other . . . personal property which Employee . . . prepared in connection with Employee’s services” is to be returned to the company, and that Defendant shall not perform employment functions “in any capacity other than on behalf of or for the benefit” of the company.

17. As part of his employment, Defendant also signed a Confidentiality Agreement dated June 9, 2014 (the “Confidentiality Agreement”). Among other things, the Confidentiality Agreement provided that Nightingale would “disclose certain of its confidential and proprietary information . . . to [Defendant],” which “Confidential Information” could include data, products, technology and specifications. The Confidentiality Agreement further provided that Defendant agreed that such Confidential Information was proprietary to Nightingale and that Defendant would not “use the Confidential Information other than for the purposes of its employment with [Nightingale].”

18. During Defendant’s employment by Nightingale, Dr. Brar, president and chief executive of Nightingale, instructed Defendant to take charge of coordinating the creation and testing of prototypes of an invention conceived of by Brar and intended for use, sale and/or distribution by Nightingale. The invention is a mat device for use in the room of a recovering patient, elderly person or other individual that may need monitoring (the “Mat Invention”).

19. Dr. Brar conceived of the Mat Invention in early 2014. Dr. Brar spoke with employee Rajesh Relan to discuss the Mat Invention and potential names for it.

20. Dr. Brar then explained to Defendant the need for an engineering or manufacturing firm to assist in manufacturing prototypes of the Mat Invention according to Dr. Brar's specifications. Dr. Brar provided technical information to Defendant, including a list of features for the prototypes, for Defendant to use in locating such a firm.

21. Defendant identified a potential manufacturing source, Embin Pvt. Ltd of Mumbai ("Embin"), and Dr. Brar consulted with Embin's CEO and eventually chose Embin to do the work. Defendant was instructed to serve as the project manager for the prototype of the Mat Invention, and was the point of contact with Embin for expediting prototype delivery and testing. Defendant was assigned the task of overseeing others in preparing such items for Dr. Brar's Mat Invention, and Defendant accepted and performed that task.

22. In early 2015, Nightingale received, and Dr. Brar authorized acceptance of, a proposal for a prototype that included a drawing that captured the disclosure of the Mat Invention Dr. Brar had given to Embin.

23. Defendant continued to act as go-between with Embin, corresponding with them on several occasions. Defendant received drawings, schematics and questions concerning the Mat Invention from Embin, and passed them to Dr. Brar. Defendant then obtained instructions, ideas, and comments from Dr. Brar concerning the Mat Invention and passed them to the outside

engineers. Defendant also worked with Dr. Brar in testing prototypes as they were delivered to Nightingale.

24. Dr. Brar never asked Defendant for input in the creation or development of the Invention, and Dr. Brar never authorized Defendant to add any of Defendant's ideas to the materials that Defendant was conducting between Dr. Brar and Embin. On information and belief, Defendant never included any original ideas of his own concerning the Mat Invention in any of the materials he conducted between Dr. Brar and Embin. Dr. Brar never believed that Defendant was an inventor of the Invention, and never authorized Defendant to be or hold himself out as an inventor of the invention.

25. In 2015, Dr. Brar chose to have a patent application prepared and filed for his Mat Invention. Dr. Brar assigned Defendant to coordinate that effort internally and with outside counsel. A patent application was eventually filed, under Serial No. 14/920,454 (the "'454 Application"), now issued as the '328 Patent.

26. All of Defendant's work relating to the Mat Invention, the '454 Application, and all associated information and intellectual property was performed within the course and scope of Defendant's duties for Nightingale, at the direction of Nightingale, and using Nightingale property and resources.

27. Defendant represented that he contributed to the subject matter of the '454 Application as an inventor, along with Dr. Brar. Accordingly, an inventor declaration as required under the

Patent Act was prepared for Defendant and for Dr. Brar for filing with the '454 Application. Defendant received the inventor declarations for the Mat Invention to Nightingale. Defendant handled obtaining the required signatures on those documents.

28. Defendant executed an inventor declaration, stating under oath that he was an inventor of the subject matter of the '454 Application. Defendant also attended to Dr. Brar's inventor declaration, but never advised Dr. Brar that Defendant also considered himself an inventor and would be filing an additional inventor declaration. Subsequently the two executed declarations were filed with the '454 Application.

29. In late 2015, Defendant was requested to provide a signed assignment document for the '454 Application. On information and belief, Defendant made no objection. However, no such executed assignment was found.

30. Following Defendant's resignation, Nightingale asked for the signed assignment, and Defendant represented his belief that he had signed the assignment. Again no such executed assignment was found, and again Defendant was requested to sign the assignment. Defendant again did not object, and represented that he would attend to it. To date, no such executed assignment has been found in Nightingale's possession.

