

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FAEGRE DRINKER BIDDLE & REATH LLP
Zoë K. Wilhelm (SBN 305932)
zoe.wilhelm@faegredrinker.com
Michael Jaeger (SBN 289364)
michael.jaeger@faegredrinker.com
1800 Century Park East, Suite 1500
Los Angeles, California 90067
Telephone: +1 310 203 4000
Facsimile: +1 310 229 1285

Attorneys for Plaintiff
Springfield Clinic, LLP

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SPRINGFIELD CLINIC, LLP,

Plaintiff,

v.

PRIMEX CLINICAL
LABORATORIES, INC.,

Defendant.

Case No. 2:21-cv-03595

COMPLAINT FOR:

- I) BREACH OF CONTRACT**
- II) UNJUST ENRICHMENT**
- III) MONEY HAD AND RECEIVED**
- IV) CONVERSION**
- V) NEGLIGENT MISREPRESENTATION**
- VI) VIOLATIONS OF CAL BUS. & PROF. CODE §§ 17200 ET SEQ.**

JURY TRIAL DEMANDED

1 Plaintiff Springfield Clinic, LLP, by and through its counsel, for its
2 Complaint against Defendant Primex Clinical Laboratories, Inc., pleads as follows:

3 **NATURE OF THE ACTION**

4 1. Primex Clinical Laboratories, Inc. (“Primex”) promised to provide
5 1 million 3M-brand N95 masks to Springfield Clinic, LLP (“Springfield”) in
6 exchange for a payment of nearly \$1.8 million. Although Primex accepted that
7 payment nearly a year ago, Springfield has received neither the 1 million masks nor
8 a refund.

9 2. Springfield therefore brings this complaint against Primex for breach
10 of a written contract, unjust enrichment, money had and received, conversion,
11 negligent misrepresentation, and violations of California’s Unfair Competition Law
12 (“UCL”).

13 **JURISDICTION AND VENUE**

14 3. This Court has jurisdiction over the claim asserted in this matter
15 pursuant to 28 U.S.C. § 1332(a), because there is complete diversity between the
16 parties and the amount in controversy exceeds the sum or value of \$75,000,
17 exclusive of interest and costs.

18 4. Venue is proper in this district because the parties expressly agreed
19 that any disputes would be heard in this Court.

20 5. Personal jurisdiction is proper in this district because the parties
21 expressly consented to this Court’s jurisdiction.

22 **PARTIES**

23 6. Plaintiff Springfield is limited liability partnership formed in Illinois
24 with its principal place of business in Springfield, Illinois. All of the partners in
25 Springfield are individuals who are residents and citizens of Illinois.

26 7. Defendant Primex is a California corporation with its headquarters and
27 principal place of business located at 16742 Stagg St. #120, Van Nuys, California,
28 91406.

1 **FACTUAL ALLEGATIONS**

2 8. Springfield is a multi-specialty physician practice with medical offices
3 throughout central Illinois that has been providing health care to the people in its
4 community since the 1940s, and is a leader in delivering state-of-the-art health care
5 to its patients.

6 9. In March 2020, the COVID-19 pandemic exploded across the United
7 States. As of mid-April, 2020, COVID-19 cases in Illinois had surpassed 30,000.
8 Springfield needed large quantities of personal protective equipment, including
9 masks, in order to protect its staff and patients and to continue providing care.

10 **The Product Supply Agreement**

11 10. In or about April 2020, Springfield contracted with Primex to provide
12 Springfield with 1 million 3M N95 Mask Model #8210 for a total cost of
13 \$1,789,425.00, including tax. This agreement was memorialized in the parties'
14 Product Supply Agreement ("PSA").

15 11. It was critical to Springfield that the masks be manufactured by 3M, so
16 that Springfield could be assured that the masks met the N95 standard and patients
17 and staff were fully protected. Indeed, the PSA reflects that the 3M brand was an
18 essential term. The PSA describes Primex as "a High-Complexity Clinical
19 Laboratory engaged in diagnostic testing and having supply chain accessibility to
20 Personal Protective Equipment, namely 3M equipment." The PSA refers
21 specifically to 3M masks multiple times, including in the section on acceptance of
22 orders as well as in Exhibit A to the PSA, which sets forth the specific 3M products
23 that are available to Primex.

