

DC-24-05317

No. _____

MiroDx LLC,
Plaintiff,

IN THE DISTRICT COURT

68th

v.

_____ JUDICIAL DISTRICT

STERILIS SOLUTIONS, LLC, and
SPECTRUM MEDICAL LENDING, LLC
Defendants.

DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION BREACH OF CONTRACT

Plaintiff, MiroDx LLC, files this original petition against defendant, STERILIS SOLUTIONS, LLC, and SPECTRUM MEDICAL LENDING, LLC and alleges as follows:

DISCOVERY-CONTROL PLAN

- 1. Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Civil 190.4 and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because plaintiff seeks monetary relief over \$250,000.

RELIEF

- 2. Plaintiff seeks monetary relief over \$1,000,000.

PARTIES

- 3. Plaintiff, MiroDx LLC, is limited liability company doing business in Dallas County at 7920 Beltline Rd., Suite 210 Dallas TX USA 75254.
- 4. Defendant, STERILIS SOLUTIONS, LLC, a Delaware limited liability company and existing under the laws of Delaware, whose office is located in the state of Massachusetts at 85 Swanson Road, Suite 315, Boxborough, Massachusetts 01719, may be served with process by serving the Texas Secretary of State at 1019 Brazos Street, Austin, Texas 78701, as its agent for service because defendant engages in business in Texas but does not maintain a regular place of business in Texas or a designated agent for service of process, and this suit arose from defendant's business in this state.
- 5. Defendant, Spectrum Medical Lending, LLC ("Spectrum") is an Illinois limited liability company with its principal place of business address registered at 414 N. Orleans St., Chicago, Illinois 60654, may be served with process by serving the Texas Secretary of State at 1019 Brazos Street, Austin, Texas 78701, as its agent for service because defendant engages in business in Texas but does not maintain a regular place of business in Texas or a designated agent for service of process, and this suit arose from defendant's business in this state.

JURISDICTION

6. The Court has subject-matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

FACTS

7. The Plaintiff currently maintains a supply agreement by assignment with defendants.
8. The original agreement between Sterilis and Seroclinix Labs Inc, Ex 1 Supply Agreement Between Sterilis Solutions, LLC and Seroclinix Labs, Inc.; was assigned and amended to assign from the original purchaser Seroclinix to Mirodx LLC the Assignee and Amended Purchaser. Exhibit 2 Assignment and First Amendment to Supply Agreement Between Sterilis Solutions, LLC and Seroclinix Labs, Inc.
9. Subsequently there was an Supply Agreement Between Sterilis Solutions, LLC and Seroclinix Labs, Inc. Ex. 3.
10. In early 2020, Praxeo Health and Seroclinix Labs (collectively, "Seroclinix") were working with potential suppliers of antibody tests to distribute into its networks of health plans, major payors and large enterprise clients in response to the COVID-19 pandemic. In doing so, MiroDX realized there was a robust appetite for a US-manufactured product. Seroclinix was introduced to Sterilis Solutions, because Sterilis Solutions was distributing a Made in the USA product - the Quikpac II (SARS-CoV-2) (COVID-19) IgG & IgM rapid antibody test kit ("Test Kit") manufactured by Syntron Bioresearch, Inc./True Diagnostics, LLC (collectively, "Manufacturer").
11. At that time, the Test Kits were authorized for commercial distribution under Section IV(D) of the FDA's March 16, 2020 rules and with that FDA guidance, Seroclinix Labs entered into an Agreement with Sterilis Solutions to purchase and distribute the Test Kits ("Seroclinix Agreement").
12. Under the terms of the Seroclinix Agreement, the initial volume was for 1.6mm Test Kits at the price of \$4.00USD by mid to late Summer 2020. The payment terms were fifty percent (50%) down and the balance due, fifteen (15) days after the Test Kits were shipped.
13. Subsequently in early April 2020 GIBD, LLC wired an initial \$3,200,000.00USD on behalf of Seroclinix to Sterilis Solutions (this was done in 2 transactions approximately a week apart). Additional balance payments on the Test Kits were made by Seroclinix Labs and MiroDX, LLC.
14. MiroDX, LLC was formed in late May 2020 to accommodate the Manufacturer who believed that Seroclinix's relationship with a competitor (the Chinese company Biotest Biotech) was in conflict with its product distribution.
15. Seroclinix was and continues to be the GMP for a product made out of Finland.
16. The Seroclinix Agreement was assigned to MiroDX, LLC, who does not have any

common ownership with Seroclinix.

