

IN THE U.S. DISTRICT COURT FOR  
THE WESTERN DISTRICT OF PENNSYLVANIA, PITTSBURGH DIVISION

DR. PATRICK ST. GERMAIN, D.C.,  
an individual,

Plaintiff,

v.

DR. RAYMOND WISNIEWSKI,  
D.C., an individual, NUTRIMOST,  
LLC, a Pennsylvania Limited  
Liability Company, and  
NUTRIMOST DOCTORS, LLC, a  
Pennsylvania Limited Liability  
Company,

Defendants.

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**COMPLAINT AND DEMAND FOR JURY TRIAL**

Dr. Patrick St. Germain, D.C. (“Plaintiff Dr. St. Germain”), by and through the undersigned counsel, hereby sues Defendants DR. RAYMOND WISNIEWSKI, D.C. (“Dr. Wisniewski”), NUTRIMOST, LLC, a Pennsylvania Limited Liability Company (“Licensor”), and NUTRIMOST DOCTORS, LLC, a Pennsylvania Limited Liability Company (“New Co”) (collectively “Defendants”) and alleges the following:

**PARTIES, VENUE AND JURISDICTION**

1. At all times material hereto, Plaintiff Dr. St. Germain, was and is a resident of Orange County, Florida.

2. At all times material hereto, Defendant Dr. Wisniewski was and is a resident of Westmoreland County, Pennsylvania.

3. At all times material hereto, Defendant Licensor was and is an active Pennsylvania Limited Liability Company.

4. Defendant New Co was and is an active Pennsylvania Limited Liability Company.

5. Pursuant to 28 U.S.C. § 1332(a)(1) (2014), this Court has original diversity jurisdiction over the instant action, as the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00), exclusive of interest, attorney's fees, and costs, and complete diversity exists between Plaintiff Dr. St. Germain and all Defendants.

6. This Court has personal jurisdiction over the Defendants, as Dr. Wisniewski is a resident of Westmoreland County, Pennsylvania, and Defendants Licensor and New Co are active Pennsylvania Limited Liability Companies domiciled in Pennsylvania.

7. Pursuant to 28 U.S.C. § 1391(b)(1) (2014), venue is appropriate in the Western District of Pennsylvania, Pittsburgh Division, as all the Defendants reside in Pennsylvania, and Defendant Dr. Wisniewski resides within this district.

8. This is an action for common law breach of contract, unjust enrichment, tortious interference with an advantageous business relationship,

fraudulent transfer, civil conspiracy, and equitable relief, in which the damages exceed \$75,000.00, exclusive of interest, costs, and attorneys' fees.

## **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

### **The NutriMost System**

9. The heart of this dispute revolves around the respective parties' rights to a weight-loss program called NutriMost (the "NutriMost System"). The NutriMost System utilizes a process called "NutriMost Resonant Frequency Technology" ("NRFT"). This NRFT, refined and manufactured by ZYTO Corp., a Utah Corporation ("ZYTO"), gathers information directly through the physiology of a patient, and develops a customized weight loss plan for each patient.

10. To accomplish this task, the NutriMost System is made up of three distinct, yet interrelated components: the Hardware, the Software, and the Supplemental Materials.

11. The Hardware consists primarily of a ZYTO hand cradle scanner, used by the patient on each visit, to gather biometrical data.

12. After the Hardware has gathered this data, the second NutriMost System component, the Software, compares the data captured by the Hardware to baseline data, and develops a customized weight loss plan for the patient.

13. This weight loss plan consists of a customized nutrition program, as well as the integration of the NutriMost System's third component: the

Supplemental Materials. The Supplemental Materials include natural, holistic consumables, designed to significantly increase a patient's success in losing weight, as well as items such as manuals and literature that explain the NutriMost System and provide patients with guidance in successfully implementing the NutriMost System.

