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Case No. 2023-0366-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CI HOLDINGS LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. _____
	)	
CARDIAC IMPLANTS LLC,	)	
	)	
Defendant.	)	

VERIFIED COMPLAINT

Plaintiff CI Holdings LLC, a Delaware limited liability company ("Plaintiff" or "CIH"), by and for its Verified Complaint against Defendant Cardiac Implants LLC, a Delaware limited liability company ("Cardiac Implants" or the "Company"), alleges as follows:

INTRODUCTION

1. CIH is the owner of a majority of the common units of the Company, which is engaged in the development of a transformative tricuspid heart valve repair device with extraordinary clinical and financial potential. CIH also is the counterparty to a binding agreement to purchase all the Company's intellectual property and know-how as well as to assume various obligations and liabilities as part of a liquidation process initiated by the Board of Managers (the "Board").

2. However, the Company, at the direction of a conflicted Board, which was hand-picked by a control group of unitholders known as the Series E-2 investors

(the "E-2 Investors"), has sought for unlawful, arbitrary, pretextual, or other undisclosed reasons, to renege on the transaction with CIH and instead to accept a far inferior offer (the "Inferior Offer") from an entity (herein referred to as "Alpha") that will acquire only the patents of the Company and will not continue the development of the Company's medical device but rather shelve the intellectual property and prevent any further development of the Company's medical device.

3. By trying to sell the patents to an alternative counterparty in Alpha that is not positioned to or seeking to continue the development of the technology, including the Company's ongoing clinical trial which is the cornerstone of the Company's development program, the Board members and the E-2 Investors seek to protect themselves against future scrutiny of their breaches and misconduct. Those breaches include the sudden and abrupt decision to shut the Company down and the termination of the Company's development program through a disorganized and unprofessionally managed liquidation process, regardless of the harm the decision would cause other members of the Company, not to mention the potential harm to the patients enrolled in the Company's past and ongoing clinical trials.

4. The rapid and sudden demise of the Company began with the completion of the restructuring described below which transferred complete control of the Board and over the disposition of the Company's assets to the E-2 Investors. Given that the Company was, according to the Board, facing bankruptcy in January

of 2023, less than six months after completion of the aforementioned restructuring, it is clear that the Company is now, and has been since the completion of this transaction, insolvent.

5. Being then faced with the consequences of their own actions, on January 12, 2023 , the Board and the E-2 Investors whose approval would have been required, decided to shut the Company down and undertook a voluntary process of liquidation under the direction of the current CEO and CFO of the Company. In determining to liquidate the assets of the Company in this process, the Board has a responsibility to maximize the value and price of the assets being sold. To that end, the Company specified the details of an extremely abbreviated bidding process for the intellectual property and know-how of the Company, and following this short bidding process, negotiated with CIH, which agreed to purchase the Company's intellectual property and know-how (the "CIH Terms") for what were later revealed to be by far the most favorable terms available to the Company from any other bidders.

6. In addition to the payment of $1 million in cash to the Company, which is twice the amount of cash otherwise offered in the Inferior Offer, the CIH Terms include the assumption of certain obligations and liabilities. CIH also would later offer additional compensation in the form of warrants in the new entity to the Company's unitholders so that they would also benefit from the future success of

the business under the new leadership of CIH. CIH also had made offers to a number of current and former employees of the Company in order to secure their employment and participation in the new entity, although there is no evidence that the Board or E-2 Investors gave any consideration to these additional factors. CIH, as documented by a proposed escrow wire transfer transmitted from CIH, has been, and remains, prepared to put the agreed-upon $1 million purchase price immediately into escrow and fund the transaction and close on the agreed upon terms.

7. However, shortly after accepting the CIH Terms, on March 25, 2023, the Company advised CIH that it had suddenly accepted an Inferior Offer from Alpha. CIH was completely blindsided, having just previously entered into an agreement with the Company to the CIH Terms.

8. In a letter to Company unitholders, the Company purported to have closed immediately on the Inferior Offer even though its purchase price of $500,000 represented only a fragment of the price of the CIH Terms. It is substantially inferior in all material aspects as it involves neither any assumption of liabilities nor the prospect of future value through interests in the continued business, nor does it further advance, but rather slows down, the liquidation process that the Board started with its January 12 decision to shut down.

9. But having already reached agreement in principle to sell all of its intellectual property and know-how to CIH, the Company actually had nothing left

to sell to Alpha, and thus any purported transaction with Alpha is invalid, encumbered and subject to unwinding to the extent of any transfer. Any sale of assets based on the Inferior Offer is a categorically invalid result of a corrupted and unfair process by which the fiduciaries of the Companies breached their duties and thus would be null and void.