31. On information and belief Defendant never followed through on his duty and agreement to execute the assignment. On information and belief, Defendant did not attend to his obligation to sign his assignment at the time he signed the inventor declaration or thereafter.



32. On or about January 27, 2016, Defendant submitted his resignation with two-week notice. Defendant's last day with Nightingale was on or about February 5, 2016.

33. Defendant's resignation made no reference to the pending patent application or rights to the patent once obtained.

34. Defendant has been requested again, through his counsel, to execute a formal assignment of the '454 Application and '328 Patent for recordal with the United States Patent and Trademark Office. On information and belief, Defendant has refused, and to date no such assignment has been executed.

**COUNT ONE—CORRECTION OF INVENTORSHIP**

35. The preceding paragraphs 1-34 are repeated and incorporated herein by reference.

36. At least as early as October of 2015, Defendant incorrectly held himself out as an inventor of the Mat Invention. On or about October 22, 2015, Defendant signed a declaration form identifying himself under oath as an inventor of the Mat Invention, to be filed in the U.S. Patent and Trademark Office (USPTO) with the '454 Application.

37. Dr. Brar is the sole inventor of the Invention, having originally conceived the Invention in early 2014.

38. Dr. Brar regularly directed others, including Defendant and others through Defendant, in the preparation and testing of various prototypes created from his ideas.

39. Defendant never contributed original ideas to Dr. Brar's conception of the Mat Invention as it was thereafter to be practiced. Defendant is not an inventor of any subject matter of the '454 Application. Nonetheless, Defendant represented that he was an inventor by signing an inventor declaration under penalty of perjury. Accordingly, Defendant was incorrectly identified as an inventor in the '454 Application, which issued as the '328 Patent, by Defendant's actions and with no deceptive intent by Nightingale. Correction of the '328 Patent under 35 U.S.C. §256 by removing Defendant as an inventor is warranted.

#### **COUNT TWO—CONSTRUCTIVE FRAUD**

40. The preceding paragraphs 1-39 are repeated and incorporated herein by reference.

41. In his position of Information Technology Director for Nightingale, Defendant had an employment and management relationship with Nightingale that gave rise to duties, including but not limited to a duty to act in the best interest of Nightingale and a duty to observe the rules, policies and procedures of Nightingale.

42. Defendant accepted tasks as a part of his employment including (1) coordinating communications surrounding the creation of and testing of prototypes of Dr. Brar's Mat Invention, and (2) coordinating the preparation and filing of the '454 Application, with the duty of accomplishing those tasks according to the interests of Nightingale and within the rules,

policies and procedures of Nightingale. Defendant had a duty to accomplish these tasks so that Nightingale had full ownership of the '328 Patent.

43. Defendant breached his duties at least by not advising Dr. Brar of any belief he had that he had contributed to the invention, by representing that he was an inventor of the subject matter of the '328 Patent, by failing to advise colleagues and coworkers of any belief he had that he was not obligated to assign to Nightingale any part of the '328 Patent that he asserted belonged to him, and by representing that he had or would execute an assignment without doing so. Defendant's omission in not informing Nightingale of any contribution to the Mat Invention Defendant might allege to have made was in violation of his duties to Nightingale. Defendant's actions and omissions, including but not limited to representing that he was an inventor of the '454 Application, signing an inventor declaration in his own name, omitting to tell Dr. Brar that he was asserting that he was an inventor, and agreeing to but omitting to execute the assignment document, were in violation of his duties to Nightingale. Effectively, Defendant hid his assertions concerning the Mat Invention and '454 Application from his superior (and the true inventor).

44. That breach served to or resulted in reliance by Nightingale on Defendant and injury to Nightingale. On information and belief, Nightingale relied on Defendant to act fairly and in Nightingale's interest in accomplishing these tasks. Nightingale relied on Defendant for correct inventorship, for correct information concerning the patent application and his role in the creation and testing of prototypes (e.g. on Defendant's omission to tell Dr. Brar that Defendant considered himself an inventor and was executing an inventor declaration), to sign his

assignment document, and to refrain from acting to hide an interest he had at the time against Nightingale.

45. Nightingale has suffered injury as a proximate result of Defendant's representations and/or omissions. Such injury includes, but is not limited to, a cloud on title to and/or reduced ownership of the '328 Patent, and the potential for improper granting of licenses or other benefits by Defendant under the '328 Patent, with resulting improper gain to the Defendant. Such injury also includes damages in the form of costs to Nightingale in investigating this matter and clearing title to the '328 Patent.

46. Defendant has gained an advantage at the expense of Nightingale, including but not limited to a claim to title in the '328 Patent and the ability to profit from use of or licensing of the '328 Patent.

