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11
12 UNITED STATES DISTRICT COURT
13 FOR THE WESTERN DISTRICT OF WASHINGTON
14 SEATTLE DIVISION

15 ALLIED BIOSCIENCE, INC., a Nevada
corporation,

16 Plaintiff,

17 v.

18 CRAIG GROSSMAN, an individual,

19 Defendant.
20

Case No. 2:20-cv-01650

COMPLAINT

21
22 1. Plaintiff Allied BioScience, Inc. (“**ABS**”) complains against Defendant Craig
23 Grossman (“**Grossman**”):

24 **I. PARTIES**

25 2. Plaintiff Allied BioScience, Inc. is a Nevada Corporation with its principal place of
26 business and nerve center at 7800 Dallas Parkway, Suite 650, Plano, Texas 75024.

1 to 2014 and as Chairman of the Board of Directors and Chief Technology Officer for ABS for
2 from 2014 to 2018. Exhibit A. As an officer and director of ABS from 2005 through 2018,
3 Grossman was a fiduciary of ABS. As a fiduciary, Grossman owed ABS the duty of utmost good
4 faith and was required to refrain from acting in his own best interests.

5 10. On April 30, 2018, ABS terminated Grossman’s employment. Then, effective
6 May 1, 2018, ABS retained Grossman as an independent consultant under a written Consulting
7 Agreement.¹ ABS retained Grossman as an independent consultant to consult on “future patent
8 filings and product development and design,” among other things. In June 2018, Grossman stepped
9 down from ABS’s Board of Directors. On May 1, 2020, the Consulting Agreement terminated
10 according to its terms. Since then, Grossman has held no formal or informal position at ABS.

11 11. During the course and scope of his employment with ABS and as independent
12 consultant for ABS, Grossman helped to invent certain technology related to ABS’s business and
13 portions of the ABS Technology (the “*Grossman Inventions*”). A key aspect of Grossman’s
14 employment and consultancy with ABS was to help invent the Grossman Inventions and develop
15 the ABS Technology. Some of the Grossman Inventions have been described or claimed in some
16 of ABS’s patents and patent applications.

17 **B. Grossman’s Prior Assignment of the Grossman Inventions to ABS.**

18 12. ABS has spent considerable time and resources working to obtain broad patent
19 protection for the ABS Technology, including the Grossman Inventions. ABS owns over 82 patent
20 filings worldwide, with approximately 53 issued patents and many pending applications in process.

21 13. Given the extraordinary investment ABS has made in the ABS Technology and
22 corresponding intellectual property, it is natural that ABS should desire to confirm its ownership
23 of the ABS Technology.

24 14. As a fiduciary of ABS—and in furtherance of the duties of utmost good faith and
25 refraining from acting in his own self-interest—Grossman has an obligation to assign any rights

26 ¹ ABS has previously provided a copy of Mr. Grossman’s Consulting Agreement referenced herein.

1 he may have had in the Grossman Inventions to ABS. Indeed, Grossman has previously executed
2 a number of invention assignments in favor of ABS. *See* Exhibit B. Likewise, Grossman’s
3 Consulting Agreement contains a broad assignment of all intellectual property to ABS, including
4 any Grossman Inventions made during Grossman’s two-year tenure as an independent consultant.
5 Grossman’s Consulting Agreement also includes non-complete provisions that prevent Grossman
6 from engaging in business activities that do or may compete with ABS’s business during, and for
7 twelve months after, his consultancy without ABS’s consent.

8 **C. Grossman Demands that ABS Make Additional Payments Related to the**
9 **Grossman Inventions.**

10 15. Despite no longer being affiliated with ABS in any way, Grossman continues to
11 hold himself out as an agent of ABS and attempts to conduct business on behalf of ABS. Grossman
12 has also used an ABS-like email signature block in a deceptive and misleading way, and apparently
13 he claims some continuing ownership of the Grossman Inventions. *E.g.*, Exhibit C; Exhibit D.

14 16. On September 4, 2020, counsel for ABS sent a cease and desist letter to Mr.
15 Grossman demanding that he immediately cease this misleading and harmful conduct. Exhibit C.

