

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

South Carolina Aquarium, a South	)	<b>CIVIL ACTION NUMBER:</b>
Carolina Non-Profit Corporation,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<u>2:18-cv-00265-DCN</u>
	)	
	)	
Epica Medical Innovations, LLC, a	)	<b>(JURY TRIAL DEMANDED)</b>
subsidiary of Epica International, Inc.;	)	
and Epica International, Inc.,	)	
Defendants.	)	

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Plaintiff, complaining of the Defendants, alleges:

**JURISDICTION**

1. Plaintiff, South Carolina Aquarium, is a non-profit corporation organized and existing under the laws of South Carolina. It operates an aquarium for use by the public in Charleston, South Carolina and is located at 100 Aquarium Wharf, Charleston, SC 29401.
2. Defendant, Epica Medical Innovations, LLC on information and belief is a subsidiary of Defendant Epica International Inc. and is, on information and belief, a limited liability company organized under the laws of New Jersey with its principal place of business in San Clemente, California.
3. Defendant, Epica International, Inc. is, on information and belief, a corporation organized and existing under the laws of Nevada with its principal place of business also in San Clemente, California.

4. Epica Medical Innovations, LLC which, on information and belief, is a wholly owned subsidiary of Epica International Inc., proposed to Plaintiff, in writing, over a period of time in 2015, the terms and provisions of a contract which was finally agreed to, for valuable consideration, when Plaintiff executed a sales order on June 16, 2015 which had been sent to it by Defendants and by which it agreed to all the terms of the contract between them. The resulting contract between the Parties was to be fully performed in South Carolina by which Plaintiff agreed to purchase certain equipment sold to it by Defendants in South Carolina, and on which sale of equipment Plaintiff paid the applicable South Carolina sales tax to accomplish the transaction. Defendants agreed to arrange for the installation of the equipment on Plaintiff's premises in Charleston, South Carolina.

5. Defendants, by virtue of negotiating and entering into a contract entered into and to be fully performed in every respect in South Carolina are subject to the jurisdiction of this Court in this action for the enforcement of the terms of the contract and all issues related to it.

6. There is complete diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000, and all the parties and claims made herein are within the jurisdiction of this Court under the authority of 28 USC Section 1332.

#### **FACTUAL BACKGROUND**

7. Plaintiff, South Carolina Aquarium, is a South Carolina non-profit corporation and a public institution in the City of Charleston that collects, displays, and cares for the health and well being of many species of water creatures and animals related to its primary mission as an aquarium. Its primary mission as an aquarium is a commitment to education and conservation.

8. Among the important activities and operations of the South Carolina Aquarium is the care, treatment, and rehabilitation of ill, injured, and disabled sea turtles which are prevalent in the waters of the Atlantic Ocean off the coast of South Carolina.

9. For several years Plaintiff has been in the process of planning, developing, and constructing a sea turtle recovery center or hospital that was to be and is located within the aquarium.

10. An important part of Plaintiff's plan for the operation of the sea turtle recovery center was to have the ability to better diagnose the illnesses and injuries of sea turtles, and to evaluate their physical condition with the availability of a CT Scanner for conducting tomography and other testing to be able to make timely and accurate diagnoses of the health of the sea turtles under its care.

11. In early 2015, Plaintiff began investigating the acquisition of CT scanning equipment for the sea turtle recovery center in the aquarium. Its inquiry led to information it acquired from Defendants. Defendants, by their agent Ron Tibett, provided Plaintiff information about a CT scanner by email correspondence on April 6, 2015 that contained substantial technical data and information about a CT scanning product it offered for sale called Pegaso. Pegaso was described by Defendants as an equine CT system that would perform better than any other such equipment available on the market and, although primarily designed for equine animals, could obviously be successfully used for CT scanning of other creatures including sea turtles.

12. Of particular interest to Plaintiff was a representation contained in an email from Ron Tibett of April 6, 2015 which represented, among other things, the following: "Our advanced HDCT imaging technology does not require lead walls, special electric, special cooling,

reinforced floors, and our extended warranty is dramatically less, covers the entire system including tube in a 14x14 space with 60-90% less radiation exposure.”