10. Unlike a sale to CIH, the alternative Inferior Offer would effectively lead to the killing the Company's technology that is under development and that is the subject of the Company's on-going clinical trial. Ultimately, this is what the Board and the E-2 Investors, to whom they are beholden, want, for unknown and unexplained reasons or other self-serving purposes demonstrably contrary to the interests of the Company and the other unitholders in the Company.

11. The Board and E-2 Investors have steadfastly refused to communicate any information about their intentions or rationale for its decision to any of the unitholders outside the E-2 Investors control group. The Company has become, under this absolute control, an impenetrable black box. CIH suspects that the E-2 Investors is acting to protect themselves from ongoing scrutiny of their past decision-making sins or else the E-2 Investors have other undisclosed personal interests that are better served by accepting the Alpha offer.

12. Without question, for the Board members and E-2 Investors to whom they are beholden, the continuity of the business and the distinct prospect of the

future successful development and clinical testing of the Company's medical device creates a major risk to them of legal liability when what other leadership can achieve proves the value of the assets. Once the business obtains new financing and creates major medical breakthroughs for patients and financial rewards for new investors, the prior mismanagement by the Company's fiduciaries and the rash and capricious nature of their decision to shut the Company down in a process akin to a fire sale will subject them to legal claims, not only from CIH, but from other unitholders and investors who are completely wiped out by the acceptance of the Alpha bid.

13. As a glaringly obvious pretext for reneging on the superior CIH Terms, the Company's directors and officers and E-2 Investors have taken the completely unsupportable position that the intellectual property and know-how of the Company does not include its ongoing clinical trial and that it would not allow CIH to continue the clinical trial even though by acquiring the intellectual property and know-how CIH would be acquiring all rights in and under the trial and advancing the Company's stated goal to liquidate. The Company's shallow suggestion that the transfer of the clinical trial was actually *not* encompassed in their previously accepted CIH Terms is completely unsupported by both the thoroughly documented correspondences between CIH and the Company, and all customary industry standards recognizing that the intellectual property and know-how of a company is

inextricably tied up with and includes the rights arising under and in respect of clinical trials.

14. The Company's ongoing clinical trial is an early feasibility study of up to 15 patients in the U.S. and have been approved by the F.D.A. and also approved for reimbursement by C.M.S. (the "EFS Study"). The EFS is the cornerstone of the development of the Company's medical device and the data and results from the trial are essential to the continued development of the Company's medical device. Crucially, there are no impediments or restrictions whatsoever that would prevent CIH as the owner of all the intellectual property and know-how of the Company from becoming the successor company to the EFS Study and thereby enable CIH to continue to develop the study. As the Company well knows, clinical trials are not transferred like assets nor can they be sold or separated from the bundle of rights that comprise the intellectual property and know-how of a company. By becoming the successor to the EFS study as CIH proposed would in fact do the opposite than what has been suggested. Specifically, it would *relieve* the Company of liability, rather than create a burden.

15. As such, the position of the Company that the intellectual property and know-how does not include the right to continue an ongoing investigational study carried out by third party investigators and clinical sites on behalf of the Company (or CIH) as sponsor only is completely nonsensical.

16. It is clear that the refusal of the Company to include within the intellectual property and know-how, rights of the Company the right to continue the clinical trial is clearly pretextual to hide the fact that the parties had agreed on all material terms of the agreement, and cannot form a valid basis to reject the CIH Terms.

17. In fact, in complete contradiction to the Company's proffered pretext, CIH has since come to learn that Company management was itself offering to potential bidders during the sale process the right to continue the clinical trial of the Company. The Company provided detailed information to these other bidders about the clinical sites of the Company and even projections for continuing the clinical study and the development of the technology, which categorically depends on continuing the clinical study.

18. Not only is there no business justification whatsoever for that pretextual position, and not only is the termination of the trial a destruction of the value of the Company's crown jewel asset, but this study is part of important research for the national medical community. If the trial is stopped, the patients enrolled in the study lose the benefit of the extensive follow up and care that is prescribed by the protocol. Specifically, these patients have the Company's implant in their heart and to stop the trial means that the promised care to these patients will not be provided. At the same time, the medical community and the clinical sites will lose all benefit of following

and publishing the future results which provides critical medical research insights into this kind of technology.

19. In sum, while engaged in a disorganized and aggressively timed liquidation and dissolution process the Board themselves forced the Company into, the Company entered into a binding agreement based on the CHI Terms that should be enforced. There is no legal, much less logical, explanation as to why the Company's refusal to honor the CIH Terms is justified.