**COUNT THREE—CONVERSION (IC 35-43-4-3)**

47. The preceding paragraphs 1-46 are repeated and incorporated herein by reference.

48. Defendant is knowingly or intentionally exerting unauthorized control over property of Nightingale. Such property includes the '328 Patent and the rights flowing from it, including the rights to license and profit from it, constituting conversion of the '328 Patent. Defendant has been requested to return such property, and has refused.

49. Nightingale has never consented to or authorized Defendant to claim inventorship in, or any claim of title over the '328 Patent. Nightingale has never consented to authorized Defendant to offer licenses or other permissions under the '328 Patent, which on information and belief Defendant Bashore has or is preparing to offer. Nightingale has never consented to or authorized Defendant to exercise any control over the '328 Patent or any rights to or flowing from it.

50. Nightingale's remedy at law for conversion of the '328 Patent is inadequate. On information and belief, Defendant will not cease exercising unauthorized control over Nightingale's property without an injunction and order to return such property to Nightingale.

**COUNT FOUR—ENFORCEMENT OF PATENT ASSIGNMENT OBLIGATION**

**(based on contract, implied-in-fact contract, and/or directed-to-invent doctrine)**

51. The preceding paragraphs 1-50 are repeated and incorporated herein by reference.

52. To the extent that Defendant has any legitimate right to any portion of the '328 Patent, Defendant has at least an equitable obligation to assign such portion of the '328 Patent and any associated intellectual or other property to Nightingale. Such obligation arose at least out of one or both of Defendant's Non-Competition Agreement and Confidentiality Agreement he entered as part of his employment. All of Defendant's inventive contribution to the Mat Invention (and consequent '328 Patent), if any, was of a character to which Nightingale had at least equitable title under those Agreements.

53. Defendant's equitable obligation to assign the '454 Application and '328 Patent and associated property to Nightingale also arose at least from the fact that Defendant was directed to coordinate others' preparation and testing of prototypes of Dr. Brar's Mat Invention, on Nightingale's time and with Nightingale's resources. If Defendant had any inventive contribution to the Mat Product (and consequent '454 Application and '328 Patent and associated intellectual or other property), all of it came from Nightingale directions to Defendant to oversee prototypes.

54. Defendant was presented with an assignment document on at least two occasions while he was employed at Nightingale. Defendant represented to Nightingale that he thought he had already executed the assignment, and Defendant also represented that he would do so. Defendant accordingly intended to and thought he had assigned the '454 Application (and consequent '328 Patent) to Nightingale.

55. An implied-in-fact contract was created by way of Defendant's above-noted actions with respect to the assignment, including but not limited to indicating that he had and that he would execute the assignment. Defendant has thereby at least an equitable obligation to assign (or complete the assignment by executing a recordable assignment document) the '328 Patent.

56. Defendant has not met his equitable obligations, and has willfully refused, to assign legal title to the '328 Patent and associated intellectual or other property to Nightingale. An order from this Court assigning the '328 Patent and associated property to Nightingale (and/or complete the assignment by executing a recordable assignment document) is warranted.

**DEMAND FOR JURY TRIAL**

57. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Nightingale demands a trial by jury on all claims and issues so triable.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff Nightingale requests the following relief:

- A. That the Court enter a judgment in favor of Nightingale and against Defendant on all counts of the Complaint;
  
- B. That the Court enter an order declaring that Defendant is not an inventor or owner of the '328 Patent and directing that the '328 Patent be corrected by removing Defendant as an inventor;
  
- C. To the extent the Court may determine that Defendant is a legitimate joint inventor in the '328 Patent, that the Court enter an order declaring that Defendant has an obligation to assign the '328 Patent to Nightingale and directing him to do so;
  
- D. That the Court enter an order declaring that Defendant disgorge to Nightingale any and all right, title and interest he may have in the '328 Patent, as a result of his fraudulent and/or other tortious actions;

E. That judgment be entered against Defendant for any and all profits derived by Defendant and all damages sustained by Plaintiffs as a result of Defendant's conversion, fraudulent actions, or such other actions as may be established at trial, including but not limited to profits derived from unauthorized licensing of the '328 Patent;

F. That such damages be trebled or otherwise enhanced pursuant to applicable sections of the U.S. Code or the Indiana Code, due to the willful and deliberate nature of Defendant's actions;

G. That judgment be entered against Defendant for Plaintiffs' reasonable costs and attorney fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and

H. That the Court grant such other legal and equitable remedies and relief as it deems just, equitable and proper.

Date: October 20, 2017

Respectfully submitted,

/s/Christopher A. Brown

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