

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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BIOREREFERENCE HEALTH, LLC,	:	
	:	
Plaintiff,	:	
	:	Case No. 22-cv-04901
- against -	:	
	:	<b><u>COMPLAINT</u></b>
BELLHAVEN MANAGEMENT, LLC d/b/a	:	
BELLHAVEN CENTER FOR REHABILITATION	:	
AND NURSING CARE,	:	
	:	
Defendants.	:	
-----X	:	

Plaintiff BioReference Health, LLC (“BioReference”), for its Complaint against defendant Bellhaven Management, LLC, d/b/a Bellhaven Center for Rehabilitation and Nursing Care (“Client”), alleges as follows:

**NATURE OF THE ACTION**

1. In this action, BioReference seeks to collect from Client fees in the total amount of \$269,897.75 for COVID-19 tests BioReference performed pursuant to a binding contract. There is no dispute that BioReference rendered these services. Nor is there any dispute that Client owes BioReference the amounts in question. Client simply refuse to pay.

2. This dispute is governed by the Laboratory Services Agreement for COVID-19 RT-PCR and Serology Antibody Testing for Employees, dated on or about May 15, 2020 (the “Agreement”), entered into by the Clients and BioReference during a bleak time in New York’s fight against COVID-19. Client and BioReference entered into the Agreement following a government order mandating that all assisted living facilities test their employees twice a week.

3. BioReference has upheld its end of the bargain and has provided the requested testing for Client. In response, however, Client has refused to pay BioReference what it is owed.

4. Because Client refuses to fulfill its payment obligations, BioReference had no choice but to bring the instant action.

### **THE PARTIES**

5. BioReference is a limited liability company organized under the laws of Delaware, with its principal place of business at 481 Edward H. Ross Dr., Elmwood Park, New Jersey 07407-3128. BioReference is a clinical testing laboratory offering testing, information and related services to physician offices, clinics, hospitals, nursing homes, employers and governmental units. BioReference has supported New York State by providing testing for the first public drive-through testing collection facility set up on the East Coast, a model which was then replicated at dozens of other locations throughout the state. BioReference, in partnership with the State of New York, also initially offered 5,000 COVID-19 swab tests a day at additional satellite testing sites and has since increased the daily capacity significantly to address emerging needs and demand.

6. Upon information and belief, Client is a New York limited liability company with its principal place of business at 110 Beaver Dam Road, Brookhaven, NY 11719. Upon information and belief based on public filings with, *inter alia*, the New York State Department of State, Division of Corporations, the members of Bellhaven are Charles-Edouard Gros, Devorah Friedman, Sharon Einhorn, Israel Minzer, and Ernest Schlesinger, who are all citizens of the State of New York.

### **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because there is complete diversity of citizenship and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

8. This Court has personal jurisdiction over Client pursuant to CPLR 301 because its principal places of business is in New York.

9. Venue in this District is proper pursuant to 28 U.S.C. § 1391(b)(1) and (2) because, *inter alia*, a substantial part of the events or omissions giving rise to the claims in this action occurred in this District and Client resides in this District.

### **FACTUAL ALLEGATIONS**

#### **Client Contracts with BioReference to Provide COVID-19 Testing**

10. On May 10, 2020, amid the height of the unprecedented COVID epidemic in New York, Governor Andrew Cuomo ordered “nursing homes and all adult care facilities . . . to test or make arrangements for the testing of all personnel, including all employees, contract staff, medical staff, operators and administrators, for COVID-19, twice per week” (the “Executive Order”). The penalty for failing to comply with the Executive Order included steep fines, and in some cases, the suspension or revocation of a facility’s operating license.

11. BioReference is a provider of comprehensive testing services. Many nursing homes and laboratories contracted with BioReference to perform crucial COVID-19 testing to ensure the health and safety of nursing home residents—one of the most vulnerable populations during the pandemic. Client, a rehabilitation and nursing care center, sought BioReference’s crucial services.

12. On or around May 15, 2020, Client and BioReference<sup>1</sup> entered into the Agreement. A true and correct copy of the Agreement is attached hereto as Exhibit A. Pursuant to the Agreement, BioReference agreed to “perform, upon request by Client and to the extent within its capabilities, COVID-19 Tests for Tested Persons.” *See* Ex. A § 1.1.

13. The Agreement provided that “Client agrees to pay Laboratory Forty Dollars (\$40) per specimen submitted for the Serology Test performed by Laboratory, if the Laboratory’s phlebotomist performs the draw of the specimens an additional Ten Dollars (\$10) will be added to the cost of the Serology Test; and Sixty-Five Dollars (\$65.00) per specimen submitted for the RT-PCR Test performed by Laboratory.” *Id.* § 3.1. It further provided, in pertinent part, that “Laboratory shall submit a detailed written invoice to Clients in connection with COVID-19 Tests rendered under this Agreement,” *id.* § 3.2, and that “[w]ithin ten (10) days of receipt, Client shall submit payment to Laboratory for the undisputed amount of each invoice,” *id.* § 3.3.

14. The Agreement provides that “[t]he laws of the State of New Jersey shall govern the terms of this Agreement.” *See id.* § 5.11.

#### **BioReference Performs Pursuant to the Agreement**

15. Beginning in the summer of 2020, Client began sending BioReference specimens for testing, and BioReference performed the requested testing on the specimens and provided the test results to Client.

16. Client failed to submit payment to BioReference for the tests performed by BioReference pursuant to the Agreement.

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<sup>1</sup> The Agreement was executed by BioReference Laboratories, Inc., which is the predecessor-in-interest to plaintiff BioReference Health, LLC. For ease of reference, the term “BioReference” is used throughout this Complaint.

**Client Breached the Agreement by Failing to Pay Amounts Owed to BioReference**

17. As detailed in the schedule appended hereto as Exhibit B, BioReference sent invoices to Client between June 2020 and March 2021 for tests performed pursuant to the Agreement.

18. BioReference billed Client \$269,897.75 pursuant to the Agreement.

19. BioReference has contacted Client multiple times concerning the outstanding payments, but Client has failed to pay.

**FIRST CLAIM FOR RELIEF  
Breach of the Agreement**

20. BioReference repeats and re-alleges the allegations set forth in paragraphs 1 through 19 as if fully set forth herein.

21. BioReference and Client entered into the Agreement which is a binding and valid contract.

22. BioReference performed its obligations under the Agreement by performing the COVID-19 tests.

23. Client has failed to make payment to BioReference, in breach of the Agreement, causing BioReference injury.

24. By reason of the foregoing, BioReference is entitled to a judgment awarding it damages in an amount to be determined at trial, but not less than \$269,897.75, plus pre- and post-judgment interest.

**SECOND CLAIM FOR RELIEF  
Account Stated**

25. BioReference repeats and re-alleges the allegations set forth in paragraphs 1 through 24 as if fully set forth herein.

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