20. Because the Company appears bent on proceeding with a wildly inferior transaction at the behest of the conflicted Board and E-2 Investors, immediate judicial intervention is required to (1) enforce the previously agreed-to CIH Terms, including by preventing or unwinding the consummation of the inferior Alpha transaction;[1] and (2) appoint an independent liquidating trustee to oversee and administer the liquidation process given that the Board is unfit to do so fairly and properly itself.

Parties

21. Plaintiff CIH is a Delaware limited liability company with its principal place of business in Tarrytown, New York. CIH is the beneficial and record holder of a majority of the common units of the Company which, prior to the ill-fated 2022 restructuring, which vested absolute control in the E-2 investors, represented

[1] From a practical standpoint, this would be easy to do, as it only involves a short form transfer of patent rights.

approximately 30% of the outstanding voting securities of the Company and held the right to appoint two of the five members to the Board.

22. CIH's managing member, Mr. Rachlin, is a co-founder, former CEO, and former member of the Board of Directors of the Company. Mr. Rachlin was forced out as CEO and then abruptly removed from the Board and cut off from any further information about the Company just prior to and as an essential condition to completion of the above referenced 2022 restructuring by E-2 Investors. Due to the lack of transparency and the lack of substantive information to members outside the E-2 Investors control group regarding recent actions taken by the Company and its Board over the Board, the Plaintiff does not know what specific percentage of the outstanding voting securities of the Company it currently holds.

23. The Company or Cardiac Implants is a Delaware limited liability company, with its principal place of business in American Canyon, California. Founded in 2013 by Mr. Rachlin and Mr. David Alon, the Company is a clinical stage company focused on proprietary devices for repairing the valves of the heart using a catheter to access the heart directly through the vasculature, and without surgical incisions or the use of a heart lung machine to stop the beating heart. The Company is currently in the midst of a groundbreaking clinical study that has been approved by the FDA and for general reimbursement by the Center for Medicare & Medicaid Services. Cardiac Implants is currently controlled by a wrongfully and

unlawfully constituted Board appointed by the by the controlling E-2 Investors as a result of the Restructuring

Jurisdiction and Venue

24. This Court has jurisdiction over this action pursuant to 8 Del. C. § 111, 10 Del. C § 341, 6 Del. C § 18-802, and 6 Del. C § 18-803.

Company Background

25. Cardiac Implants has raised over $50 million dollars since its founding in 2013, and was valued at over $100,000,000 based on the Series D investment round completed in 2018-2019, prior to the COVID pandemic. The Company's current product under development, and the study device that is the subject of the Company's FDA EFS clinical study, is a transcatheter device for repairing leaking tricuspid valves, the valve on the right side of the heart that regulates the flow of blood from the right atrium to the right ventricle. The technique employed by the Company to repair the valves is the only current technology in clinical study that has been able to mimic the gold standard for surgical repair of the heart valves using a ring that is called an annuloplasty ring to reshape and repair the leaking valve annulus and to do so without surgical incisions and through a transcatheter device. While there are other competitive technologies under development, there are currently no approved devices for treating these patients in the U.S. and there remains a very large unmet medical need for a solution to this class of patients,

estimated at over 2 million patients in the U.S. alone. Perhaps to avoid a competitive product, Alpha may benefit from the cessation of the EFS study and the shutting down of the Company's or any successor's development program.

26. The Company's fundraising has largely come from a small group of investors through a series of rounds of investment, from a Series A round through the Series D round and culminating in the final and fateful Series E round as part of the Restructuring. As of the completion of the Series E round in late July or August 2022, the Company adopted its latest Fifth Amended and Restated Limited Liability Company Agreement.

27. The Company's R&D development reached its first major milestone at the end of 2017 with the first-in-human successful implantation of the Company's Tri-Ring product in a patient in Prague under the direction of a leading team of international physicians. A series of additional patients were treated in European clinical trials in 2018-19.

28. After the first in human tests with the Company's product, the Company was valued in its Series D round at over $100 million and the Company decided to then turn its attention to building its next iteration of the medical device for testing in the United States in a so-called Early Feasibility Study (EFS Study).

29. The EFS program is a special program developed by the FDA which encourages companies like the Company to test and develop their medical devices

in the U.S. so patients in the U.S. may potentially get early access to these potentially breakthrough therapies. A description of the Company's clinical trial can be found at the following link: https://clinicaltrials.gov/ct2/show/NCT0489082.