17. After the Seroclinix assignment, MiroDX, LLC did the following:
 - a. assumed the GIBD, LLC debt owed by Seroclinix;
 - b. continued efforts to commercially distribute the Test Kits; and
 - c. made additional balance payments on the Test Kits as they were manufactured and shipped by Syntron/True Diagnostics.
18. Shortly after MiroDX assumed the Seroclinix Agreement, the Test Kits were delisted by the FDA and could not be commercially distributed in the US. A total of 470,000 Test Kits were shipped and a total of 427,000 Test Kits cannot be commercially distributed. The manufacturer issued an RMA for the unsellable inventory, which was shipped back as required.
19. Defendants refused to refund the monies related to the returned test kits that could not be commercially distributed and were delisted by the FDA and returned to the manufacturer.
20. Plaintiff made demand on the Defendants to return the funds, and the Defendants refused to return the requested \$3,200,000; expended for FDA rejected test kits produced and sold by the Defendants.

BREACH OF CONTRACT

21. On 10 April 2020, plaintiff and defendant executed a valid and enforceable written contract. Plaintiff attaches a copy of the contract as Exhibit 1 and incorporates it by reference. The contract provided that plaintiff would deliver salable product test kits, approved by the FDA.
22. The defendants did not deliver the FDA approved test kits.
23. Plaintiff fully performed as required and was excused from performing plaintiff's further contractual obligations because an approval by the FDA was a necessary requisite to the sale of the test kits in the United States. Defendants knew that there was no FDA approval when the Test Kits were returned and the demand for the return of the \$3,200,000 was made.
24. Defendant materially breached the contract by selling unapproved Test Kits as required by the FDA.
25. Defendant's breach caused injury to plaintiff, which resulted in the following damages: loss of reputation, and loss of \$3,200,000
26. Plaintiff seeks unliquidated damages within the jurisdictional limits of this Court.
27. Plaintiff seeks liquidated damages in the amount of at least \$3,200,000, which is within the jurisdictional limits of this Court.

28. Attorney fees. Plaintiff is entitled to recover reasonable and necessary attorney fees under Texas Civil Practice & Remedies Code chapter 38 because this suit is for breach of contract. Plaintiff retained counsel, who presented plaintiff's claim to defendant and defendant's duly authorized agents. Defendant did not tender the amount owed within 30 days of the date the claim was presented.

JURY DEMAND

29. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

CONDITIONS PRECEDENT

30. All conditions precedent to plaintiff's claim for relief have been performed or have occurred.

OBJECTION TO ASSOCIATE JUDGE

31. Plaintiff **OBJECTS** to the referral of this case to any associate judge for any hearing, a trial on the merits, or presiding at a jury trial.
32. Plaintiff objects to any hearing or trial by submission except as specifically permitted by the Texas Rules of Civil Procedure or the Civil Practice and Remedies Code or applicable statute and the Texas Constitution.

REQUEST FOR A COURT REPORTER

33. Plaintiff requests the Court to require a court reporter at any conference, hearing or trial, or Court activity.
34. Under Texas Government Code § 52.046. General Powers and Duties Defendants request, an official court reporter TO:
- a. Attend all sessions;
 - b. Take full shorthand notes of oral testimony offered before the court, including objections made to the admissibility of evidence, court rulings and remarks on the objections, and exceptions to the rulings;
 - c. Take full shorthand notes of closing arguments, including objections to the arguments, court rulings and remarks on the objections, and exceptions to the rulings;
 - d. Take full shorthand notes of any oral motion made in the court, including objections to the arguments, court ruling and remarks on the objections, and exceptions to the ruling;
 - e. Preserve the notes for future reference for three years from the date on which they were taken; and
 - f. Furnish a transcript of the reported evidence or other proceedings, in whole or in part, as provided by the chapter upon request by any party for the transcript.

NOTICE OF EMAIL

35. NOTICE IS HEREBY GIVEN THAT THE **ONLY** EMAIL ADDRESS THAT WILL BE MONITORED OR RESPONDED TO IN THE ABOVE NUMBERED AND CAPTIONED LAWSUIT IS **COURTDOCUMENTS@MOSSERLAW.COM**. NO PERSONAL EMAIL ADDRESS WILL BE MONITORED OR RESPONDED TO.

OBJECTION TO ANY ELECTRONIC OR VIDEOCONFERENCE HEARINGS

36. A party can object to any method of appearance at a court proceeding and state good cause for why the method should not be used. Tex. R. Civ. P. 21d(d).
37. Plaintiff requires that **ALL** hearings be administered in person and not via electronic, video or tele-conference.

PRAYER

38. For these reasons, plaintiff asks that the Court issue citation for defendants to appear and answer, and that plaintiff be awarded a judgment against defendant for the following:
- a. Actual damages.
 - b. Prejudgment and postjudgment interest.
 - c. Court costs.
 - d. Attorney fees.
 - e. All other relief to which plaintiff is entitled.

Respectfully submitted, MOSSER LAW PLLC

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