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

SHANE STEVENS and RELIANT IMMUNIE DIAGNOSTICS, INC.	§	
Plaintiffs,	§	
v.	§	Civil Action No.: 1:22-cv-00504
ANHUI DEEPBLUE MEDICAL TECHNOLOGY CO., a Chinese corporation	§	
Defendant.	§	

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[1] 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.

[1] *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 j**ustifiably 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

provides breach of contract remedies to buyers who can show they have "rightfully reject[ed] or justifiably revoke[d] acceptance." Tex. Bus. & Com. Code § 2.711.

15. In this case, Plaintiffs allege a breach of contract action based on justifiable revocation of acceptance of 100,000 antibody tests Anhui Deepblue manufactured, advertised, marketed, shipped, and sold. Texas Business and Commerce Code Section 2.608 defines "justifiable revocation." *A.O. Smith Corp. v. Elbi S.p.A.*, 123 Fed. App'x. 617, 619 (5th Cir. 2005) ("Breach of contract remedies are available, however, to a buyer who, inter alia, properly revokes acceptance. Section 2.608 of the UCC describes the conditions necessary for revocation….") (internal citations omitted). The elements of revocation of acceptance under Section 2.608 are: "(1) initial acceptance without discovery of the non-conforming item if acceptance was induced by [the difficulty of discovery before acceptance or] the seller's assurance (2) of a non-conforming item (3) when such non-conformity substantially impairs the value to the buyer (4) with revocation occurring within a reasonable time, and in any event, before a substantial change in the condition of the goods occurs unless the change is caused by a defect of the goods." *Rhoades v. Prosser*, 2010 WL 1999150, at *4 (Tex. App.—Fort Worth May 20, 2010, no pet.); Tex. Bus. & Com. Code § 2.608.

16. By contrast, where a buyer has accepted goods without later properly revoking acceptance under 2.608—there has been "final acceptance"—the buyer is limited to a breach of warranty action under Section 2.714 for a particular "non-conformity." *Neal v. SMC Corp.*, 99 S.W.3d 813, 817 (Tex. App.—Dallas 2003, no pet.) ("The remedies for breach of warranty, however, are set forth in Section 2.714, and are available to a buyer who has finally accepted goods."). That provision is as follows:

> Tex. Bus. & Com. Code § 2.714
> Buyer's Damages for Breach in Regard to Accepted Goods
>
> a) Where the buyer has accepted goods and given notification (Subsection (c) of Section 2.607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.
>
> (b) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(emphasis added).

17. The distinction between Section 2.711 breach of contract claims and Section 2.714 breach of warranty claims is clear: "the 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**," rather than on how one characterizes the good's alleged shortcomings. *Emerson Elec. Co*., 201 S.W.3d at 310 (emphasis added); *see also Structural Metals, Inc. v. S & C Elec. Co*., 2012 WL 5208543, at *7 (W.D. Tex. Oct. 22, 2012) ("[W]ith regard to delivered but non-conforming goods, the critical factor in determining the remedies available to the buyer is **whether the buyer has finally accepted the goods**, not whether the buyer is complaining about defects or non-conformities.") (emphasis added). Breach of contract under Section 2.711 expressly states it is available to buyers who "rightfully reject or justifiably revoke acceptance," whereas Official Comment 1 to Section 2.714 makes clear that the breach of warranty claim under Section 2.714 applies to "the buyer after the goods have been accepted and the time for revocation of acceptance has gone by." Tex. Bus. & Com. Code §§ 2.711 and 2.714, Official Comment 1. "**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.) (emphasis added); see also id. at 7 n.6 (noting that "under the UCC, non-conformity may relate to both goods and conduct/performance under the contract") (citing Tex. Bus. & Com. Code § 2.106(b)).

