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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

BIO-REFERENCE LABORATORIES, INC.,

Plaintiff,

v.

MATT CAREY and SAM RUTA,

Defendants.

Civil Action No. 09-cv-05093 (DMC)
(MF)

**ANSWER TO COUNTERCLAIMS
OF MATT CAREY AND SAM RUTA**

ELECTRONICALLY FILED

MATT CAREY and SAM RUTA,

Counterclaim Plaintiffs,

v.

BIO-REFERENCE LABORATORIES, INC.,

Counterclaim Defendant.

Bio-Reference Laboratories, Inc. ("Bio-Reference") states by way of its Answer to the Counterclaims of Counterclaim Defendants Matt Carey and Sam Ruta as follows:

AS TO PRELIMINARY STATEMENT

1. Bio-Reference denies the allegations set forth in ¶1 of the Counterclaim except to admit that following an investigation Bio-Reference determined that John Littleton, then its Vice President of Sales, had misappropriated approximately \$1.6 million from it.

2. Bio-Reference denies the allegations set forth in ¶2 of the Counterclaim except to admit that Littleton arranged for Carey to receive inflated commissions and reimbursement of outdated/untimely expenses and in return, Carey conveyed things of value to Littleton.

3. Bio-Reference denies the allegations set forth in ¶3 of the Counterclaim.

4. Bio-Reference denies the allegations set forth in ¶4 of the Counterclaim except to (a) admit that it terminated Littleton's employment and (b) neither admit nor deny the allegations regarding the referenced press release and 8-K statement because the documents speak for themselves.

5. Bio-Reference denies the allegations set forth in ¶5 of the Counterclaim except to admit that Charles T. Todd, while explaining to the sales staff what Bio-Reference had learned about Littleton's conduct and was doing in response, stated that Littleton was repaying Bio-Reference \$1.6 million.

6. Bio-Reference denies the allegations set forth in ¶6 of the Counterclaim except to admit that Todd remains employed by Bio-Reference.

7. Bio-Reference denies the allegations set forth in ¶7 of the Counterclaim except to admit that while Grodman and Ruta communicated, ¶7 of the Counterclaim mischaracterizes their communications.

8. Bio-Reference denies the allegations set forth in ¶8 of the Counterclaim.

9. Bio-Reference denies the allegations set forth in ¶9 of the Counterclaim.

10. Bio-Reference denies the allegations set forth in ¶10 of the Counterclaim except to admit that it brought the instant action against Ruta and Carey.

11. Bio-Reference denies the allegations set forth in ¶11 of the Counterclaim.

AS TO PARTIES AND JURISDICTION

12. Bio-Reference admits the allegations set forth in ¶12 of the Counterclaim.
13. Bio-Reference admits the allegations set forth in ¶13 of the Counterclaim.
14. Bio-Reference admits the allegations set forth in ¶14 of the Counterclaim.
15. Bio-Reference denies that Counterclaim Defendants' counterclaims have any basis in law or fact.
16. Since the allegations set forth in ¶16 of the Counterclaim state a legal conclusion, no response is required.
17. Since the allegations set forth in ¶17 of the Counterclaim state a legal conclusion, no response is required.
18. Since the allegations set forth in ¶18 of the Counterclaim state a legal conclusion, no response is required.

AS TO FACTS

19. Bio-Reference admits the allegations set forth in ¶19 of the Counterclaim.
20. Bio-Reference admits the allegations set forth in ¶20 of the Counterclaim.
21. Bio-Reference denies that it did not have an expense policy in place until 2009 and neither admits nor denies the remaining allegations set forth in ¶21 of the Counterclaim because the Carey Employment Agreement speaks for itself.
22. Bio-Reference neither admits nor denies the allegations set forth in ¶22 of the Counterclaim because the Carey Employment Agreement speaks for itself.
23. Bio-Reference admits the allegations set forth in ¶23 of the Counterclaim but notes that it is an incomplete statement of his responsibilities and role within Bio-Reference.