14. In addition to the custom weight loss plan, the NutriMost System can provide medical practitioners with additional data that allows the practitioner to identify a significant number of factors that may contribute to a patient's inability to lose weight, such as diabetes or various thyroid disorders. Once these conditions have been identified, a NutriMost System provider can also develop a natural, holistic treatment plan to address these problems.

15. All NutriMost System components are in a constant process of updating, refinement, and improvement, such that a NutriMost System provider cannot successfully implement the NutriMost system without the latest generation of all three components. Without the latest Hardware, the Software may not have the most accurate data set to use in creating a treatment plan. Without the latest Software, a patient's weight-loss protocol might not integrate the latest Supplemental Materials. And without the Supplemental Materials, a patient is unable to fully take advantage of the customized weight loss plan that they have purchased.

**The NutriMost System’s History,  
and the Plaintiff’s Purchase of His License**

16. In approximately 2007, Defendant Dr. Wisniewski began to develop the NutriMost System. Defendant Dr. Wisniewski, through Defendant Licensor, trademarked the term “NutriMost” with the United States Patent and Trademark Office the same year (a copy of the United States Patent and Trademark Office search for the trademark NUTRIMOST is attached hereto as **Exhibit “A”**). Defendant Dr. Wisniewski then sought to capitalize on the development of the NutriMost System by offering it to clinicians in various parts of the United States.

17. Intrigued with the potential that the NutriMost System might hold, Plaintiff Dr. St. Germain wished to “capture” the Orlando market. On October 23, 2013, Plaintiff Dr. St. Germain entered into a Licensing Agreement and a Practice Management Agreement (the “Agreement”) with Defendant Licensor that granted him an *exclusive, perpetual* license to use the NutriMost System, including both the NUTRIMOST Trademark and the NRFT, in Orange, Seminole, Lake, and Osceola counties (the “Four Counties”) (a copy of the licensing agreement is attached hereto as **Exhibit “B”**).

18. Defendant Dr. Wisniewski executed the Agreement on behalf of Defendant Licensor.

19. The Agreement provided Plaintiff Dr. St. Germain with an exclusive, perpetual license of the “Licensed Technology” within the Four Counties.

Specifically, the “Licensed Technology” is defined in the Agreement as “any and all discoveries, inventions, processes, methods, techniques, know-how, and intellectual property and proprietary rights, expressed in whatever form including technical information, processes, procedures, methods, formulae, protocols, **software, specifications, instructions, data, and materials** described in the Schedules attached to this License Agreement that are owned by NutriMost during the Term, in the Field of Use and Territory; or **any and all modifications, variations, updates, enhancements and improvements** owned by NutriMost during the Term and to any of the foregoing that are conceived or reduced to practice” (emphasis added).

20. Additionally, section 12.1 of the Agreement grants Plaintiff Dr. St. Germain the right to “**assign or sublicense to others in the 4 counties of Florida described. This License Agreement is binding upon and will inure to the benefit of the parties hereto and their respective heirs, administrators, representatives, executors, successors, beneficiaries, assigns, agents, insurers, and any other persons acting by, through, under or in concert with any of the parties**” (emphasis added).

21. Finally, section 14.1(b) of the Agreement states that “This License Agreement and the License granted herein are perpetual and shall not be terminable or revocable unless or until: NutriMost sells or otherwise transfers

control of the Management System to a third party, **in which case NutriMost shall require as part of the transaction that the new owner(s) give St. Germain the sole and exclusive option to retain the License or terminate it**" (emphasis added).

22. Shortly after Defendant Dr. Wisniewski executed the Agreement on behalf Defendant Licensor, Defendant Dr. Wisniewski came to believe that licensing the NutriMost System would be more profitable if the licenses were granted for particular postal zip codes, rather than for entire counties.

23. As such, Defendant Dr. Wisniewski formed Defendant New Co, for the purpose of granting rights in the NutriMost System through a franchise model, rather than through the licensor/licensee model under which Plaintiff Dr. St. Germain had acquired his rights to the Four Counties.