18. Any distinction between breach of contract and breach of warranty actions other than "final acceptance"—such as the delivery of incorrect products versus defective future performance—runs counter to the rule stated in the UCC and defined in Fifth Circuit and Texas case law. *See, e.g., Structural Metals, Inc*., 2012 WL 5208543, at *6 ("Although the case law is murky, the UCC is clear: With regard to delivered but nonconforming goods, **the buyer's remedies under the UCC are determined by whether the buyer has accepted the goods**.") (emphasis added); *Luig v. N. Bay Enterprises, Inc*., 55 F. Supp. 3d 942, 948 (N.D. Tex. 2014) ("this Court is bound to follow Texas law. . . . Thus, whether [Plaintiff] may state a cause of action for breach of contract depends on whether [Plaintiff] has finally accepted the aircraft.") rev'd on other grounds, 817 F.3d 901 (5th Cir. 2016) ("Under Texas law, 'damages are [] permitted under a breach of contract cause of action when . . . the buyer has revoked his acceptance'") (citing *A.O. Smith Corp*., 123 Fed. App'x. at 619); *Paul Mueller Co. v. Alcon Labs., Inc*., 993 S.W.2d 851, 855-56 (Tex. App.—Fort Worth 1999, no pet.) ("[H]old[ing] that [Plaintiff] was entitled to assert a breach of contract claim just as if it had initially rejected the goods" after revoking acceptance of corroding storage tanks); Vill. *Mobile Homes, Inc. v. Porter*, 716 S.W.2d 543, 551 (Tex. App.—Austin 1986, writ ref'd n.r.e.) (affirming damages award for revocation of acceptance based on numerous defects in mobile home, including cracking exterior paint, malfunctioning oven and stove, and malfunctioning air compressor).

19. In addition to the case law, the statutory text of the Texas Business and Commerce Code supports "final acceptance" as the distinction between breach of contract and breach of warranty for a non-conforming good. Both Section 2.608 revocation of acceptance and Section 2.714 breach of warranty are expressly based on the same standard: a "non-conformity," which is defined in the Texas Business and Commerce Code as not "conforming to the obligations of the contract." Tex. Bus. & Com. Code § 2.106. Therefore, a "non-conformity" for purposes of Section 2.608 is not a particular characterization of a subset of defective goods that is unique to Section 2.608 and cannot serve to distinguish between a contract and warranty claim, because a non-conformity is the basis of a breach of warranty under Section 2.714 as well. Looking at the entire statutory scheme, a non-conformity in a good where acceptance has been revoked under Section 2.608 leads to breach of contract under Section 2.711. That same non- conformity in a good that has been finally accepted leads to breach of warranty.

20. The "final acceptance" rule also comports with the policy goal of Section 2.608, because Section 2.608 is intended to protect buyers from latent defects. Structural Metals, Inc. v. S & C Elec. Co., 2012 WL 5208543, at *8 (W.D. Tex. Oct. 22, 2012) ("[T]his section recognizes a buyer's right to revoke when use of the goods reveals a latent defect."). Section 2.608 is designed to provide a breach of contract remedy to a buyer who would otherwise have difficulty identifying the non-conformity on delivery. Indeed, the statute expressly states the goal is to give the revoking buyer the same rights "as if he had rejected" the non-conforming goods at delivery. Tex. Bus. & Com. Code § 2.608(c). By allowing a party to bring a breach of contract claim after delivery and until the point of "final acceptance," the law protects unsuspecting buyers from latent defects while barring those who simply wait too long to revoke acceptance after discovering the non-conformity.

21. In order to plead a breach of contract claim under Texas Business and Commerce Code § 2.608, Plaintiffs need show only that the antibody tests did not conform to a contract term, that Plaintiffs revoked its acceptance of the antibody tests within a reasonable time of discovering the non-conformity, and that the non-conformity substantially impaired the antibody tests value to Plaintiffs. Tex. Bus. & Com. Code § 2.711; *Luig v. N. Bay Enterprises, Inc*., 817 F.3d 901, 906 (5th Cir. 2016) ("Under Texas law, damages are only permitted under a breach of contract cause of action when the seller has failed to deliver the goods, the buyer has rejected the goods, or the buyer has revoked his acceptance. . . . a buyer may revoke acceptance of a good if the good was accepted without knowledge of a nonconformity and acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurance.") (internal citations omitted).