24. Bio-Reference denies the allegations set forth in ¶24 of the Counterclaim.
25. Bio-Reference denies the allegations set forth in ¶25 of the Counterclaim.
26. Bio-Reference denies the allegations set forth in ¶26 of the Counterclaim except to admit that (a) Warren Erdmann was informed that he had to sever any further relationship between Warren Delivery Services and Bio-Reference before he could be promoted to the position of Senior Vice President of Operations and become a member of senior management, (b) Bio-Reference ceased doing business with Warren Delivery Services in or about December 2007, and (c) Erdmann became Senior Vice President of Operations in or about December 2007.
27. Bio-Reference denies the allegations set forth in ¶27 of the Counterclaim .
28. Bio-Reference denies the allegations set forth in ¶28 except to admit that Bio-Reference is a publicly-traded company on the NASDAQ.
29. Bio-Reference denies the allegations set forth in ¶29 of the Counterclaim except to admit that the Bio-Reference executive team neither disclosed nor sought shareholder approval of Bio-Reference's decision to do business with Warren Delivery Services when Warren Erdmann was not a member of senior management.
30. Bio-Reference denies the allegations set forth in ¶30 of the Counterclaim.
31. Bio-Reference denies the allegations set forth in ¶31 of the Counterclaim except to admit that a portion of ¶31 quotes accurately from a portion of the press release that Bio-Reference issued.
32. Bio-Reference denies the allegations set forth in ¶32 of the Counterclaim
33. Bio-Reference denies the allegations set forth in ¶33 of the Counterclaim.
34. Bio-Reference denies the allegations set forth in ¶34 of the Counterclaim.

35. Bio-Reference denies the allegations set forth in ¶35 of the Counterclaim.
36. Bio-Reference denies the allegations set forth in ¶36 of the Counterclaim.
37. Bio-Reference denies the allegations set forth in ¶37 of the Counterclaim.
38. Bio-Reference denies the allegations set forth in ¶38 of the Counterclaim.
39. Bio-Reference denies the allegations set forth in ¶39 of the Counterclaim
40. Bio-Reference admits the allegations set forth in ¶40 of the Counterclaim.
41. Bio-Reference neither admits nor denies the allegations set forth in ¶41 of the Counterclaim as the expense reports Carey submitted to Bio-Reference speak for themselves.
42. Bio-Reference neither admits nor denies the allegations set forth in ¶42 of the Counterclaim as the expense reports Carey submitted to Bio-Reference speak for themselves except Bio-Reference denies that Carey always attached original receipts as at times Carey attached bank/credit card or credit card statements.
43. Bio-Reference admits that it did not reimburse Carey for certain expenses in or about September 2006 as Carey's expense reports were not submitted in accordance with company guidelines.
44. Bio-Reference denies the allegations set forth in ¶44 of the Counterclaim, which mischaracterize communications and dealings between Littleton and Carey.
45. Bio-Reference denies the allegations set forth in ¶45 of the Counterclaim.
46. Bio-Reference denies the allegations set forth in ¶46 of the Counterclaim, which mischaracterize communications and dealings between Littleton and Carey.
47. Bio-Reference denies the allegations set forth in ¶47 of the Counterclaim, which mischaracterize communications and dealings between Littleton and Carey.

48. Bio-Reference is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶48 of the Counterclaim.

49. Bio-Reference denies the allegations set forth in ¶49 of the Counterclaim.

50. Bio-Reference denies the allegations set forth in ¶50 of the Counterclaim.

51. Bio-Reference denies the allegations set forth in ¶51 of the Counterclaim.

52. Bio-Reference denies the allegations set forth in ¶52 of the Counterclaim, which mischaracterize communications and dealings between Carey and Littleton.

53. Bio-Reference is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶53 of the Counterclaim.

54. Bio-Reference denies the allegations set forth in ¶54 of the Counterclaim except to admit that it terminated Littleton's employment.

55. Bio-Reference denies the allegations set forth in ¶55 of the Counterclaim.

56. Bio-Reference denies the allegations set forth in ¶56 of the Counterclaim.

57. Bio-Reference denies the allegations set forth in ¶57 of the Counterclaim.

58. Bio-Reference denies the allegations set forth in ¶58 of the Counterclaim.

59. Bio-Reference denies the allegations set forth in ¶59 of the Counterclaim.

60. Bio-Reference neither admits nor denies the allegations contained in ¶60 of the Counterclaim because the press release speaks for itself.

61. Bio-Reference denies the allegations set forth in ¶61 of the Counterclaim.

62. Bio-Reference denies the allegations set forth in ¶62 of the Counterclaim except to admit that it did not seek to have the authorities press criminal charges against Littleton.

63. Bio-Reference denies the allegations set forth in ¶63 of the Counterclaim except to admit that its understanding has been and remains that Littleton misappropriated money from Bio-Reference and, as a result, restitution had to be made to Bio-Reference.