30. Unfortunately, the COVID pandemic that struck in early 2020 had a material adverse effect on the Company as it became impossible to continue clinical testing of the Company's device as medical research in hospitals (other than related to COVID) came to a grinding halt and investors that were otherwise pouring money into vaccine treatments and technologies benefitting or supporting remote work stopped providing funding for companies engaged in clinical research that could not continue during COVID. The result was that the investors in the Company became impatient, and as the Company was coming out of COVID in August 2021, with its US EFS study now approved and ready to start enrolling, the controlling investors who would become the E-2 Investors decided to remove Mr. Rachlin from the Company.

31. Following an unsuccessful search for a new CEO and the persistence of adverse conditions from COVID, the E-2 Investors decided to force Mr. Rachlin out as CEO and, shortly following, to remove him from the Board and to block him from any further information or access to the Company. This cleared the pathway for the E-2 Investors to pursue a restructuring transaction under new management

and under terms that would give these E-2 Investors absolute control over the Board and a veto right over any sale of assets or liquidation.

32. As a means to facilitate further investment, Mr. Rachlin voluntarily agreed to step aside from his CEO position in February of 2022. He was however then removed from the Board without cause or notice and excluded from all decision-making on the Board. One of the Board members appointed by the E-2 Investors received a substantial head-hunting fee for recruiting the current CEO through his head-hunting firm. The new CEO steadfastly followed the Board's direction not to engage substantively with Mr. Rachlin as E-2 investors with their Board allies were then seeking to solidify control of the Company through the 2022 Restructuring as further explained below.

The 2022 Restructuring and Subject Liquidation Sale

33. After Mr. Rachlin had been forced out of the Company as an officer and director of the Company in mid-2022, the members comprising the E-2 Investors began plotting the restructuring of the capital of the Company.

34. Despite vehement objections from various constituents, on or about August 1, 2022, the Company's Series E-2 Investors completed a major restructuring of the Company, including a substantial down round (the "2022 Restructuring") by which they made investments at a valuation far less than prior investments. In this 2022 Restructuring, these E-2 Investors assumed complete control through not only

the right to appoint all the Board members with such members beholden to them but the E-2 Investors also obtained a veto right over, among other things, any sale or disposition of the assets and intellectual property of the Company.

35. The E-2 Investors include the members of the Stiller Family, who own 50% of the Series E-2 shares and controls the majority of the Board, if not its entirety, with the right to appoint four or potentially even five of the five total seats; Ernst Langner, a retired real estate and retail clothing business executive, whose wife Nataly Langner sits as an observer to the Board; and Gideon Levy, a real estate investor based in Atlanta. None of these members has any known experience managing a medical device company with a permanent implant in the heart and all come from industries outside medical devices.

36. CIH, still the owner of a majority of the common units, repeatedly objected to this restructuring, which, after receiving Board approval, left the Company insolvent and did not provide a viable plan for the Company to succeed.

37. Less than six months later, on January 12, 2023, reflecting the errors of the 2022 Restructuring, the Board decided to shut the Company down and sell and liquidate all of its assets despite its extraordinary potential value if the clinical trials continued to proceed favorably as they had been. All of the Company's employees were fired the following Monday, January 17, except for a few to manage the liquidation and to oversee the Company's ongoing U.S. clinical trial and the

treatment of the two patients who have been enrolled and implanted with the Company's annuloplasty ring.

38. Despite the Board's decision, the CEO, Mr. Turco, who was brought in by the E-2 Investors as part of the 2022 Restructuring, continued to try to raise money for the Company without disclosing to potential investors that the Board already had already decided to shut the company down and sell the assets to potential investors.

39. In fact, following the Board's decision, Mr. Turco sent a letter to the unitholders of the Company, including CIH, informing all that the Company was looking for funds and asking unitholders if they were interested in investing while making no reference to the Board's previous decision to shut down and liquidate its assets.

40. During this process, Mr. Turco also sent presentations to potential investors, including a group called Orchestra Biomedical and its principal David Hochman to evaluate the assets and the clinical program of the Company. Despite the position later taken with Mr. Rachlin and CIH, during these presentations, Dr. Turco explicitly discussed the ongoing clinical program and made clear that a buyer could and would succeed to the entirety of the clinical program as well as the continued R&D program.

CIH and Company Reach Binding Agreement

41. Once CIH received notice that the Company's employees were being fired, it immediately started discussions with a major investment bank, HSBC, to explore fundraising for the Company. CIH received immediately positive and interested reception to its proposals.

42. Later in January of 2023, Board member and Stiller Family representative (and holder of 50% of the E-2 units) Stephen Magowan emailed one of CIH's members that the Company was being shut down and that the assets were for sale. Mr. Magowan further made clear in his email that if anyone wanted to buy the assets and continue the clinical program of the Company that they should send their offers to Mr. Turco who had been appointed to run the process for such a sale. Mr. Magowan informed the CIH member that Mr. Turco was not authorized to look for investment, only to sell the Company's assets.