13. Thereafter, on April 18, 2015, Defendants sent to Plaintiff a proposed Pegaso sales order for a total sales price including all equipment, warranty costs, shipping costs, and installation and training costs, etc. for a total price of \$443,775.00 contingent only upon Plaintiff obtaining sufficient funding for the purchase of the Pegaso CT scanner.

14. All of the material representations made by the Defendants to Plaintiff, including those made in its email correspondence to Plaintiff on April 6, 2015 and at other times, became a part of and terms of the Contract between the parties that was consummated when Plaintiff accepted the sales order and all the prior material representations that led to it on June 16, 2015.

15. The only contingency contained in the contract between the parties was that Plaintiff had the right to cancel the contract obligations if it was unable to raise sufficient funding to pay for the Pegaso CT Scanner to which contingency the Defendants agreed. As it developed, sufficient funds for the Pegaso were raised and the contract contingency was met.

16. At the time Plaintiff accepted the contract proposal on June 16, 2015, it relied, as it was entitled to do, on the truth of all the material representations Defendants had made to it that led up to its acceptance of the contractual sales order including, especially, the representation that the room in which the Pegaso CT Scanner was to be located required no lead shielding in its walls or any other radiation protection devices or unusual construction to accommodate the Pegaso CT Scanner.

17. Following the contractual agreement entered into on June 16, 2015 including the representations made to it by Defendants, Plaintiffs proceeded to complete the overall

construction of its sea turtle recovery facility in accordance with the agreements it had made with its general contractor, and in particular, in reliance upon the representations about the structural requirements prescribed by the Defendants to the effect that lead shielding in the walls of the facility was not required. Plaintiffs completely relied upon Defendants representations that the room in which the Pegaso CT Scanner was to be located did not require lead shielding or any other unusual construction plans to control and contain radiation produced by it, and that there were no governmental permit requirements for its installation and use.

18. After the substantial completion of the overall construction project including the completion of all work it believed was necessary for the Pegaso CT Scanning room, Plaintiff was asked, for the first time, by Defendants if Plaintiff's facility had been "cleared by the local governing agency/physicist?" This requested information was Plaintiff's first knowledge that, despite Defendants' representation to the contrary in its contract with Plaintiff that shielding of the CT scanner room might, in fact, require lead wall shielding and a governmental certification based on a report prepared by a physicist.

19. Plaintiff immediately investigated the new and different information provided to it by Defendants and discovered that the representations made to it by Defendants concerning governmental and safety requirements for the CT scanner room were false. It had relied upon the expert knowledge and representations of Defendants, as it had a right to do, and proceeded to complete the construction of its sea turtle recovery center at a great expense based on such false representations.

20. Defendants, as experts on the use of CT scanning equipment such as Pegaso, had a duty to Plaintiff to truthfully inform it of construction requirements to meet any and all mandated

governmental regulations for the installation and use of a Pegaso CT scanner device; and, in this matter they failed to inform Plaintiff of technical information that it knew or should have known, or could have readily ascertained, before making such false representations. Defendants' false representations required Plaintiff to rip out and dismantle the construction that had been completed for the CT Scanner room and install all new construction to meet the regulatory requirements that Defendants had said not necessary. The new and additional construction work came at great additional expense to Plaintiff, and the completion of the project delayed the use of the facility for almost a year until near the end of 2017, all of which additional costs and consequential delay in the completion of the sea turtle recovery center was a direct and proximate result of the material and false representations made by Defendants to the Plaintiff.

21. Upon discovering that its sea turtle facility CT scanner room required lead shielding against radiation and other special construction specifications which were contrary to Defendants' representations to it, Plaintiff expeditiously proceeded to dismantle the construction of the CT scanner room, engage a building contractor to conform the room to the newly discovered specifications for the CT scanner, and completed it in the fall of 2017. It was required to retain the services of a physicist to provide a professional report on the project, and obtain licenses required by the State of South Carolina to operate the CT scanner; all of which, along with the additional unexpected construction costs, would have been unnecessary except for the intentional or negligent representations made by the Defendants upon which Plaintiff had a right to and did rely.