64. Bio-Reference denies the allegations set forth in ¶64 of the Counterclaim.

65. Bio-Reference denies the allegations set forth in ¶65 of the Counterclaim.

66. Bio-Reference denies the allegations set forth in ¶66 of the Counterclaim except to admit that the preceding paragraphs of the Counterclaim did not set forth Littleton's misconduct fully.

67. Bio-Reference denies the allegations set forth in ¶67 of the Counterclaim except to admit that false expenses were added to Ruta's expense reports and then Ruta conveyed to Littleton some or all the monies Bio-Reference remitted to him for these false expenses.

68. Bio-Reference is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶68 of the Counterclaim except to admit that Littleton and Ruta committed acts similar to that described therein.

69. Bio-Reference admits the allegations set forth in ¶69 of the Counterclaim except to state that Littleton recouped either some or all of the extra money.

70. Bio-Reference denies the allegations set forth in ¶70 of the Counterclaim.

71. Bio-Reference denies the allegations set forth in ¶71 of the Counterclaim as they reference Todd and is otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶71 of the Counterclaim.

72. Bio-Reference denies the allegations set forth in ¶72 of the Counterclaim.

73. Bio-Reference denies the allegations set forth in ¶73 of the Counterclaim except to admit that Littleton used select sales staff to secure reimbursement of false expenses.

74. Bio-Reference denies the allegations set forth in ¶74 of the Counterclaim.

75. Bio-Reference denies the allegations set forth in ¶75 of the Counterclaim.

76. Bio-Reference denies the allegations set forth in ¶76 of the Counterclaim.

77. Bio-Reference denies the allegations set forth in ¶77 of the Counterclaim.

78. Bio-Reference denies the allegations set forth in ¶78 of the Counterclaim.

79. Bio-Reference denies the allegations set forth in ¶79 of the Counterclaim.

80. Bio-Reference denies the allegations set forth in ¶80 of the Counterclaim except to admit that the Cal Labs and Liberty Medical Center accounts were assigned to Carey and other Sales Representatives.

81. Bio-Reference denies the allegations set forth in ¶81 except that it neither admits nor denies the portion of the allegation relating to the e-mail appended as Exhibit J to the Counterclaim, which speaks for itself. (Bio-Reference points out that the referenced e-mail was sent by Littleton to Carey but Littleton concluded it with the words “love, Chuck” as if Todd had authored it though Littleton, not Todd, had done so).

82. Bio-Reference denies the allegations set forth in ¶82 of the Counterclaim except to admit that Bio-Reference, as the employer, ultimately was responsible for appropriately authorized compensation decisions.

83. Bio-Reference denies the allegations set forth in ¶83 of the Counterclaim.

84. Bio-Reference denies the allegations set forth in ¶84 of the Counterclaim.

85. Bio-Reference is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶85 of the Counterclaim because the allegations are too vague to respond.

86. Bio-Reference denies the allegations set forth in ¶86 of the Counterclaim.

87. Bio-Reference admits the allegations set forth in ¶87 of the Counterclaim.

88. Bio-Reference denies the allegations set forth in ¶88 of the Counterclaim except to admit that Ruta notified Bio-Reference of his intention of resigning in mid-September 2009 and after declining a proposed revision of his Employment Agreement gave notice of his resignation on September 28, 2009.

89. Bio-Reference denies the allegations set forth in ¶89 of the Counterclaim except to admit that Carey's meeting with management concerning return of Bio-Reference property was rescheduled to October 1.

90. Bio-Reference is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶90 of the Counterclaim.

91. Bio-Reference denies the allegations set forth in ¶91 of the Counterclaim except to admit that Todd, Glenn Smith (Bio-Reference's outside counsel), and Vaughn Klug were present for the meeting with Carey, Smith attempted to delineate to Carey the Bio-Reference property that Bio-Reference expected him to return and asked Carey to sign a Certification in which he was to acknowledge that he was doing so, and Carey became loud and disruptive and stormed out of the meeting. A similar meeting was convened with Ruta in which Ruta conducted himself civilly but, like Carey, refused to sign a Certification acknowledging that he was returning to Bio-Reference its property.

92. Bio-Reference denies the allegations set forth in ¶92 of the Counterclaim.

93. Bio-Reference denies the allegations set forth in ¶93 of the Counterclaim except to admit that it commenced an action on or about October 5, 2009 seeking the return of its property and related temporary restraints.

94. Bio-Reference denies the allegations set forth in ¶94 of the Counterclaim except to admit that the Court entered temporary restraints on October 7, 2009.