24. No later than June 23, 2014, Defendant New Co began offering franchises for sale in the NutriMost System.

25. While Defendant New Co claims that it has no parents or predecessors, Defendant New Co's Franchise Disclosure Document, which is required by federal law to be provided to all potential franchisees, states that:

[p]rior to our operations, [Defendant Licensor] has conducted and developed the procedures used in our system and has been in business since April 30, 2007. [Defendant Licensor] has not sold franchises, but has instead sold the rights to its system to us.

Dr. Ray Wisniewski, Sole Member, CEO and Director of [Defendant

New Co], *has operated the predecessor business that led to the creation of this franchise system.*

(emphasis added) (a copy of the quoted portions of this document are attached hereto as **Exhibit “C”**).

26. Thus, it is clear that Defendant Licensor, through Defendant Dr. Wisniewski, transferred all or substantially all of its rights in the NutriMost System to Defendant New Co, also through Defendant Dr. Wisniewski. This was done in violation of section 14.1(b) of the Agreement, as Plaintiff Dr. St. Germain was never given “the sole and exclusive option to retain the License or terminate it” as required under the Agreement.

27. In fact, in stark contrast to the requirements of section 14.1(b) of the Agreement, Defendant Dr. Wisniewski requested that Plaintiff Dr. St. Germain convert his county license with Defendant Licensor to zip code franchises with Defendant New Co for an additional fee. This proposed conversion would result in Plaintiff Dr. St. Germain enjoying reduced rights from those he originally paid for and enjoyed under the Agreement, *at an additional cost.*

28. Accordingly, Plaintiff Dr. St. Germain declined, because under the terms of the Agreement, his license was both exclusive and perpetual.

29. In addition, it became clear to Plaintiff Dr. St. Germain that Defendant Dr. Wisniewski effected a transfer from Defendant Licensor to Defendant New Co of that which Defendant Licensor had no legal right to give.

**The Defendants' Failure to Provide Adequate Support  
to Plaintiff Dr. St. Germain**

30. Around the same time, the Defendants updated the NutriMost System to include a newer generation of both the Hardware and the Software.

31. Based upon Plaintiff Dr. St. Germain's declining to join the new zip code franchise model, and in an attempt to force compliance with the same, the Defendants refused to provide Plaintiff Dr. St. Germain with these updates to the NutriMost System.

32. As such, from the date of execution of the Agreement through the time of filing this Complaint, Plaintiff Dr. St. Germain has never received the most current version of the NutriMost System from the Defendants.

33. Moreover, the Defendants have refused to provide Plaintiff Dr. St. Germain with adequate supplies of current versions of the Supplemental Materials necessary to successfully implement the version of the NutriMost System to which Plaintiff Dr. St. Germain does have access, including, but not limited to, user manuals relating to the NutriMost System that are to be provided to patients by Plaintiff Dr. St. Germain.

**Dr. Yachter**

34. At some point after Plaintiff Dr. St. Germain acquired the rights to the Four Counties, Dr. Daniel Yachter became interested in the NutriMost System. Dr. Yachter has an office located within the Four Counties, as well as an office outside

of Plaintiff Dr. St. Germain's protected area in Volusia County, Florida.

35. Upon information and belief, Dr. Yachter entered into a contractual arrangement with Defendant New Co, based upon the zip code franchise system, with Dr. Yachter acquiring the territory consisting of a portion of Volusia County.

36. On or about March 25, 2014, Dr. Yachter sent a text message to Plaintiff Dr. St. Germain, asking to speak with him by phone.