43. In February 2023, CIH secured HSBC as an investment banker to lead the financing that it wanted to put together to save the Company from liquidation. When Mr. Rachlin approached Mr. Magowan and Dr. Turco with CIH's plan to attract financing for the Company, he was told the Company was not looking for investment but that CIH and/or Mr. Rachlin was free to bid for the assets.

44. While the best path for the Company, as Mr. Rachlin understood, remained a new fundraising with new management so it could continue its activities

for the benefit of all members, Mr. Rachlin took the opportunity given the Board's decision-making to formulate a proposal to purchase the intellectual property and know-how of the Company so that the development of the Company's groundbreaking technology could be continued and reach its potential and the patients in the Company's clinical trials could be continued to be followed to generate important longer term data.

45. Unlike any other options, CHI as the purchaser of assets came with Mr. Rachlin's ability to rehire all the Company's key engineers and clinical personnel with whom he has positive relationships but who had been previously fired by the Company. Mr. Rachlin also has deep and unique knowledge of the Company's development process from his experience as a Company founder and former CEO, such that the continuation of the substantial clinical and technical development of the Company's technology would be in the best possible hands moving forward to ensure its successful and uninterrupted continuity. Mr. Rachlin also confirmed with the physicians that were the principal investigators in the US EFS trial that would continue to participate in the trial. Indeed, Mr. Rachlin's inquiries were met with highly enthusiastic response from the physicians who had treated the two patients already in the US trial.

46. Shortly after communicating its willingness and ability to close a deal for the Company's assets, which covers its intellectual property, including patents

as well as rights relating to the critical ongoing clinical trial efforts, and other know-how, CIH signed a Non-Disclosure Agreement ("NDA") with the Company so it could gain access to information which it had previously been refused, despite being the majority holder of the common stock of the Company. Notwithstanding this signed NDA, Dr. Turco inexplicably refused to provide CIH with any general access to information, or even to the data room that had been set up by the Company.

47. When CIH objected to the lack of information access, it received Mr. Turco's email of March 9 in which he laid out the bidding "process" approved by the Board (and presumably also the E-2 Investors who have dispositive control over the Company's assets as a result of the Restructuring) and told CIH it had essentially **three days**, with a weekend intervening, to put in a bid for the Company's intellectual property and know-how and to be prepared to close the following Friday, March 17, 2023. A copy of this email is annexed hereto as **Exhibit A**.

48. In accordance with this email, as inexplicably onerous as it was, CIH submitted a bid for $1 million dollars, as memorialized through numerous emails between CIH and Company personnel, as well as an independent screen shot duly capturing the $1 million dollar wire transfer to the account of CIH.

49. At the time, as far as CIH was aware, the only other pending offer received by the Company was the Inferior Offer by a third party given the code name

"Alpha" by the Company, which was dwarfed by a significant margin by the CIH Terms.

50. Nevertheless, Dr. Turco returned to Mr. Rachlin and tried to further negotiate CIH's bid. In the interests of good faith and to simply finalize the transaction, CIH agreed to assume additional liabilities on Cardiac Implants' facilities lease in California, which equate to roughly several hundred thousand dollars.

51. Shortly thereafter, through email on March 16, 2023, Mr. Rachlin was informed the CIH Terms were accepted by the Company. A short-form bill of sale memorializing the agreement was produced by the Company, transmitted to Mr. Rachlin. Mr. Rachlin, acting for CIH, then returned to the Company a lightly marked-up bill of sale agreement (the "Bill of Sale"), which only added industry standard definitions of intellectual property and know-how to be acquired and other industry standard provisions regarding the assignment of rights thereto. Importantly, CIH's markups were more formalities than anything, and did not add any representations or warranties regarding assignability or otherwise and sought to impose no additional burdens or material terms whatsoever on the Company.

52. The sole purpose and effect of the industry standard mark-up was to make clear that the buyer would in fact succeed to all rights that comprise the intellectual property and know-how of the Company. In short, all material terms of

the parties had already been accepted by both parties and no material terms had been added. At this point in time, all necessary components comprising a lawful agreement were present and final, including Mr. Rachlin's valid offer, the Company's acceptance, consideration, and mutual assent from both parties.

53. Mr. Rachlin was then sent documents and asked to deposit the $1 million in escrow with the Company's attorney. But no escrow agreement was ever provided to Mr. Rachlin, only wire transfers to Foley's IOLA account. The agreement between CIH and the Company was a final Bill of Sale without executory obligations or conditions precedent.