95. Bio-Reference denies the allegations set forth in ¶95 of the Counterclaim.

96. Bio-Reference denies the allegations set forth in ¶96 of the Counterclaim except to admit that it sought an order compelling, among other things, a forensic examination of Defendants' personal computers and electronic devices.

97. Bio-Reference denies the allegations set forth in ¶97 of the Counterclaim except to admit that it filed an Amended Complaint.

98. Bio-Reference denies the allegations set forth in ¶98 of the Counterclaim.

99. Bio-Reference denies the allegations set forth in ¶99 of the Counterclaim.

100. Bio-Reference denies the allegations set forth in ¶100 of the Counterclaim except to admit, as stated in Todd's October 9, 2009 affidavit and clarified in his December 2, 2009 affidavit, that, despite the absence of any formal or written policy, Bio-Reference management repeatedly communicated to its personnel its insistence that they conduct Bio-Reference business using its software and e-mail networks.

101. Bio-Reference denies the allegations set forth in ¶101 of the Counterclaim, except that it neither admits nor denies the content of the quoted e-mail, which speaks for itself, and incorporates by reference Todd's clarification in his December 2, 2009 affidavit as set forth in ¶101 immediately above.

102. Bio-Reference denies the allegations set forth in ¶102 of the Counterclaim except to admit, as set forth in Todd's December 2, 2009 affidavit, that "Defendants are apparently not the only persons who resisted" management's insistence that personnel use the Bio-Reference e-mail network and software to conduct Bio-Reference business.

103. Bio-Reference denies the allegations set forth in ¶103 of the Counterclaim.

104. Bio-Reference denies the allegations set forth in ¶104 of the Counterclaim except to admit, as Todd clarified in his December 2, 2009 affidavit, that Carey was paid on specific non-histology testing generated by Vassar Brothers and sent to Bio-Reference.

105. Bio-Reference denies the allegations set forth in ¶105 of the Counterclaim.

106. Bio-Reference denies the allegations set forth in ¶106 of the Counterclaim except to admit the first sentence therein (which is drawn from ¶7 [rather than ¶5 as is alleged]) of Charles T. Todd's October 9 affidavit.

107. Bio-Reference denies the allegations set forth in ¶107 of the Counterclaim.

108. Bio-Reference denies the allegations set forth in ¶108 of the Counterclaim.

AS TO FIRST COUNTERCLAIM FOR BREACH OF CONTRACT (BY CAREY)

109. Bio-Reference repeats and reiterates each and every response to the allegations in ¶¶1 through 108 of the Counterclaim as if set forth at length herein.

110. Bio-Reference admits the allegations set forth in ¶110 of the Counterclaim.

111. Bio-Reference denies the allegations set forth in ¶111 of the Counterclaim.

112. Bio-Reference denies the allegations set forth in ¶112 of the Counterclaim.

113. Bio-Reference denies the allegations set forth in ¶113 of the Counterclaim.

114. Bio-Reference denies the allegations set forth in ¶114 of the Counterclaim.

115. Bio-Reference denies the allegations set forth in ¶115 of the Counterclaim.

**AS TO SECOND COUNTERCLAIM FOR VIOLATION OF COVENANT OF
GOOD FAITH AND FAIR DEALING (BY CAREY)**

116. Bio-Reference repeats and reiterates each and every response to the allegations in ¶¶1 through 115 of the Counterclaim as if set forth at length herein.

117. Since the allegations set forth in paragraph 117 of the Counterclaim state a legal conclusion, no response is required.

118. Bio-Reference denies the allegations set forth in ¶118 of the Counterclaim except to admit that it stopped Littleton from continuing his misconduct and it promptly conducted an investigation and confirmed Littleton's misdeeds.

119. Bio-Reference denies the allegations set forth in ¶119 of the Counterclaim.

**AS TO THIRD COUNTERCLAIM FOR VIOLATION OF COVENANT OF
GOOD FAITH AND FAIR DEALING (BY RUTA)**

120. Bio-Reference repeats and reiterates each and every response to the allegations in ¶¶1 through 119 of the Counterclaim as if set forth at length herein.

121. Since the allegations set forth in paragraph 121 of the Counterclaim state a legal conclusion, no response is required.

122. Bio-Reference neither admits nor denies the allegations set forth in ¶122 of the Counterclaim as the Ruta Agreement speaks for itself.