16 17. In an effort to resolve the dispute with Grossman and confirm ownership of the
17 Grossman Inventions, ABS prepared a draft Confirmatory Assignment Agreement consolidating
18 Grossman’s assignment records and reiterating that ABS is the sole owner of all Grossman
19 Inventions.

20 18. In response, Grossman’s counsel conceded that:

21 ***“Mr. Grossman agrees with ABS that what he invented relating to his work and***
22 ***consulting for ABS, pursuant to those agreements and relating to ABS’s***
23 ***business, belongs to ABS.”***

24 Exhibit E at 5 (emphasis added).

25 19. Despite his counsel’s unequivocal statement, Grossman refused and, continues to
26 refuse, to sign the Confirmatory Assignment Agreement. Worse, Grossman and his counsel

1 redlined the Confirmatory Assignment Agreement to include a baseless requirement that ABS pay
2 Grossman significant, unearned additional compensation in exchange for Grossman’s execution
3 of the document. Specifically, Grossman demands that ABS compensate him commensurate with
4 “other recently-resigned directors” and that ABS permit him to “sell up to 10% of [Grossman’s]
5 holdings” in ABS. Exhibit D; Exhibit E at 1.

6 20. Grossman’s request for additional consideration is unconscionable for multiple
7 reasons. First, the Confirmatory Assignment Agreement is exactly that—a confirmation of ABS’s
8 ownership of the Grossman Inventions, for which Grossman already received significant
9 compensation. Second, Grossman’s demand for unearned compensation and attempt to somehow
10 hold the Grossman Inventions hostage is unconscionable. Third, the specific compensation of other
11 departing ABS directors is highly confidential ABS information that, as further discussed below,
12 Grossman apparently acquired improperly. That Grossman then attempted to use this improperly-
13 acquired information to squeeze money out of ABS is astounding.

14 21. Grossman’s repeated refusals to sign the Confirmatory Assignment Agreement and
15 demands for additional compensation and consideration regarding the Grossman Inventions has
16 created an ownership dispute over the Grossman Inventions.

17 **D. Grossman’s Misappropriation of ABS’s Trade Secrets.**

18 22. In addition to his wrongful conduct regarding the Grossman Inventions, Grossman
19 has also surreptitiously acquired ABS’s trade secrets.

20 23. First, Grossman improperly acquired confidential information related to the terms
21 of an ABS director’s severance agreement and is now using that information to demand additional
22 unearned compensation from ABS.

23 24. ABS’s employee and director compensation information, including severance
24 terms, is highly confidential information. Indeed, ABS’s severance agreements include
25 confidentiality clauses stating as much. ABS also stores all employee and director confirmation
26 information on secure, password-protected computer systems with limited accessibility.

1 Grossman served as an ABS officer and director for over a decade, meaning he is well aware of
2 the confidential nature of compensation and severance terms and the efforts that ABS takes to
3 maintain the confidentiality of such information.

4 25. Nonetheless, Grossman improperly acquired information concerning departed ABS
5 directors' confidential compensation and severance details and disclosed that information to third
6 parties, including to Grossman's counsel. As discussed above, Grossman's counsel included the
7 confidential compensation and severance details (that Grossman acquired from a recently-resigned
8 ABS director) in a redline of the Confirmatory Assignment Agreement and demanded that
9 Grossman be similarly compensated. ABS did not consent to Grossman's acquisition or disclosure
10 of any confidential compensation or severance terms.

11 26. Severance terms, and compensation generally, constitute highly confidential
12 financial information that ABS places great value on. Such information is not shared amongst
13 ABS directors or employees and, as noted above, ABS directors and employees are obligated to
14 keep such information confidential. ABS takes these precautions because the disclosure of this
15 confidential information could negatively impact ABS's reputation and ability to compete in the
16 marketplace, among other things. Case in point, Grossman improperly obtained the terms of
17 another director's severance and is now wrongfully using that information as leverage to secure a
18 similar compensation package for himself.