22. The false information transmitted to Plaintiff by Ron Tibett on behalf of his employer Epica Medical Innovations, LLC to the effect that the Pegaso CT Scanner did not require lead

walls, is most likely to have also been transmitted to other potential customers of Defendants, and is an unfair trade practice because it is, as in this case, a violation of §39-5-10, et seq., of the South Carolina Unfair Trade Practice Act, and is the proximate cause of Plaintiff's damage and clearly has the potential for repetition, and such conduct affects the public interest and should be prohibited.

23. Plaintiff is informed and believes that Epica Medical Innovations, LLC is a wholly-owned subsidiary of Epica International Inc.; and that Epica International Inc. controls or has the right to control all aspects of the operations of Epica Medical Innovations, LLC and is or should be legally responsible for all the allegations made herein, and it is equally responsible for the wrongdoing herein alleged against its wholly owned subsidiary.

**FOR A FIRST CAUSE OF ACTION  
(BREACH OF CONTRACT)**

Plaintiff realleges all of the foregoing allegations of the complaint as if set forth here verbatim.

24. Plaintiff, in good faith, entered into a contract as fully described hereinabove by which Defendants agreed to sell a Pegaso CT Scanner to the Plaintiff upon the terms and conditions described in the documents comprising the terms of the contract and particularly including a representation that the room and walls where the Pegaso CT Scanner is located did not require lead shielding and other protections to protect users and bystanders from radiation exposure, nor did it require any other special construction treatment to be installed by the Plaintiff. Defendants further represented that there was no requirement imposed by any governmental agency that mandated such requirements for its operation. The representations to such effect made by

Defendants became a part of the contract terms offered by Defendants all of which were accepted and relied upon by Plaintiff. In consideration of the offer made by Defendants as described herein and, in accordance with the terms and requirements of the contract between them, Plaintiffs paid Defendants \$443,775.00 for the delivery and installation of a Pegaso CT Scanner in its sea turtle recovery center.

25. The contract entered into in good faith by Plaintiff has been breached by Defendants because Plaintiff was informed, after fully preparing the room where the CT scanner was to be located in its Aquarium, that contrary to the representations made to it by Defendants as a part of the contract between them, that the location for its CT Scanner or any location in the state did indeed require lead shielding and other modifications imposed by regulations of the State of South Carolina.

26. The actions and representations as described herein constitutes a material breach of contract by Defendants which has caused Plaintiff to incur substantial damages as fully described hereinbelow.

**FOR A SECOND CAUSE OF ACTION  
(FRAUD IN THE INDUCEMENT)**

Plaintiff realleges all of the foregoing allegations of the Complaint as if set forth here verbatim.

27. As fully described herein, Defendants made certain false representations to Plaintiff that were material to Plaintiff's decision to enter into an agreement with Defendants which Plaintiffs agreed to purchase a Pegaso CT Scanner for use at the South Carolina Aquarium, to wit: that in installation and use of the CT scanner no special preparations for the room were required,

including no necessity of lead shielded walls where the scanner was to be located, and that there were no governmental requirements regarding any special room preparation.

30. The material representations made to Plaintiff as described herein were false and Defendants knew or should have known such representations were false.

31. Defendants intended for Plaintiff to rely on such false representations and Plaintiff did, in fact, rely on the representations made to it by Defendants. In reliance on Defendants' material representations, Plaintiff was induced to enter into the contract with Defendants and as a result of Defendants' negligent or reckless representations, has sustained substantial damages as described hereinafter.

32. Defendants intended that Plaintiff act on its false representations and to purchase, in reliance thereon, a Pegaso CT Scanner for a purchase price of almost a half million dollars.

33. Plaintiff had a right to rely on the false representations made to it by Defendants and did so because, among other reasons, Defendants held themselves out as experts in the operations and requirements for operations of Pegaso CT Scanners.

34. As a direct and proximate result of the fraudulent and negligent representations, Plaintiff has sustained substantial damages for which it is entitled to damages, both actual and punitive.

**FOR A THIRD CAUSE OF ACTION  
(NEGLIGENT MISREPRESENTATION)**

Plaintiff realleges all of the foregoing allegations of the Complaint as if set forth here verbatim.