24 12. The PSA states that once Springfield supplied Primex with a purchase
25 order and Primex accepted that purchase order, a "binding purchase commitment"
26 was created.

27 13. The PSA also states that Primex must accept all purchase orders placed
28 by Springfield, provided that (1) the order is in writing, (2) the order is for at least

1 the minimum amount of products per order required by the manufacturer, and (3)
2 Springfield is prepared to pay for the order in full in advance.

3 14. The PSA also states that an order will not “bind [Primex] unless it is
4 accepted by [Primex] and full advance payment is received,” meaning that if
5 Primex accepts the order and full advance payment is received, Primex is bound.

6 15. The PSA also states that within two business days of receipt of a
7 purchase order, Primex must deliver to Springfield copies of “applicable
8 correspondence from the manufacturer indicating information relevant to each
9 transaction, including but not limited to: Order Acknowledgment, Delivery ETA,
10 Invoice Payment Confirmation, Order Fulfillment and Logistics Correspondence.”

11 16. The parties agreed that the laws of the State of California would
12 govern the interpretation of the PSA for purposes of any dispute arising under it,
13 and that they would submit to the jurisdiction of this Court.

14 17. The PSA provides that a party may file an action against the other
15 party related to the PSA if the parties have not reached an agreement within 20 days
16 after a dispute has arisen.

17 **Springfield’s Order and Payment of \$1.79 Million**

18 18. On April 30, 2020, Springfield sent a purchase order to Primex
19 (purchase order no. 0000325640), setting forth an order for “3M N95 Mask Model
20 # 8210” in a quantity of 1,000,000, at a cost of \$1.70 each, for a total of \$1,700,000
21 (the “Purchase Order”).

22 19. Upon receipt of the Purchase Order, on April 30, 2020 Primex sent an
23 invoice to Springfield (invoice no. PPP44), reflecting a total charge, including sales
24 tax, of \$1,789,425.00, for 1,000,000 “3M Particulate Respirator 8210, N95” (the
25 “Invoice”).

26 20. That same day, Springfield sent via wire transfer to Primex’s bank
27 account two payments totaling \$1,789,425.00, one for \$1,700,000.00 and one for
28

1 \$89,425.00 (the “Payment”). Springfield confirmed by email to Primex that the
2 two wire transfers had been initiated.

3 21. On May 2, 2020, Primex confirmed receipt of Springfield’s payment
4 in full.

5 **Primex’s Refusal to Fulfill Springfield’s Order in Full or Provide a Refund**

6 22. On or about December 1, 2020, a shipment of 1,280 3M 8210 N95
7 masks arrived at Springfield without a purchase order, invoice, requisition number,
8 packing slip, or any other identifying information. From the shipping label, it
9 appeared that the shipment came from Primex.

10 23. Springfield has yet to receive the remaining 998,720 masks it ordered
11 and paid for, or a refund of the nearly \$1.8 million it paid Primex (less
12 approximately \$2,176.00, the cost of 1,280 masks at \$1.70 per mask).

13 24. On December 22, 2020, Primex notified Springfield that it would be
14 unable to fulfill Springfield’s order of 3M masks, and instead offered to provide a
15 different brand of mask as an “equivalent.”

16 25. Primex, through its Chief Financial Officer, Eric Garofano, stated, “If
17 these products are acceptable, please respond with your acceptance of the intended
18 replacement product to be shipped to Springfield Clinic.”

19 26. That same day, Springfield notified Primex that the substitute products
20 were not acceptable and requested a refund.

21 27. The next day, December 23, 2020, Mr. Garofano emailed back, “We
22 can respect your decision regarding this order. We will be happy to work with you
23 on a final resolution and begin a refund process.”

24 28. For the next two months, Springfield repeatedly contacted Primex
25 regarding the anticipated refund. In one phone call, Mr. Garofano told Springfield
26 that he would provide a draft of a written release by the end of that same day and
27 anticipated refunding Springfield’s Payment within a couple of weeks. Weeks
28

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.