37. During this phone conversation, Dr. Yachter sought Plaintiff Dr. St. Germain's permission to utilize the NutriMost System within a three (3)-mile radius of the Lake Mary, Florida office utilized by Dr. Yachter.<sup>1</sup>

38. Plaintiff Dr. St. Germain declined the request.

39. Despite being denied this request, on September 17, 2014 (after Plaintiff Dr. St. Germain refused to convert his license to a franchise with Defendant New Co), upon information and belief, Dr. Yachter launched a website with the domain name <http://loseweightnoworlando.com> (the "Website"). The Website is titled "NutriMost Orlando" (a copy of the whois.com registry showing the registration date for the Website is attached hereto as **Exhibit "D"**).

40. Visitors to the Website are presented with marketing materials regarding the NutriMost System. These marketing materials include, but are not limited to: the use of the NutriMost Trademark; blog posts by Defendant

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<sup>1</sup> Lake Mary, Florida is located in Seminole County, Florida, within Plaintiff's protected area.

Wisniewski; a biography of Dr. Yachter and Defendant Dr. Wisniewski in the Website's "About Us" section; a discussion about the NutriMost System's NRFT and Defendant Dr. Wisniewski's contributions to it; and a nearly thirty (30)-minute testimonial video that includes a discussion of the NutriMost System by Defendant Dr. Wisniewski.

41. As such, visitors to the website, through the express or implied endorsement of the Defendants, are led to believe that Dr. Yachter is authorized to promote and use the NUTRIMOST Trademark, and is authorized to promote, use, and sell the NutriMost System in Seminole County, which he is not authorized to do.

42. Additionally, visitors to the Website are offered the chance to schedule a "consultation" with Dr. Yachter at the Lake Mary office utilized by Dr. Yachter (A copy of a NutriMost Orlando consultation confirmation with Dr. Yachter, to occur in Seminole County, is attached as **Exhibit "E"**).

43. Upon information and belief, the consultation consists of a sales presentation of the NutriMost System and signing up patients for the NutriMost System within the Four Counties, but scheduling their NRFT scan in Volusia County, Florida, where Dr. Yachter has a protected territory.

44. Despite the fact that the NRFT scan takes place in Volusia County, the marketing and, significantly, the closing of the sale of the program to the

patient, take place in Seminole County, within Plaintiff Dr. St. Germain's protected area.

45. Additionally, Dr. Yachter, through an entity under his control, promoted a "Grand Re-Opening" event of his entity's office in Lake Mary, Florida, in Seminole County, to occur on October 18, 2014 (A copy of the advertisement is attached hereto as **Exhibit "F"**). The advertisement offers visitors the opportunity to "learn about the most powerful weight loss program in the world. *We are one of the only offices in the world utilizing state-of-the-art NRF technology and the NutriMost Ultimate Fat Loss Scans*" (emphasis added).

46. In a further disregard for the rights of Plaintiff Dr. St. Germain, Dr. Yachter launched a series of radio advertisements on Orlando radio stations. These advertisements utilized the name "NutriMost Orlando" and provided the telephone number 844-407-THIN.<sup>2</sup> Callers to this number were offered to schedule a consultation at the Lake Mary Office of Dr. Yachter.

47. By advertising the use of the NutriMost System in the Lake Mary office utilized by Dr. Yachter, Dr. Yachter held out to the public that he was authorized to promote, use, and sell the NutriMost System in Seminole County, which he is not authorized to do.

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<sup>2</sup> Upon information and belief, Dr. Yachter chose the phone number to include the Orlando telephone area code "407" to further represent that he was authorized to market and sell the NutriMost System within the Four Counties, which he was not authorized to do.

### **The Defendants' Lack of Response**

48. After learning of Dr. Yachter's conduct, Plaintiff Dr. St. Germain, through his counsel, made Defendant Dr. Wisniewski aware of Dr. Yachter's conduct, by letter dated November 14, 2014 (a copy of this correspondence is attached hereto as **Exhibit "G"**). This correspondence informed Defendant Dr. Wisniewski that Dr. Yachter was utilizing (and continues to utilize) Defendant Dr. Wisniewski's name, likeness, and written work in promoting Dr. Yachter's sales efforts in Plaintiff Dr. St. Germain's protected territory.