123. Bio-Reference denies the allegations set forth in ¶123 of the Counterclaim.

124. Bio-Reference denies the allegations set forth in ¶124 of the Counterclaim.

**AS TO FOURTH COUNTERCLAIM FOR UNJUST ENRICHMENT
(BY CAREY)**

125. Bio-Reference repeats and reiterates each and every response to the allegations in ¶¶1 through 124 of the Counterclaim as if set forth at length herein.

126. Bio-Reference denies the allegations set forth in ¶126 of the Counterclaim except to admit that Littleton repaid Bio-Reference approximately \$1.6 million in restitution due to his malfeasance.

127. Bio-Reference denies the allegations set forth in ¶127 of the Counterclaim.

128. Bio-Reference denies the allegations set forth in ¶128 of the Counterclaim.

129. Bio-Reference denies the allegations set forth in ¶129 of the Counterclaim.

130. Bio-Reference denies the allegations set forth in ¶130 of the Counterclaim.

AS TO FIFTH COUNTERCLAIM FOR UNJUST ENRICHMENT (BY RUTA)

131. Bio-Reference repeats and reiterates each and every response to the allegations in ¶¶1 through 130 of the Counterclaim as if set forth at length herein.

132. Bio-Reference denies the allegations set forth in ¶132 of the Counterclaim.

133. Bio-Reference denies the allegations set forth in ¶133 of the Counterclaim.

134. Bio-Reference denies the allegations set forth in ¶134 of the Counterclaim.

**AS TO SIXTH COUNTERCLAIM FOR UNFAIR COMPETITION
(BY RUTA AND CAREY)**

135. Bio-Reference repeats and reiterates each and every response to the allegations in ¶¶1 through 134 of the Counterclaim as if set forth at length herein.

136. Bio-Reference denies the allegations set forth in ¶136 of the Counterclaim except to admit that its initial application sought to prevent Defendants from any “direct or indirect association” with any Bio-Reference competitor pending completion of certain actions set forth in the Complaint.

137. Bio-Reference denies the allegations set forth in ¶137 of the Counterclaim except to admit that the Court entered temporary restraints on October 7, 2009 pending a hearing before the Court on October 13, 2009.

138. Bio-Reference is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in ¶138 of the Counterclaim.

139. Bio-Reference admits the allegations set forth in ¶139 of the Counterclaim.

140. Bio-Reference admits the allegations set forth in ¶140 of the Counterclaim.

141. Bio-Reference denies the allegations set forth in ¶141 of the Counterclaim except to admit that it notified Zach Liu that it believes that his employment with Orange Regional Pathology (also known as Orange Pathology Associates) resulted from impermissible actions by one or both of the Defendants and that it might amend the lawsuit to name Liu as a defendant as well.

142. Bio-Reference denies the allegations set forth in ¶142 of the Counterclaim except to admit that it sought permission from the Court, which was granted in part, to take expedited discovery.

143. Since the allegations set forth in ¶143 of the Counterclaim state a legal conclusion, no response is required.

144. Bio-Reference denies the allegations set forth in ¶144 of the Counterclaim.

145. Bio-Reference denies the allegations set forth in ¶145 of the Counterclaim.

146. Bio-Reference denies the allegations set forth in ¶146 of the Counterclaim.

AS TO SEVENTH COUNTERCLAIM FOR ADMINISTRATIVE NEGLIGENCE
(BY CAREY)

147. Bio-Reference repeats and reiterates each and every response to the allegations in ¶¶1 through 146 of the Counterclaim as if set forth at length herein.

148. Bio-Reference denies the allegations set forth in ¶148 of the Counterclaim except to admit that on January 7, 2009 it became aware of the possibility that Littleton was engaging in misfeasance.

149. Bio-Reference denies the allegations set forth in ¶149 of the Counterclaim except to admit that as of January 7, 2009 Bio-Reference became concerned that Littleton was harming both it and its employees.

150. Bio-Reference denies the allegations set forth in ¶150 of the Counterclaim.

151. Bio-Reference denies the allegations set forth in ¶151 of the Counterclaim.

152. Bio-Reference denies the allegations set forth in ¶152 of the Counterclaim.

**AS TO THE EIGHTH COUNTERCLAIM FOR UNPAID WAGES IN
VIOLATION OF NEW JERSEY WAGE PAYMENT ACT (N.J.S.A. § 34:11-4.3)
(BY CAREY)**

153. Bio-Reference repeats and reiterates each and every response to the allegations in ¶¶1 through 152 of the Counterclaim as if set forth at length herein.