FACTUAL ALLEGATIONS

A. THE AGREEMENT

22. Plaintiffs entered into two (2) Agreements with Rallo Holdings, Ltd. ("Rallo") for the purchase of antibody tests imported from Anhui DeepBlue. However, after Rallo failed to procure and deliver the goods in a timely manner, the Parties terminated the first agreement and entered into a second Agreement, which is the basis of this action.

23. Effective May 30, 2020, Plaintiffs and Rallo entered into a second Commercial Agreement (the "Contract") setting forth the items, purchase quantity, purchase price, payment specifications, and delivery obligations.

24. Under the Contract, Rallo was to obtain 100,000 antibody tests from Anhui Deep Blue Medical Technology Co. to Plaintiffs in exchange for $600,000.00 representative of the cumulative individual item price of $6.00.

25. Under the terms of the Contract, Plaintiffs were obligated to pay for the antibody tests as follows:

a. 75% down payment ($481,125.00)

b. 25% balance due payable on June 30, 2020 ($118,875.00)[2]

26. Plaintiffs satisfied its financial payment obligation as to the 75% down payment; however, after discovering the non-conforming nature of the antibody tests Plaintiffs promptly revoked its acceptance of the goods. As a result, Plaintiffs did not tender the remaining 25% balance and requested a refund of $481,125.00.

B. THE NON-CONFORMING GOODS

27. After delivery and upon inspection, Plaintiffs discovered the antibody tests were not in proper working condition.

28. Specifically, the antibody tests were defective in that the tests produced ghost lines and false positives which precluded physicians from accurately diagnosing patients with or without COVID-19 antibodies.

29. On or about April 17, 2020, Jim Lu, the CEO and Medical Director for GoPath Laboratories LLC and the individual who connected Rallo and Anhui DeepBlue, sent Plaintiffs a validation study conducted by Complutense University of Madrid using Anhui DeepBlue's antibody tests. Dr. Lu advised Plaintiffs the study "looks pretty good."[3]

30. On or about July 1, 2020 and following delivery of the antibody tests, Plaintiffs raised concerns regarding the Federal Drug Administration's ("FDA") removal of the Anhui DeepBlue antibody tests from the list of approved devices for distribution.[4]

[2] *See* Exhibit 2, Invoice dated May 30, 2020.
[3] *See* Exhibit 3, Email dated April 17, 2020.
[4] *See* Exhibit 4, Email dated July 2, 2020.

31. On or about July 2, 2020, Dr. Lu attempted to mitigate Plaintiffs concerns, advising Plaintiffs should "treat th[e] 'validation' as internal/pilot study . . ."[5] and warned against avoiding any publication the "premature data."[6]

32. In his July 2, 2020 email, Dr. Lu not only admitted for the first time that Anhui DeepBlue failed to submit the requisite information needed for FDA approval of the antibody tests, but further conceded the "DP [DeepBlue] kit is not the best . . .".[7] Defendants also tendered a document titled "FDA certificate 03112020.pdf"[8] upon which Plaintiffs relied to their detriment in believing that the antibody test registration with the FDA would then culminate in ultimately receiving FDA approval.

33. On or about July 10, 2020, just ten (10) days after learning of the defects, Defendants' failure to obtain FDA approval of the antibody tests, and Dr. Lu's concession that the antibody tests "[were] not the best", Plaintiffs sent Rallo a formal rejection of the non-conforming goods and requested a refund.[9]

34. To date, and despite numerous conversations with Dr. Lu, Rallo, and Anhui DeepBlue,[10] Defendants have refused to refund Plaintiffs the compensation paid in exchange for antibody tests in proper working condition and in conformity with the Agreements and industry customs.

[5] *See* Exhibit 5, Email dated July 2, 2020.
[6] *Id.*
[7] *Id.*
[8] *See* Exhibit 6, FDA Certificate of Registration.
[9] *See*, Exhibit 7, Email dated July 10, 2020.
[10] *See*, Exhibit 8, Text Messages.