35. Defendants' representations made to Plaintiff as fully described herein were false, which representation inured to the financial benefit to Defendants because it led to Plaintiff's purchase of a Pegaso CT scanner from Defendants for a price of \$443,775.

36. Defendants' had a duty of care to Plaintiff to make only truthful representations in good faith because, among other reasons, South Carolina law requires all persons to act in good faith and fair dealing in matters related to contractual relations, which legal obligations Defendants breached. Defendants did not exercise due care in the matters alleged herein and made negligent representations to Plaintiff which were false.

37. Plaintiff, with justification, relied upon the material misrepresentations made by Defendants which it was entitled to do based upon the facts and law pertaining to the relationship between the parties hereto.

38. Plaintiff has sustained substantial damages as a direct and proximate result of Defendants' false and negligent misrepresentations and is entitled to an award of actual and punitive damages.

**FOR A FOURTH CAUSE OF ACTION  
(UNFAIR TRADE PRACTICE § 39-5-20 et seq., SC Code)**

Plaintiff realleges all of the foregoing allegations of the Complaint as if set forth here verbatim.

39. Defendants' act, when it falsely represented to Plaintiff that the space created by the Plaintiff for the placement of a Pegaso CT Scanner at its aquarium did not require shielding and other protection against the emission of radiation, was an unfair and deceptive act made for the

purpose of luring Plaintiff into purchasing a CT scanner at considerable cost, and is a violation of the South Carolina Unfair Practices Act.

40. The false and deceptive act of Defendants in making the described false representation was made in the conduct of trade and commerce as Defendants were attempting to sell a Pegaso CT scanner to Plaintiff.

41. The within described unfair and deceptive acts of Defendants is capable of repetition and, in fact, Plaintiff believes it is likely that the misconduct described herein has already and will be in the future repeated by Defendants.

42. As a direct result of Defendants' violation of the South Carolina Unfair Trade Practices Act as described herein, Plaintiff is entitled to all the damages it has incurred as described below and, in addition, it is entitled to an award of trebled damages and attorneys' fees all of which is prescribed and required by law.

## **DAMAGES**

43. Plaintiff has sustained substantial damages proximately to and directly flowing from the delicts of Defendants as described in this Complaint. Plaintiff, in reliance on Defendants' false representations substantially completed the construction of its sea turtle recovery facility only to be informed by Defendants that the space set aside for its Pegaso CT scanner required special and costly preparation including the installation of lead-lined walls and other modifications in accordance with a physicist's report it was required to obtain and with the regulations imposed by State law, all of which Defendants said were unnecessary.

44. Plaintiff was required to dismantle the construction work that it had already completed and obtain a contractor to fit out the scanner space as required by applicable rules and

regulations. All of the new work had to be completed and certified before the expensive CT scanner could be used. Such construction delays occasioned by the delay in the completion of the CT scanner room led to an eleven month delay in the opening of the facility. This delay caused a substantial loss in the number of visitors to the aquarium and its sea turtle recovery facility, along with the loss of income from visitors who could not be accommodated. In addition, the Plaintiff incurred substantial monetary losses due to the eleven month opening delay. There were also some people who wished to contribute as people who visited to the sea turtle recovery center construction costs who did not do so as a result of the delay in the opening. The known and projected damages sustained by Plaintiff, except for punitive and trebled damages to which it is entitled, are itemized as follows:

Design Costs	\$9,000.
Shielding Plan & DHEC Review	\$1,063.
Demolition and Shielding Installation	\$106,094.
Post Installation Survey	\$1,000.
Lost Installed Materials/Finishes	\$10,000.
Lost Operations Income	\$TBD
Lost Contributions	250,000.
 Total:	 \$377,157.00

Wherefore, Plaintiff prays for a monetary judgment against Defendants for damages to which it is entitled as described herein resulting from the delicts of the Defendants alleged herein, both actual, punitive, and for trebled damages and attorneys' fees provided by the South Carolina Unfair Trade Practices Act.

Respectfully submitted,

HELLMAN YATES & TISDALE, P.A.

/s/ Thomas S. Tisdale

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