

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

SHANE STEVENS and RELIANT  
IMMUNIE DIAGNOSTICS, INC.

Plaintiffs,

v.

ANHUI DEEPBLUE MEDICAL  
TECHNOLOGY CO., a Chinese corporation

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Civil Action No.: 1:22-cv-00504

**COMPLAINT**

COMES NOW, Plaintiffs Shane Stevens, an Individual, and Reliant Immune Diagnostics, Inc. (“Reliant”), on behalf of itself and all relevant subsidiaries, by and through undersigned counsel, and files this Complaint against Defendant Anhui DeepBlue Medical Technology Co. (“Anhui DeepBlue”) on the grounds set forth as follows:

**INTRODUCTION**

1. This is a breach of contract action concerning the sale and delivery of non-conforming goods. In May 2020 Plaintiffs entered into an Agreement<sup>1</sup> with Rallo, a wholesale distributor, for the purchase of 100,000 COVID-19 (SARS-CoV-2) IGM/IgG Antibody Test Kits (Colloidal Gold) (hereinafter, “antibody tests” or “goods”). Pursuant to the Agreement and the representations made that ultimately induced Plaintiffs to enter into the Agreement, Rallo was to purchase the antibody tests from Anhui DeepBlue, a medical technology company based in Anhui Province, China and deliver the antibody tests to Plaintiffs in Texas thereafter.

---

<sup>1</sup> See, Exhibit 1.

2. Rallo purchased the antibody tests from Anhui DeepBlue and delivered them to Plaintiffs; however, upon receipt and inspection of the goods, Plaintiffs conducted a validation study which revealed the antibody tests were defective. As a result, Plaintiffs file this action to recover the monies payed in satisfaction of their contractual obligation and further seek to recover expectation damages, reliance damages, attorney's fees, costs, and other economic damages directly and proximately caused by Defendants' tortious conduct articulated herein.

### **PARTIES**

3. Plaintiff Shane Stevens is an adult resident of the State of Texas and a capital investor that provided funding for the antibody test purchase orders.

4. Plaintiff Reliant Immune Diagnostics, Inc. is a Delaware corporation and maintains its principal place of business in Austin, Texas. At all relevant times, Reliant provided a consumer-driven health platform that offers medical testing services that include, without limitation, COVID-19 antibody testing.

5. Defendant Anhui Deepblue is a Chinese corporation and maintains its principal place of business in Anhui Province, China. At all relevant times, Anhui Deepblue manufactured, exported, marketed, and sold the COVID-19 (SARS-CoV-2)IGM/IgG Antibody Test Kits (Colloidal Gold) (hereinafter, "antibody tests") antibody tests subject to dispute in this action.

### **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction because the amount in controversy exceeds \$75,000 exclusive of interest and costs, and there is complete diversity of citizenship between Plaintiffs and Defendant. The Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 and supplemental jurisdiction as to any state law claims.

7. Pursuant to 28 U.S.C. § 1391, venue properly lies in this district as it is the judicial district in which a substantial part of the events or omissions giving rise to the claims occurred and, because the defendant is not a resident of the United, it may be sued in any judicial district. Defendant conducted business in the State of Texas and had continuing minimum contacts with the State of Texas.

### RELEVANT STATUTES

8. The Uniform Commercial Code applies to contracts for the sale of goods. *Cont'l Casing Corp. v. Siderca Corp.*, 38 S.W.3d 782, 788 (Tex. App.—Houston [14th Dist.] 2001, no pet.) (“[T]he alleged agreement in this case was a contract for the sale of goods, and thus is subject to the UCC.”). “Where the Uniform Commercial Code applies, common law rules regarding breach of contract do not apply.” *Plano Lincoln Mercury, Inc. v. Roberts*, 167 S.W.3d 616, 624 (Tex. App.—Dallas 2005, no pet.) (citing Tex. Bus. & Com. Code § 2.102) (emphasis added). The statutory provisions of the Texas Business and Commerce Code control this case. The relevant statutes are as follows:

9. Section 2.608 of the Texas Business and Commerce Code provides:

Tex. Bus. & Com. Code § 2.608  
Revocation of Acceptance in Whole or in Part

a) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

...

(2) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller’s assurances.

(b) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods

which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

**(c) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.**

(emphasis added).

10. Section 2.711 of the Texas Business and Commerce Code provides:

Tex. Bus. & Com. Code § 2.711

Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods

(a) **Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (Section 2.612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid**

(1) **“cover” and have damages under the next section** as to all the goods affected whether or not they have been identified to the contract. . .

(emphasis added).

11. Section 2.712 of the Texas Business and Commerce Code provides:

Tex. Bus. & Com. Code § 2.712

“Cover”; Buyer's Procurement of Substitute Goods

...

(b) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 2.715), but less expenses saved in consequence of the seller's breach.

12. Section 2.715 of the Texas Business and Commerce Code provides:

Tex. Bus. & Com. Code § 2.715

Buyer's Incidental and Consequential Damages

(a) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially

reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(b) Consequential damages resulting from the seller's breach include:

(1) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(2) injury to person or property proximately resulting from any breach of warranty.

**A. BREACH OF CONTRACT VS. BREACH OF WARRANTY**

13. For a buyer that receives a good that does not conform to the contract with the seller, the Texas Business and Commerce Code has different provisions for breach of contract (Section 2.711) and for breach of warranty (Section 2.714). “[T]he critical factor in whether the buyer has a breach of contract or a breach of warranty claim is **whether the buyer has finally accepted the goods.**” *Emerson Elec. Co. v. Am. Permanent Ware Co.*, 201 S.W.3d 301, 310 (Tex. App.—Dallas 2006, no pet.). (emphasis added). “**Only after the buyer finally accepts** and can no longer revoke his acceptance, **is he limited to recovering under Section 2.714.** If the seller tenders non-conforming goods, the buyer may reject them, or he may later revoke his acceptance under section 2.608 if the non-conformity was difficult to discover before acceptance.” *Selectouch Corp. v. Perfect Starch, Inc.*, 111 S.W.3d 830, 834 (Tex. App.—Dallas 2003, no pet.). Accordingly, if the buyer can timely revoke acceptance, the buyer has a breach of contract claim under Section 2.711.

14. The remedies for breach of contract based on revocation of acceptance are set forth in Section 2.711. *Emerson Elec. Co.*, 201 S.W.3d at 310. By its express terms, Section 2.711

# 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.