19 27. Second, in addition to surreptitiously acquiring confidential severance
20 compensation terms, on information and belief, Grossman has also secretly and improperly
21 obtained critical ABS trade secrets from an ABS insider, including information related to ABS's
22 patent and innovation strategies. This technical information is highly confidential and relates to
23 non-public ABS inventions and technologies.

24 28. ABS's trade secrets, including information related to ABS's patent and innovation
25 strategies, also derive independent economic value from not being generally known to, or readily
26 ascertainably by, other persons and entities. For example, ABS's trade secrets, which ABS has

1 spent over a decade developing, are vital to its surface coating product-focused business and
2 provide ABS with a competitive advantage in the industry. ABS's trade secrets, including its patent
3 and innovation strategies, relate to ABS's proprietary technologies and products, which are used
4 and sold as part of ABS's business throughout the United States.

5 29. ABS takes the security of its confidential information and trade secrets seriously
6 and has made reasonable efforts to maintain the secrecy of that information and prevent the
7 unauthorized disclosure or use of its trade secret information. For example, the ABS Employee
8 Handbook requires employees to hold in confidence, and to not use or disclose, any ABS
9 proprietary or confidential information outside of their employment with ABS. Similarly, ABS
10 also requires independent contractors, including Grossman, to hold in confidence, and not to
11 disclose or use, any ABS confidential information (which includes trade secrets) outside of their
12 work for ABS. ABS stores ABS confidential information on secure, password protected computer
13 systems with limited accessibility. Additionally, ABS's severance agreements also include
14 confidentiality provisions prohibiting the disclosure of the severance agreement's term to third
15 parties.

16 30. Despite ABS's efforts to maintain the confidentiality of its confidential information
17 and trade secrets, on information and belief Grossman used his insider knowledge and connections
18 to willfully and maliciously misappropriate ABS's trade secrets for his own benefit and to ABS's
19 detriment.

20 31. Grossman's misappropriation of ABS's trade secrets is even more concerning given
21 that Grossman apparently started his own consulting company—Gman BioTech Consulting,
22 Inc.—in 2018 while he was still a consultant at ABS. In addition to apparently improperly
23 competing with ABS in violation of his Consulting Agreement, Grossman may also benefit greatly
24 from misappropriating ABS's confidential information and trade secrets.

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1 **IV. CLAIMS FOR RELIEF**

2 **FIRST CLAIM FOR RELIEF**

3 **Declaratory Judgment of Ownership of the Grossman Inventions**

4 32. ABS repeats and re-alleges the foregoing allegations as if fully set forth herein.

5 33. From 2005 to 2018, Grossman was an officer or director of ABS and owed a
6 fiduciary duty to ABS during the entirety of his tenure in those positions.

7 34. Grossman invented the Grossman Inventions during the course and scope of his
8 work as an ABS employee and independent consultant, and the Grossman Inventions relate
9 directly to the work Grossman performed as an ABS employee and independent consultant.

10 35. As a fiduciary of ABS, Grossman was obligated to assign the Grossman Inventions
11 to ABS, rendering ABS the sole owner of the Grossman Inventions.² See NEV. REV. STAT. 78.138
12 (officers and directors of Nevada corporation are fiduciaries); see also *Miller v. GTE Corp.*, Civ.
13 A. No. H-88-1176, 1989 WL 258184, at *2 (S. D. Tex. Apr. 7, 1989) (“Among the obligations
14 which this fiduciary duty imposes . . . is the one that any inventions which he may develop while
15 occupying such a position and which relate to the occupation of the corporation must be assigned
16 to the corporation for its benefit.”) (citing *Davis v. Alwac Int’l, Inc.*, 369 S.W.2d 797, 802 (Tex.
17 Civ. App.—Beaumont 1963, writ ref’d n.r.e.)).³