49. Consequently, Defendants were informed, and are aware, that Plaintiff Dr. St. Germain did not support and/or authorize a strategy of holding out to the public that Dr. Yachter was authorized to promote and use the NutriMost Trademark, and were authorized to promote, use, and sell the NutriMost System in Seminole County, and that such conduct was in direct violation of Plaintiff Dr. St. Germain's contractual rights.

50. Despite this knowledge, and, in fact, despite a direct appeal by Plaintiff Dr. St. Germain to Defendant Wisniewski to aid in the protection of Plaintiff Dr. St. Germain's legal rights, Defendants failed to take any action whatsoever in support of Plaintiff.

**The Defendants Shut-Out Plaintiff Dr. St. Germain**

51. Immediately prior to the filing of the instant complaint, Plaintiff Dr. St. Germain was hopeful that an amicable resolution of these and other matters might be possible. Accordingly, Plaintiff Dr. St. Germain continued to abide by the terms of the Agreement, including making all payments required by the Agreement, and continuing to order products, including Supplemental Materials, from the Defendants.

52. However, on or about August 21, 2015, Plaintiff Dr. St. Germain learned that Defendant Dr. Wisniewski directed Defendant Licensor and/or Defendant New Co to refuse to fill any and all orders for NutriMost System products placed by Plaintiff Dr. St. Germain.

53. Thus, Defendants have completely frustrated the purpose of the Agreement, to the point that Plaintiff Dr. St. Germain has been robbed of both the benefit of his bargain, as well as his ability to continue to operate his business.

54. Plaintiff Dr. St. Germain has been substantially damaged and continues to be damaged by Defendants' wrongful activities described herein.

55. All conditions precedent to bringing this action have occurred or been waived.

56. As a result of the Defendants' misconduct, Plaintiff Dr. St. Germain has been forced to hire Fisher Rushmer, P.A. and Zimmer Kunz, PLLC, and has

agreed to pay Fisher Rushmer, P.A. and Zimmer Kunz, PLLC a reasonable fee for their services.

**COUNT I:**  
**BREACH OF CONTRACT AGAINST DEFENDANT LICENSOR**

57. Plaintiff Dr. St. Germain realleges paragraphs 1-56 above.

58. Plaintiff Dr. St. Germain and Defendant Licensor were parties to the Agreement, a binding contract.

59. As described above, Defendant Licensor has materially breached the Agreement.

60. As a result of Defendant Licensor's material breach of the Agreement, Plaintiff Dr. St. Germain has suffered damages in an amount to be proven at trial.

WHEREFORE, Plaintiff Dr. St. Germain respectfully requests that this honorable Court award damages in an amount to be proven at trial, an award of costs and attorneys' fees as allowed by contract, rule of court or statute, and for such further relief as this Court deems just and proper.

**COUNT II:**  
**BREACH OF CONTRACT AGAINST DEFENDANT NEW CO**

61. Plaintiff Dr. St. Germain realleges paragraphs 1-56 above.

62. Plaintiff Dr. St. Germain and Defendant Licensor were parties to the Agreement, a binding contract.

63. Upon information and belief, Defendant Licensor transferred all of its rights to Defendant New Co.

64. As described above, Defendant New Co has materially breached the Agreement.

65. As a result of Defendant New Co's material breach of the Agreement, Plaintiff Dr. St. Germain has suffered damages in an amount to be proven at trial.

WHEREFORE, Plaintiff Dr. St. Germain respectfully requests that this honorable Court award damages in an amount to be proven at trial, an award of costs and attorneys' fees as allowed by contract, rule of court or statute, and for such further relief as this Court deems just and proper.