FIRST CLAIM FOR RELIEF
BREACH OF CONTRACT PURSUANT TO TEX. BUS. & COM. CODE § 2.608

35. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

36. At all times relevant, Defendant had a valid and binding contract to provide Plaintiffs with antibody tests suitable for diagnostic testing in accord with the applicable standards set forth by United States governmental and professional organizations, including without limitation, the FDA, as described above.

37. Plaintiffs are proper parties to assert a claim, whether as a party to the contract, an assignee, or an intended third-party beneficiary.

38. Plaintiffs performed their obligations under the contract.

39. Defendant breached the aforementioned contract by failing to provide goods to Plaintiffs of the qualities and characteristics agreed upon and acceptable in the medical field, including those as specifically described above.

40. Plaintiff has satisfied all conditions precedent to recovery under the contract.

41. Plaintiffs notified Defendant of the non-conforming goods and formally rejected the defective antibody tests within a reasonable time.

42. Plaintiffs did not limit their rights of revocation under Section 2.608. Those rights exist at law and are nowhere modified by any agreement.

43. Breach of contract remedies are available to a buyer who properly revokes acceptance. *A.O. Smith Corp. v. Elbi S.p.A.*, 123 F. App'x 617, 619–20 (5th Cir. 2005). Section 2.608 of the Texas Business and Commerce Code describes the conditions necessary for revocation. *Id*.

44. 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.

Tex. Bus. & Com. Code § 2.608.

45. The antibody tests were non-conforming goods because they did not conform to Defendant's obligations under the contract.

46. Plaintiffs did not know the antibody tests were non-conforming at the time Plaintiffs received the antibody tests.

47. Plaintiffs could not have been aware of the non-conformities with respect to antibody tests at the time Plaintiffs accepted them. Defendant, either directly or indirectly, or through its agents acting with express or apparent authority, assured Plaintiffs that the antibody tests "were certified or registered by CE quality standards and compliant with relevant quality standards and safety requirements of Chicago."[11] Further, Defendant stated, "Our company is responsible for the truthful declaration of [this information]."[12]

[11] *See* Exhibit 9, Export Declaration of Medical Supplies.
[12] *Id.*

48. Plaintiffs revoked acceptance of the antibody tests within a reasonable time.

49. The non-conformity of the antibody tests substantially impaired the value of the antibody tests to Plaintiffs.

50. As a direct and proximate result of Defendant's breach, Plaintiffs suffered actual damages, expectation damages, reliance damages, lost profits, and loss of business opportunity, and incurred reasonable attorney's fees and court costs associated with this litigation.

SECOND CLAIM FOR RELIEF
UNFAIR AND DECEPTIVE BUSINESS PRACTICES

51. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

52. Defendant engaged in unconscionable business practices in breaching implied warranties concerning the condition of the antibody tests.

53. Such acts by Defendant were detrimentally relied upon by Plaintiffs.

54. Defendant, by taking $481,125.00 from Plaintiffs in exchange for defective antibody tests to which Defendant knew of the defect, or should have known of the defect, was an act or practice detrimental to Plaintiffs.

55. Defendant breached one or more implied warranties. Specifically, Defendant engaged in false, misleading or deceptive acts or practices in one or more of the following ways:

a. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services. Tex. Bus. & Comm. Code § 17.46(b)(2);

b. Representing that its goods or services had characteristics, uses, benefits which they did not have. Tex. Bus. & Comm. Code § 17.46(b)(5);

c. Representing that its goods or services are of a particular standard, quality, or grade when they are not. Tex. Bus. & Comm. Code § 17.46(b)(7);

d. Knowingly making false or misleading statements of fact concerning the need for replacement or repair service. Tex. Bus. & Comm. Code § 17.46(b)(13);

e. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed. Tex. Bus. & Comm. Code § 17.46(b)(24); and

f. Falsely representing that work or service had been performed. Tex. Bus. & Comm. Code § 17.46(b)(22).