The Company Unlawfully Reneges on the CIH Terms and Accepts Inferior Offer for Self-Interested Reasons

54. The sole changes Mr. Rachlin made to the Bill of Sale were minor, non-substantive edits to add customary transactional language standard to the medical technology industry for the sale of intellectual property and know-how. Notably, as documented by a proposed escrow wire transfer transmitted by email from Mr. Rachlin to the Board, CIH has been and remains prepared to fund its $1 million offer immediately, as quested by Company representatives themselves.

55. It was only at this point having received Mr. Rachlin's non-substantive edits based on customary terms to the Bill of Sale, and no point prior, that Mr. Rachlin was told that the Company would now *not* honor its agreement with CIH. The unjustifiable and pretextual reason given for their reneging purported to be

because Mr. Rachlin was insisting on taking over the Company's rights in the ongoing clinical trials and because they understood that Mr. Rachlin intended to continue these trials or at least continue to follow the already treated patients. But this excuse made no sense, as throughout negotiations with CIH, the Company always knew CIH planned to continue the business, which by practical necessity and common sense involved proceeding with the ongoing clinical study. It thus lacked any semblance of credibility for Company representatives to assert that clinical trial matters were somehow *not* encompassed by the transaction.

56. The Company's sudden change of course being purportedly based on CIH's intention to continue the Company's clinical trial efforts came as great surprise to Mr. Rachlin and CIH for five main reasons. First, CIH would be assuming all further obligations under the trials and becoming the successor to the Company and therefore it would be categorically *relieving* the Company of possible any further liabilities from the clinical trial, and at no cost. Second, from the standpoint of the developer and intellectual property owner, clinical trials are just another testing protocol, in this case involving clinical subjects; but the results are all an essential and integral part of the intellectual property and know-how of a medical device company. Third, the value of the intellectual property, without the clinical trial, would be essentially negligible as no one would be able then to continue the development of the company's medical device without effectively starting over. It

would be like selling a car but stipulating that it can't be driven. One wonders why a Board seeking to maximize value for the assets in a liquidation would impose an arbitrary condition, inimical to the interests of patients and medical research, and which renders the assets being sold valuable only to a company looking for intellectual property in other fields or to a competitor company looking to put Cardiac Implants and its device out of business. Fourth, the Company, the Board, and Dr. Turco all knew full well and understood Mr. Rachlin's plan was to continue the clinical program as this again would be the only reason to acquire these assets. Fifth, and finally, the Company cannot otherwise "sell" the clinical program or realize any value whatsoever from it since, again, while it is a crown jewel, it is inseparable from the other intellectual property and assets being sold if the business is to continue. Conceptually, then, it would defy logic if, actually having sold the intellectual and property and know-how *without* the rights under the clinical trial, the Company could lawfully proceed to manage and shut down the clinical trial without infringing the rights it had just sold.

57. As such, it is abundantly clear that the Company's objection to transferring the clinical program to CIH was, and is, entirely pretextual.

58. Importantly, Dr. Turco and Mr. Magowan repeatedly falsely stated to Mr. Rachlin and others that the clinical trials had either "been shut down" or were "about to be" shut down. These statements were then, and still remain, absolutely

and patently false, as the Company is still following up on the last patient and needs to file a report as part of this follow up within the next two weeks as of the filing of this Complaint. The link to the clinicaltrials.gov site describing the active status of the trial further belies this idea that the trial has been "shut down".

59. The Company's clinical trial is still ongoing but will be shut down only if the Company is permitted to renege on the transaction already agreed to. Importantly, there are in fact two patients who have been implanted with the Company's device whose promised care and follow up will be cut short by this short sighted and self-interested and unexplained position of the Company.

60. Following the sudden and completely unjustifiable objection to CIH assuming the clinical program, on March 20, 2023, Mr. Rachlin received a letter from Dr. Turco indicating that his Offer was suddenly *not* approved by the Series E-2 members, despite Mr. Turco's previous confirmation to Mr. Rachlin that it *had* been.

61. This letter was the first time CIH had ever received any indication that the Series E-2 Investors, who control the Company and the Board, and purport to have full dispositive power over the assets of the Company, needed to approve the transaction, despite their having previously delegated "bid process" to Mr. Turco and the Board. In order to further sweeten what already were already superior, agreed-upon terms, Mr. Rachlin proposed to offer directly to all the unitholders in

the Company the right to receive warrants for approximately 10% of the new entity created to continue the business at the initial founders round valuation and to be allocated among the unitholders based on their relative dollar amount invested in the Company. In this way, all the unitholders of the Company would participate in the future success of the assets of the Company.