**COUNT III:**  
**UNJUST ENRICHMENT**  
**AGAINST DEFENDANT DR. WISNIEWSKI**

66. Plaintiff Dr. St. Germain realleges paragraphs 1-56 above.

67. No contractual relationship exists between Plaintiff Dr. St. Germain and Defendant Dr. Wisniewski.

68. However, by effectuating a transfer of assets (including Defendant Licensor's rights under the Agreement) from Defendant Licensor to Defendant New Co, Defendant Dr. Wisniewski has forcibly conferred a benefit from Plaintiff Dr. St. Germain to Defendant Dr. Wisniewski, under circumstances that make the conferring of this benefit unequitable under the circumstances.

69. As a result of the conferral of this benefit to Defendant Dr. Wisniewski, Plaintiff Dr. St. Germain has been damaged in an amount to be proven at trial.

WHEREFORE, Plaintiff respectfully requests that this honorable Court award damages in an amount to be proven at trial, including actual damages, disgorgement of profits and benefits obtained by Defendant Dr. Wisniewski, an award of costs and attorneys' fees as allowed by rule of court or statute, and for such further relief as this Court deems just and proper.

**COUNT IV:**  
**UNJUST ENRICHMENT**  
**AGAINST DEFENDANT NEW CO**

70. Plaintiff Dr. St. Germain realleges paragraphs 1-56 above.

71. No contractual relationship exists between Plaintiff Dr. St. Germain and Defendant New Co.

72. However, by effectuating a transfer of assets (including Defendant Licensor's rights under the Agreement) by Defendant Dr. Wisniewski, from Defendant Licensor to Defendant New Co, Defendant New Co has received a forcibly conferred benefit from Plaintiff Dr. St. Germain to Defendant New Co, under circumstances that make the conferring of this benefit unequitable under the circumstances.

73. As a result of the conferral of this benefit to Defendant New Co, Plaintiff Dr. St. Germain has been damaged in an amount to be proven at trial.

WHEREFORE, Plaintiff respectfully requests that this honorable Court award damages in an amount to be proven at trial, including actual damages, disgorgement of profits and benefits obtained by Defendant Wisniewski, an award of costs and attorneys' fees as allowed by rule of court or statute, and for such further relief as this Court deems just and proper.

**COUNT V:**  
**TORTIOUS INTERFERENCE WITH AN ADVANTAGEOUS BUSINESS**  
**RELATIONSHIP AGAINST DEFENDANTS WISNIEWSKI AND NEW CO**

74. Plaintiff realleges paragraphs 1-56 above.

75. As detailed above, Plaintiff Dr. St. Germain has advantageous business relationships with Defendant Licensor.

76. Defendant Wisniewski, by transferring Defendant Licensor's rights to Defendant New Co, without respect for the provisions of section 14.1(b) of the Agreement, intentionally and unjustifiably interfered with this business relationship.

77. Defendant New Co, by accepting the transfer of Defendant Licensor's rights, without respect for the provisions of section 14.1(b) of the Agreement, intentionally and unjustifiably interfered with this business relationship.

78. As a result of said interference, Plaintiff Dr. St. Germain has been damaged in an amount to be proven at trial.

WHEREFORE, Plaintiff Dr. St. Germain respectfully requests that this honorable Court award damages in an amount to be proven at trial, punitive damages, an award of costs and attorneys' fees as allowed by rule of court or statute, and for such further relief as this Court deems just and proper.

**COUNT VI:**  
**FRAUDULENT TRANSFER (ALL DEFENDANTS)**

79. Plaintiff Dr. St. Germain realleges paragraphs 1-56 above.

80. Plaintiff Dr. St. Germain, through the Agreement, held a claim against Defendant Licensor, by which Defendant Licensor was obligated to provide material support to Plaintiff Dr. St. Germain in the NutriMost System, and to refrain from granting any rights to the NutriMost System in the Four Counties, as described above.

81. On or about June 24, 2014, as evidenced by Defendant New Co's Franchise Disclosure Document, Defendant Licensor sold its rights to the NutriMost System to Defendant New Co for an amount that does not represent the reasonable equivalent value of the rights to the NutriMost System.