154. Bio-Reference admits the allegations set forth in ¶154 of the Counterclaim.

155. Bio-Reference denies the allegations set forth in ¶155 of the Counterclaim.

156. Bio-Reference denies the allegations set forth in ¶156 of the Counterclaim.

157. Bio-Reference denies the allegations set forth in ¶157 of the Counterclaim.

**AS TO THE NINTH COUNTERCLAIM FOR MALICIOUS PROSECUTION
(BY RUTA AND CAREY)**

158. Bio-Reference repeats and reiterates each and every response to the allegations in ¶¶1 through 157 of the Counterclaim as if set forth at length herein.

159. Bio-Reference denies the allegations set forth in ¶159 of the Counterclaim.

160. Bio-Reference admits the allegations set forth in ¶160 of the Counterclaim.

161. Bio-Reference denies the allegations set forth in ¶161 of the Counterclaim, except it is without knowledge or information sufficient to form a belief as to whether Ruta and Carey were unable to work while the TRO was in effect.

162. Bio-Reference denies the allegations set forth in ¶162 of the Counterclaim.

WHEREFORE, Bio-Reference requests judgment dismissing the Counterclaims against it with prejudice, with its attorneys' fees and costs of suit awarded to it.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Counterclaims fail to state claims which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Counterclaims fail to state claims upon which consequential or incidental damages may be granted.

THIRD AFFIRMATIVE DEFENSE

The Counterclaims fail to state claims upon which attorneys' fees may be granted.

FOURTH AFFIRMATIVE DEFENSE

Counterclaimants' claims are barred by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

The Counterclaimants' claims are barred by reason of bad faith.

SIXTH AFFIRMATIVE DEFENSE

The Counterclaims are barred in whole or in part by Counterclaimants' own contributory and/or comparative fault.

SEVENTH AFFIRMATIVE DEFENSE

Bio-Reference paid Carey for any outstanding expenses and/or unused vacation time.

EIGHTH AFFIRMATIVE DEFENSE

Bio-Reference does not owe Carey any outstanding commission payments.

NINTH AFFIRMATIVE DEFENSE

Bio-Reference did not breach any contractual obligations owed to Carey.

TENTH AFFIRMATIVE DEFENSE

Bio-Reference did not breach the covenant of good faith and fair dealing that inheres in every contract because it did not breach the terms of the Employment Agreement between Bio-Reference and Carey.

ELEVENTH AFFIRMATIVE DEFENSE

Bio-Reference did not breach the covenant of good faith and fair dealing that inheres in every contract because it did not breach the terms of the Employment Agreement between Bio-Reference and Ruta.

TWELFTH AFFIRMATIVE DEFENSE

Bio-Reference did not deny Ruta any benefits from his Employment Agreement.

THIRTEENTH AFFIRMATIVE DEFENSE

Carey's claim for unjust enrichment does not state a cause of action because he is not owed any restitution from Bio-Reference.

FOURTEENTH AFFIRMATIVE DEFENSE

Ruta's claim for unjust enrichment does not state a cause of action because Bio-Reference does not owe him any reimbursement for expenses incurred during his employment.

FIFTEENTH AFFIRMATIVE DEFENSE

Counterclaim Defendants' claim for unfair competition does not state a cause of action because Bio-Reference's claims contained in its First Amended Complaint are made in good faith and the discovery sought from third parties by Bio-Reference is relevant to its claims.

SIXTEENTH AFFIRMATIVE DEFENSE

Bio-Reference did not fail to exercise reasonable care to control Littleton and thus did not fail to supervise Littleton. In any event, Carey did not suffer any damages as a result of any misconduct or malfeasance by Littleton.

SEVENTEENTH AFFIRMATIVE DEFENSE

Bio-Reference did not withhold commissions to which Carey was entitled and, therefore, has not violated the New Jersey Wage Payment Act (N.J.S.A. § 34:11-4.3).

EIGHTEENTH AFFIRMATIVE DEFENSE

Counterclaim Defendants' claim for malicious prosecution does not state a cause of action because Bio-Reference's claims contained in its First Amended Complaint are made in good faith and have a basis in law and fact.

NINETEENTH AFFIRMATIVE DEFENSE

Bio-Reference reserves the right to amend its Answer to Counterclaims to assert additional affirmative defenses and claims as the claims of Counterclaim Defendants become more fully disclosed.

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Attorneys for Plaintiff/Counter Defendant

By: 

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For the Firm

Dated: January 5, 2010

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