62. On March 24, 2023, CIH then came to learn that the Board had approved, and was seeking member consent, to accept the alternative Inferior Offer from Alpha. In a letter to Company members on March 24 (the "March 24 Letter"), CEO Turco and the CFO of the Company solicited the consent of members to the Alpha transaction based on a misleading description of the sales process. A copy of the March 24 letter is annexed hereto as **Exhibit B**. Even as misleading as the March 24 Letter is, it recognizes the flimsiness of the pretextual excuse about concerns over the transfer of the clinical trial right by acknowledging that "[t]his is a question as to which there might be reasonable disagreement." In addition, the March 24 Letter claims that "the certainty to closing the transaction with alpha was clear" without explaining that CIH was ready immediately to fund $1 million in escrow equating to double the amount of the Inferior Offer. Nor is there any explanation as to why the proposed Alpha transaction is at risk of being lost given that Alpha merely appears to want to acquire the technology to shelve it.

63. On March 25, in response to the inaccurate and misleading March 24 Letter from the company, CIH, through Mr. Rachlin, circulated a letter (the "March 25 Letter") further explaining the CIH Terms. A copy of the CHI Terms and the March 25 Letter describing them are annexed hereto as **Exhibit C** and **Exhibit D** respectively.

64. As discussed at length, *supra*, the Inferior Offer does not maximize Company value and is not in the Company's best interests. It is less than half of the dollar value of the CIH Terms, which included payment of $1 million plus the assumption of hundreds of thousands of dollars in liabilities. Further, the CIH Terms alone included, through warrants to Company members, the additional value of further participation if the business succeeds. s

65. The only objection, as baseless as it is, untimely raised by Defendants to the CIH Terms is that it required the rights to the ongoing U.S. clinical trials. But the objection makes no sense, since CIH was (and is) willing to assume any responsibilities, obligations and liabilities pertaining to the trials. There is no greater risk profile for the Company, which will cease its operations. Without the clinical trial rights, which are the crown jewels of the Company, a purchaser is acquiring assets that are completely stripped away of future commercialization and marketability prospects. That is why it is clear Alpha is offering less than half the

price of the CIH Terms because it merely intends to shelve the Company's patents to rid itself of competitive challenges and restraints.

66. Nor has any explanation been given by the Company for any need to rush this process. In fact, since, as is clear, Alpha would not be continuing the clinical trial work, it has no apparent business justification to require a short timeline for its Inferior Offer.

Public Interest Favors Enforcing the CIH Terms

67. The rights underlying the ongoing U.S. clinical trial are an essential and inextricable part of the intellectual property rights and know-how of the Company that the Company agreed to sell to CIH, and the cessation of this clinical trial would permanently and irrevocably undermine, and for all practical purposes prevent, anyone from being able to continue the research and development of the Company's medical device, which is the subject of the study.

68. As such, much more than financial considerations are put at risk by the clinal trials' termination, especially under the present circumstances where CIH, a ready, willing, and able successor, not only has presented an attractive financial offer, but has presented one that provides the public with benefits of cutting-edge medical technology.

69. Importantly, no other buyer could have any intention of continuing these trials, as no effort has been made to secure the clinical and R&D team that

would be needed to continue the development program. Only CIH has secured the commitment of the key former employees to continue with the R&D and clinical development project.

70. Even a large medical device manufacturer would not be able to continue the development project, and, as reflected by Alpha's purported proposal, would only be interested in acquiring the Company's intellectual property to purchase a freedom to operate in other areas or simply to see a significant potential competitor put down. Thus, any offer for the Company's assets by anyone other than CIH will lead to the complete loss of this medical technology for the purpose for which it has been developed, as well as the loss to millions of patients of the Company's groundbreaking solution for treatment of a daunting and perplexing medical problem facing a large patient class.

71. Highly reputable physicians have expressed grave disappointment at the prospect of the Company's clinical program in the U.S. being shut down for these very reasons.

72. Nonetheless, in order to bestow exit relief to the Board and the E-2 Investors to whom the Board is entirely beholden, and in order to kill the clinical program which if continued would raise questions over prior decisions the Board has made, the Company seeks to unlawfully renege on the objectively superior, value-maximizing CIH Terms.