82. Defendant Licensor transferred the asset with the present intention of placing the rights in the NutriMost System beyond the reach of Plaintiff Dr. St. Germain and other creditors, in order to hinder, delay, or defraud Plaintiff Dr. St.

Germain and other creditors.

83. The above-described transfer was made either when Defendant Licensor was insolvent, in that Defendant Licensor's assets were insufficient to pay its creditors in full or otherwise, or Defendant Licensor was rendered insolvent by the transfer.

84. As Defendant New Co could only act through Defendant Dr. Wisniewski, the acceptance of Defendant Licensor's property, by Defendant New Co, was done with full knowledge of the fraudulent circumstances of the transfer, and therefore Defendants Dr. Wisniewski and New Co were complicit in this fraudulent conveyance.

WHEREFORE, Plaintiff Dr. St. Germain respectfully requests this Court: restrain the Defendants from further disposing of rights in the NutriMost System, including the granting of any rights in the NutriMost System within the Four Counties; appoint a receiver to take charge of the NutriMost System; set aside the transfer; authorize Plaintiff Dr. St. Germain to attach, levy, and/or execute on the property transferred, in the possession of Defendant New Co; and grant such further relief as this Court deems just and proper.

**COUNT VII:**  
**CIVIL CONSPIRACY**

85. Plaintiff Dr. St. Germain realleges paragraphs 1-56 above.

86. The separate Defendants, Dr. Wisniewski, Licensor, and New Co,

conspired among themselves to perform the illegal acts detailed throughout this Complaint, including those acts specifically described in Counts I - VI.

87. The facts alleged herein detail numerous overt acts by the various Defendants in pursuance of the conspiracy.

88. As a result of the acts performed through the conspiracy of the Defendants, Plaintiff Dr. St. Germain has sustained damages in an amount to be determined at trial in this matter.

WHEREFORE, Plaintiff Dr. St. Germain respectfully requests that this honorable Court award damages in an amount to be proven at trial, punitive damages, an award of costs and attorneys' fees as allowed by rule of court or statute, and for such further relief as this Court deems just and proper.

**COUNT VIII:**  
**EQUITABLE RELIEF**

89. Plaintiff Dr. St. Germain realleges paragraphs 1-56 above.

90. As detailed above, Plaintiff Dr. St. Germain has specific legal rights under the Agreement. Specifically, Plaintiff Dr. St. Germain has the right to an exclusive, perpetual license of the NutriMost System within the Four Counties.

91. As a result of the Defendants' actions described herein, Plaintiff Dr. St. Germain's rights under the agreement are in danger of disruption by the Defendants.

92. While Plaintiff Dr. St. Germain has suffered actual legal damages, in an amount to be determined at trial, he has suffered and will continue to suffer damages which cannot be calculated.

93. Specifically, Plaintiff Dr. St. Germain will continue to suffer irreparable and incalculable harm if the Defendants' conduct, as described herein, is allowed to continue.

94. In order to protect Plaintiff Dr. St. Germain's rights to the NutriMost System within the Four Counties, a permanent injunction must be placed on the Defendants to prevent them from allowing and/or supporting Plaintiff Dr. St. Germain's competitors to operate within the Four Counties, and allowing those individuals to continue utilizing the NutriMost System in these counties.

WHEREFORE, Plaintiff respectfully requests that this honorable Court utilize its Equity Jurisdiction and place a permanent injunction on the Defendants preventing them from supporting individuals selling the NutriMost System in the Four County area as well as to prevent the Defendants from denying the Plaintiff access to the most current versions of the NutriMost System.

**JURY TRIAL DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

Dated: September 30, 2015.

Respectfully submitted,

FISHER RUSHMER

/s/ J. Brock McClane

J. Brock McClane (Fl. I.D. No.: 777307)

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*Motion for Pro Hac Vice Admission to be  
filed.*

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