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20 ² The prevailing trend in the United States requires fiduciaries to assign inventions to their employers. See, e.g.,
21 *Dermworx v. Cooper*, No. 09-60284-CIV, 2009 WL 1726333, at *6-7 (S.D. Fla. June 16, 2009) (applying Delaware
22 law); *Ono’s Trading Co. v. Parnell*, No. 04-0706-CG-C, 2006 WL 8437743, at *8 (S.D. Ala. Nov. 22, 2006) (applying
23 Alabama law); *In re Stonecraft*, 322 B.R. 623, 631-35, 644 (Bankr. S.D. Miss. 2005) (applying Michigan law); *In re*
24 *Holcomb Health Care Servs., LLC*, 329 B.R. 622, 664 (Bankr. M.D. Tenn. 2004) (applying Tennessee law); *Lacy v.*
Rotating Prods. Sys., Inc., 961 P.2d 1144, 1145 (Colo. App. 1998) (applying Colorado law); *Edwards v. Camling*
Eng’g Corp., 322 Md. 535, 550 (Md. App. 1991) (applying Maryland law); *Great Lakes Press Corp. v. Froom*, 695
F. Supp. 1440, 1445-49 (W.D.N.Y. 1987) (applying New York law); *Davis v. Alwac Int’l, Inc.*, 369 S.W.2d 797 (Tex.
Civ. App. 1963) (applying Texas law); 18 AIPLA Q.J. 127, 132, 147-54 (1990).

25 ³ While ABS does not contend that Washington law governs the ownership of the Grossman Inventions, Washington
26 law imposes significant fiduciary duties on corporate officers and directors, and such persons “are not permitted to
retain any personal profit or advantage gleaned ‘on the side.’” *Kesselring v. Kesselring*, No. 78764-1-I, 2020 WL
1675788 (Wash. Ct. App. Apr. 6, 2020).

1 provides ABS with a competitive advantage in the industry. This information constitutes “trade
2 secrets” under the DTSA, 18 U.S.C. §§ 1836 et seq.

3 42. As further set forth above, ABS’s trade secrets derive independent economic value
4 from not being generally known to, and not being readily ascertainable through proper means by,
5 other persons and entities who could obtain economic value from the disclosure or use of ABS’s
6 trade secrets.

7 43. ABS’s trade secrets are used in interstate commerce, at least because ABS utilizes
8 its trade secrets in its proprietary surface-coating products, which are sold in Texas and across the
9 United States.

10 44. Under the DTSA, on information and belief Grossman misappropriated ABS’s
11 trade secrets by making unauthorized use and/or disclosure of ABS’s trade secrets and/or by
12 acquiring ABS’s trade secrets through improper means, including by inducing ABS’s current or
13 former employees, officers, or directors, to breach a duty to maintain the confidentiality of ABS’s
14 trade secrets.

15 45. ABS has made reasonable efforts to maintain the secrecy of its trade secrets and to
16 prevent the unauthorized disclosure or use of its trade secret information through: (a) requiring
17 employees to hold in confidence, and not to disclose or use, any ABS proprietary or confidential
18 information outside of their employment with ABS; (b) requiring independent contractors,
19 including Grossman, to hold in confidence, and not to disclose or use, any ABS proprietary or
20 confidential information (which includes trade secrets) outside of their work for ABS; and
21 (c) storing ABS confidential information on secure, password protected computer systems with
22 limited accessibility, among other efforts.

23 46. Unless enjoined, Grossman’s misappropriation of ABS’s trade secrets will cause
24 ABS great and irreparable harm, and ABS has no adequate or other remedy at law for such acts.
25 Accordingly, ABS is entitled to preliminary and permanent injunctive relief.

26 ///

1 47. As a direct, proximate, and foreseeable result of Grossman’s misappropriation of
2 ABS’s trade secrets, ABS has been damaged in an amount not yet fully ascertained. ABS is
3 entitled to damages, including statutory damages, unjust enrichment damages, and other damages
4 under the DTSA.

5 **THIRD CLAIM FOR RELIEF**

6 **Misappropriation of Trade Secrets Under Uniform Trade Secrets Act⁴**

7 48. ABS repeats and re-alleges the foregoing allegations as if fully set forth herein.

