

Facts

5. Human Biostar owns and operates a laboratory facility where it derives and prepares clinical grade, isolated and expanded stem cell products from unprocessed adipose (fat) materials, typically extracted at the direction of a plastic surgeon.

6. Human Biostar also maintains a specialized cryogenic facility and equipment for storage of the tissue samples and stem cell products. This facility is registered with the FDA as suitable for storage of human tissues.

7. To the knowledge and belief of Human Biostar, Celltex contracted with various patients and physicians to have extracted adipose (fat) tissue material from patients in exchange for a fee.

8. To the knowledge and belief of Human Biostar, Celltex also contracted with the individual patients to have the extracted adipose (fat) tissue processed in such a way that the adipose (fat) tissue would be transformed into a clinical grade, isolated and expanded human stem cell product, and that this product would include many human stem cells. In addition, the expanded human stem cell product was to be stored under specialized and appropriate conditions that would maintain the integrity of the stem cell product and guard against any degradation.

9. To the knowledge and belief of Human Biostar, Celltex charged each patient a fee of at least \$25,000.00 up front for all services described above prior to provision of the services.

10. No fees received by Celltex from each patient were paid or shared with Human Biostar.

11. Celltex, lacking any expertise or competence in the performance of stem cell processing or product production, routinely delivered patient adipose tissue materials to Human Biostar, with the expectation and direction to Human Biostar to perform the product production

and processing, as well as to store the finished product under appropriate conditions. Celltex does not operate or have a suitable specialized cryogenic facility for this purpose.

12. Through the application of extensive effort, expense, and expertise, Human Biostar, at Celltex's request, purified and expanded the raw patient adipose tissue that Celltex provided into clinical grade, isolated and expanded human stem cell products and stored these products in Human Biostar's facility.

13. Human Biostar billed Celltex for its reasonable and customary charges associated with its specialized human tissue processing and storage services. Celltex paid Human Biostar's invoices for these services for a time without objection.

14. However, Celltex now refuses to pay over one million dollars owed to Human Biostar for the performance of these services, as well as for the ongoing storage of the processed human tissue materials, which costs Human Biostar thousands of dollars per day.

15. Celltex has demanded immediate possession of the isolated expanded human stem cell products that Human Biostar has created as a new product from the raw adipose tissue, and Celltex refuses to pay Human Biostar's outstanding invoices for these services.

16. Human Biostar reasonably believes that Celltex's demand for possession of the human stem cell products poses a significant and immediate risk of damaging and contaminating the products.

17. To Human Biostar's knowledge, Celltex has no facility and has no immediate access to any facility certified by the FDA for the storage of human tissue. To the knowledge and belief of Human Biostar, Celltex has retained Human Biostar's former director of operations, in contravention of his employment contract with Human Biostar, in an effort to establish such a

facility. However, to the knowledge and belief of Human Biostar, Celltex has not to date succeeded in establishing such a facility.

18. Celltex also refuses to provide any detailed identifying information regarding each patient sample necessary for Human Biostar to confirm that each patient consents to Celltex's transport of the perishable stem cell product without assurances that the stem cell products will be handled in a manner that preserves the integrity and safety of each patient human stem cell product.

19. Human Biostar seeks to recover amounts due to it as well as declaratory relief regarding its legal rights and obligations regarding maintenance of the isolated and expanded human stem cell products as further specified herein.

First Claim for Relief—Breach of Contract

20. Human Biostar provided tissue processing and storage services to Celltex based on its agreement and understanding that Celltex would pay Human Biostar its reasonable and customary charges for provision of such services. Celltex manifested its agreement to this contractual arrangement by paying certain invoices submitted by Human Biostar.

21. Celltex has breached its contract with Human Biostar by failing to pay more than a million dollars of outstanding invoices, thereby causing Human Biostar to sustain damages within the jurisdictional limits of this Court.

22. As a result of Celltex's breach of contract, Human Biostar has been required to retain the services of undersigned counsel to prosecute this action and is entitled to recover its reasonable and necessary attorneys' fees incurred in connection with prosecuting its breach of contract claim.

Second Claim for Relief—Quantum Meruit

23. Pleading strictly in the alternative, to the extent the Court determines that no enforceable contractual relationship exists between Human Biostar and Celltex, Human Biostar nonetheless provided Celltex valuable services and/or materials that benefited Celltex.

24. Celltex accepted Human Biostar's services and/or materials with notice and a reasonable belief that Human Biostar expected monetary compensation for the services at its reasonable and customary rates.

Third Claim for Relief—Declaratory Judgment

25. A genuine, justiciable controversy exists between the parties regarding their respective rights in regards to the stem cell products developed, processed, and maintained at Human Biostar's facilities.

26. Human Biostar seeks a declaratory judgment that it is entitled to maintain possession, custody, and control of all stem cell products presently stored at its facility unless and until (1) Celltex makes payment to Human Biostar of all amounts owed regarding the processing and storage of the stem cell products and (2) Celltex provides Human Biostar a valid written consent from each patient who provided tissue material that was processed at Human Biostar that authorizes Human Biostar to release the stem cell products to Celltex, notwithstanding the risks to the safety and integrity of the products that may result from Celltex's possession, transportation, and storage of the products.

27. Human Biostar seeks recovery of its reasonable and necessary attorneys' fees incurred in prosecution of its claim for declaratory judgment.

Conditions Precedent

28. All conditions precedent have been performed or have occurred.