COUNT I

Breach of Contract

73. Plaintiff realleges and reasserts the allegations contained in paragraphs 1 through 72 of this Complaint.

74. Cardiac Implants and CIH entered into a binding, enforceable agreement based on the CIH Terms as described above. All materials terms are set forth in the CIH Terms, which both parties accepted. There were no further conditions precedent for CIH to satisfy. Indeed, the CIH Terms are the most favorable terms, by far, available to the Company as it seeks to liquidate its assets. As such, the fiduciaries of the Company are required to endorse the CIH Terms in accordance with their responsibilities.

75. Having agreed to the CIH Terms, the Company had nothing left it lawfully could sell to Alpha under the Inferior Offer. Accordingly, any transaction based on the Inferior Offer by Alpha is invalid, encumbered and void. In addition, any transaction based on the Inferior Offer would be the result of a corrupt process by which the fiduciaries of the Company breached their responsibilities. Any such transaction thus would be null and void.

76. To the extent the Company has taken steps to consummate, or intends to take steps to consummate, a transaction based on the Inferior Offer, the Company together with its officers, directors, agents and representatives should be enjoined

from taking further steps to that end. Any transfer to date of Company assets should be unwound and rendered void. There is no reason that any transfer of assets based on the Inferior Offer, given the straight-forward nature of any recent patent transfer, cannot be unwound at this early point.

77. Any agreement based on the Inferior Offer would constitute an unlawful and void agreement with Alpha for the sale of assets it had previously agreed to sell to CIH.

78. Unless the CIH Terms are enforced, Cardiac Implant's breach of its agreement to sell assets to CIH pursuant to the CIH Terms will cause CIH to suffer irreparable injury for which it could never be fully compensated by monetary damages given the unique object of the agreement involving cutting-edge intellectual property being developed.

COUNT II

Judicial Dissolution

79. Plaintiff repeats and realleges Paragraphs 1 through 78 as if fully set forth herein.

80. Article X, Section 10.1 of the Fifth Amended Operating Agreement states that the Company "shall be dissolved and its affairs wound up upon the occurrence of any of the following events: (a) A unanimous election by the Board to

dissolve the Company at any time; or (b) The entry of a decree of judicial dissolution of the Company under § 18-802 of the Act.

81. Pursuant to 6 Del. C. § 18-803(a), this Court, "upon cause shown, may wind up the limited liability company's affairs upon application of any member or manager, or the member's personal representative or assignee, and in connection therewith, may appoint a liquidating trustee."

82. As addressed above, the Board has steadfastly exhibited an inability to properly wind up the Company's affairs in the best interest of the Company.

83. Cause to appoint a liquidating trustee exists under 803(a) when the respective Company constituents are deeply divided over the winding up procedures and the trustee would be able to ensure that it is completed in a prompt and orderly fashion. Given the objective metrics clearly showing that the CIH Terms are far superior to the proposed Alpha transaction in multiple respects, cause is established to implement independent oversight and administration over the dissolution process. Indeed, the fact that the Board is opposed to an offer providing approximately $1 million (at least) in value above the alternative further reflects the foul and improper motives of the Board and provides critical independent oversight.

84. CIH, as the largest common unitholder, and the conflicted, corrupted Company fiduciaries are deeply divided over the winding up procedures and a

liquidating trustee would be able to ensure that it is completed in a prompt and orderly fashion.

85. CIH, as the largest common unitholder, has steadfastly objected to the Company's planned wind-up procedures, including, but not limited to, the form and function of such a wind up's attendant sale and liquidation of the Company's assets in a manner that does not comport with the Company's best interests or maximize its value.

86. 6 Del. C. § 18-803(b), provides that "the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal or administrative, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company."

87. Thus, to the extent CIH's causes of action alleged herein result in judgments for the benefit of CIH and, for that matter, the Company's unitholders generally, the Board given its conflicted position cannot objectively or in good faith enforce those judgments when winding up the Company. Accordingly, the appointment of an independent liquidating trustee to wind up the Company and, in

connection therewith, pursue and enforce all rights the Company has is appropriate and necessary.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court enter a final Order and Judgment in Plaintiff's favor, and against Defendants:

a) Declare that the CIH Terms are valid and binding, enforceable and in effect;

b) Enjoin and rescind the sale or transfer of any assets, including, without limitation, in connection with the Inferior Offer from Alpha;

c) Awarding damages, together with pre- and post- judgment interest to Plaintiff in an amount to be determined by the Court;

d) Dissolving the Company pursuant to 6 Del. C. § 18-802;

e) Compelling the Company's winding up and, in connection therewith, appointing a liquidating trustee pursuant to 6 Del. C. § 18-803;

f) Awarding Plaintiff its costs and expenses, including reasonable attorneys' fees, incurred in connection with this action; and

g) Granting such other and further relief as the Court deems just and proper.

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Dated: March 27, 2023