8 49. As set forth above, ABS developed certain trade secret information, including but
9 not limited to ABS’s patent and innovation strategies, which is vital to ABS’s business and success
10 in the surface coating market. ABS has spent over a decade developing its trade secrets, which
11 provides ABS with a competitive advantage in the industry. This information constitutes “trade
12 secrets” under the Texas, Nevada, and Washington Uniform Trade Secrets Acts (together, the
13 “*UTSA*”). TEX. CIV. PRAC. REM. CODE § 134A; NEV. REV. STAT. § 600A; WASH. REV. CODE §
14 19.108.010.

15 50. As further set forth above, ABS also keeps confidential certain trade secrets relating
16 to employee, officer, and/or director compensation and severance terms, which are vital to ABS’s
17 business and ability to remain competitive in the surface coating market. This information also
18 constitutes “trade secrets” under the UTSA.

19 51. As further set forth above, ABS’s trade secrets derive independent economic value
20 from not being generally known to, and not being readily ascertainable through proper means by,
21 other persons and entities who could obtain economic value from the disclosure or use of ABS’s
22 trade secrets.

23 52. Under the UTSA, Grossman misappropriated ABS’s trade secrets by making
24 unauthorized use and/or disclosure of ABS’s trade secrets and/or by acquiring ABS’s trade secrets

25 ⁴ Each of Texas, Nevada, and Washington have adopted the Uniform Trade Secrets Act (“UTSA”). See TEX. CIV.
26 PRAC. REM. CODE § 134A; NEV. REV. STAT. § 600A; WASH. REV. CODE § 19.108.010. Thus, ABS pleads each state’s
statute in the alternative.

1 through improper means, including by inducing ABS's current or former employees, officers, or
2 directors, to breach a duty to maintain the confidentiality of ABS's trade secrets.

3 53. As set forth above, ABS has made reasonable efforts to maintain the secrecy of its
4 trade secrets and to prevent the unauthorized disclosure or use of its trade secret information
5 through: (a) requiring employees to hold in confidence, and not to disclose or use, any ABS
6 proprietary or confidential information outside of their employment with ABS; (b) requiring
7 independent contractors, including Grossman, to hold in confidence, and not to disclose or use,
8 any ABS proprietary or confidential information (which includes trade secrets) outside of their
9 work for ABS; and (c) storing ABS confidential information on secure, password protected
10 computer systems with limited accessibility, among other efforts.

11 54. In addition, ABS made reasonable efforts to maintain the secrecy of the ABS
12 compensation and severance information by imposing confidentiality obligations on employees,
13 officers, directors, and consultants as part of their work for ABS.

14 55. Unless enjoined by this Court, Grossman's misappropriation of ABS's trade secrets
15 will cause ABS great and irreparable harm, and ABS has no adequate or other remedy at law for
16 such acts. Moreover, Grossman's use and disclosure of ABS's trade secrets to demand additional,
17 unearned compensation will irreparably harm ABS. Accordingly, ABS is entitled to preliminary
18 and permanent injunctive relief.

19 56. As a direct, proximate, and foreseeable result of Grossman's willful and malicious
20 misappropriation of ABS's trade secrets, ABS has been damaged in an amount not yet fully
21 ascertained. ABS is entitled to actual damages and exemplary damages, and other damages under
22 the UTSA.

23 **FOURTH CLAIM FOR RELIEF**

24 **Breach of Fiduciary Duty**

25 57. ABS repeats and re-alleges the foregoing allegations as if fully set forth herein.

26 ///

1 d. Ordering Grossman to return to all information, documents, and
2 tangible things in his possession, custody, or control, whether in
3 physical or digital format, including any and all copies thereof, that
4 contain ABS's confidential or trade secret information.

5 3. As to the Second, Third, and Fourth Claims for Relief, that ABS recover
6 compensatory damages, statutory damages, exemplary damages, and any other damages to which
7 ABS is entitled in an amount to be shown at trial;

8 4. As to the Second and Third Claims for Relief, reasonable attorneys' fees.

9 5. That ABS recover the costs of this action, including pre- and post-judgment
10 interest, costs, and other expenses incurred in connection with this action; and

11 6. That ABS recover any other legal or equitable relief in favor of ABS that
12 this Court deems just and proper.

13 Dated: November 9, 2020

SNELL & WILMER L.L.P.

14 *s/ Clifford S. Davidson*

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