56. Defendant's violations of the Texas Deceptive Trade Practices Act ("DTPA") were made intentionally, knowingly or negligently and were the proximate and/or producing cause of Plaintiffs damages.

57. As a direct and proximate result of Defendant's violations of the Texas DTPA, Plaintiffs sustained damages and are entitled to recover actual damages, expectation damages, reliance damages, treble damages, lost profits, loss of business opportunity, and reasonable attorney's fees and court costs associated with this litigation.

THIRD CLAIM FOR RELIEF
MANUFACTURING DEFECT

58. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

59. Anhui DeepBlue manufactured and distributed defective antibody tests that failed to satisfy the minimum required quality control and inspection standards and obligations under the applicable contract, laws, regulations, and industry standards.

60. As a result of the aforesaid defects, the antibody tests were not designed and manufactured to the standards of a reasonable and prudent manufacture under same or similar circumstances.

61. At this time, Plaintiffs cannot more specifically allege the act of manufacturing defect on the part of Anhui DeepBlue aside from its failure to manufacture antibody tests that produce accurate diagnostic testing results under the normal and reasonable intended use for such tests.

62. Upon information and belief, information as to the specific manufacturing defects are within the knowledge, control, and custody of Anhui DeepBlue.

63. Alternatively, should Plaintiffs be unable to prove specific facts of manufacturing defect, Plaintiffs assert their manufacturing defect claim under the doctrine of *res ipsa loquitur*.

64. At trial, Plaintiffs will demonstrate that:

a. the manufacturing of the casing was in the exclusive control of Anhui DeepBlue; and

b. Plaintiffs did not know, or did not have the reason or means to know, the method or manner in which Anhui DeepBlue manufactured the antibody tests.

65. The antibody tests remain in the same condition as the condition in which the antibody tests arrived upon delivery by Defendant.

66. The defective condition in which the antibody tests were delivered would not have occurred in the ordinary course of business but-for a manufacturing defect.

67. As a direct and proximate result of the aforesaid manufacturing defect, Plaintiffs suffered actual damages, expectation damages, reliance damages, lost profits, and loss of business opportunity, and incurred reasonable attorney's fees and court costs associated with this litigation.

FOURTH CLAIM FOR RELIEF
BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

68. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

69. Plaintiffs allege the antibody tests in question were sold in a defective condition and were not fit for the particular purposes known and mutually assented to by the parties forming the basis of the contract at the time it left the control of Anhui DeepBlue. Further, the antibody tests did not conform with the minimum required quality control and inspection standards and obligations under the applicable contract, laws, regulations, and industry standards and at all times relevant, were unable to be used in the manner(s) mutually known and assented to by the Parties.

70. Defendant sold the antibody tests with knowledge of Plaintiffs' intended use of the product.

71. Defendant failed to inform Plaintiffs of the defective condition in which the antibody tests were sold, Plaintiffs relied on Defendant's representations and reasonably expected Defendant's to supply antibody tests in proper working condition.

72. As a direct and proximate result of Defendant's acts or omissions, Plaintiffs suffered actual damages, expectation damages, reliance damages, lost profits, and loss of business opportunity, and incurred reasonable attorney's fees and court costs associated with this litigation.

FIFTH CLAIM FOR RELIEF
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

73. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

74. The antibody tests were sold in a defective condition at the time the antibody tests left the control of Anhui DeepBlue.

75. The antibody tests not fit for ordinary or intended purposes at the time Anhui DeepBlue delivered the antibody tests to Plaintiffs.

76. As a direct and proximate result of Defendant's acts or omissions, Plaintiffs suffered actual damages, expectation damages, reliance damages, lost profits, and loss of business opportunity, and incurred reasonable attorney's fees and court costs associated with this litigation.

SIXTH CLAIM FOR RELIEF
FRAUD

77. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

78. Defendant assured Plaintiffs that the antibody tests "were certified or registered by CE quality standards and compliant with relevant quality standards and safety requirements of Chicago."[13] Defendant represented to Plaintiffs that the tests being purchased were in good working order to detect the presence of Covid.

79. Defendant's representations were material and induced Plaintiffs to purchase the tests at issue.

80. As shown herein, Defendant's representations were false.

81. When Defendant made the representations to Plaintiffs, Defendant knew the representations were false or made recklessly and without knowledge of their truth.

82. Defendant made the representations with the intent that Plaintiffs act upon same, and Plaintiffs did, in fact, rely and act on the representations.

83. As a direct and proximate result of Defendant's acts, Plaintiffs suffered actual damages, expectation damages, reliance damages, lost profits, and loss of business opportunity, and incurred reasonable attorney's fees and court costs associated with this litigation. *Shandong Yinguang Chem. Indus. Joint Stock Co., Ltd. v. Potter,* 607 F.3d 1029, 1032-33 (5th Cir. 2010)(citing *Ernst & Young, L.L.P. v. Pacific Mut. Life Ins. Co.,* 51 S.W.3d 573, 577 (Tex. 2001)).

[13] *See* Exhibit 9, Export Declaration of Medical Supplies.

AS TO ALL COUNTS

84. Whenever in this Complaint it is alleged that Defendant did any act or thing, it is meant that in addition to the named Defendant, or the officers, agents, servants, directors, employees or representatives of that Defendant did such act or thing, and that at the time such act or thing was done, it was done with the full authorization or ratification of such Defendant, and was done in the normal and routine course and scope of employment of that Defendant or one or more of that Defendant's respective officers, agents, servants, directors, employees or representatives, or was done with actual or apparent authority.

85. Any act of omission or commission alleged herein as to Defendant is alleged to be made with the knowledge, understanding, agreement and participation of each and every of the other and in concert among them. In the event of multiple Defendants of any kind, they are referred to interchangeably in both the singular and the plural. All pleadings are in the alternative.

CONDITIONS PRECEDENT

86. All conditions precedent to Plaintiffs' right of recovery on each and every cause of action occurred, were performed, or were excused or waived.

DAMAGES

87. Plaintiffs seek both its actual, economic, special, direct, indirect and consequential damages, including but not limited to its damages for loss of the benefit of the bargain, amounts actually paid, repair costs, and out of pocket expenses, in additional to its costs, reasonable and necessary attorney fees and interest pursuant to Tex. Civ. Prac. & Rem. Code § 38.001 and Tex. Bus. & Comm. Code § 17.50.

EXEMPLARY DAMAGES

88. Plaintiffs seek exemplary damages from Defendant to the maximum extent allowable under common law, the Texas Civil Practice and Remedies Code, the Texas Deceptive Trade Practices Act, and/or any other relevant statutory scheme, whether state or federal.

ALTERNATIVE THEORIES

89. To the extent Plaintiffs plead causes of action or seek remedies which are deemed legally or factually inconsistent or provide for inconsistent remedies, they are to be deemed plead in the alternative throughout this Complaint pursuant to Fed. R. Civ. P. 8(d)(2).

ATTORNEY'S FEES

90. It was necessary for Plaintiffs to secure the services of William H. Farrell of Farrelll Law Group PLLC and Joseph E. Legere of Staubus Randall LLP, licensed attorneys, to prepare and prosecute this suit. Plaintiffs seek, and hereby request reasonable and necessary attorney's fees in this case pursuant to Texas statutory and common law.

PRE- AND POST-JUDGMENT INTEREST

91. Plaintiffs hereby plead for pre- and post-judgment interest at the highest lawful rate.

JURY DEMAND

92. Plaintiffs demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court enter judgment in their favor and against Defendant, Anhui Deepblue Medical Technology Co., and award Plaintiffs the sum certain costs expended in the amount of $481,125.00, award incidental damages and expectation damages in amounts to be determined at trial, and award attorney's fees and expenses, costs of

suit, pre- and post- judgment interest at the maximum legal rate, as well as all such other and further relief, equitable and legal as deemed just and proper.

Dated: May 24, 2022

Respectfully submitted,

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