

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

KALEIDA HEALTH
726 Exchange Street, Suite 210
Buffalo, New York 14210

Plaintiff,

v.

SUMMONS
Index No.: _____

HARPDATA LLC
50 Fountain Plaza, Suite 1400
Buffalo, New York 14202

Defendant.

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff's attorneys an Answer to the Complaint in this action within twenty (20) days after service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Venue is based upon CPLR § 503(c).

Dated: April 9, 2020
Buffalo, New York

BARCLAY DAMON LLP

By: /s/ James Milbrand
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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

KALEIDA HEALTH

Plaintiff,

v.

COMPLAINT

Index No.: _____

HARPDATA LLC

Defendant.

Plaintiff Kaleida Health (“Plaintiff” or “Kaleida”), by and through its attorneys, Barclay Damon LLP, as and for its Complaint against Defendant HarpData LLC (“Defendant” or “Harp”) hereby alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Kaleida is a domestic not-for-profit corporation organized under the laws of the State of New York, having its principal place of business at 726 Exchange Street, Buffalo, New York, 14210.
2. Upon information and belief, Defendant Harp is a domestic limited liability company organized under the laws of the State of New York, having its principal place of business at 285 Delaware Ave., Suite 120, Buffalo, NY 14202.
3. The Court has jurisdiction over the subject matter of this action pursuant to Judiciary Law § 140-b and personal jurisdiction over the parties to this matter pursuant to C.P.L.R. § 301.
4. Venue is proper in this Court pursuant to C.P.L.R. § 503.

BACKGROUND

5. Kaleida is the largest healthcare provider in Western New York, serving the area's eight counties with state-of-the art technology and comprehensive healthcare services.

6. Kaleida provides management services to the Buffalo General Medical Center, Gates Vascular Institute, DeGraff Memorial Hospital, Millard Fillmore Suburban Hospital and John R. Oishei Children's Hospital. Kaleida also provides services through two long-term care facilities, various outpatient clinics and home health care through the Visiting Nursing Association of WNY, Inc.

7. In or around August 2018, Kaleida engaged Harp to upgrade its information technology ("IT") network infrastructure across its platform (the "Project").

8. Kaleida, Erie County Medical Center Corporation ("ECMCC") and Harp entered into a Statement of Work ("SOW") on August 22, 2018 that outlined the obligations of each party as it related to the Network Switch Equipment Refresh Project. A true and accurate copy of the SOW is attached hereto as **Exhibit A**.

9. With respect to Kaleida, the scope of the Project had two phases: (i) Network Switch Equipment Refresh – Integration/Configuration; and (ii) Network Switch Equipment Refresh – Installation/Delivery and Acceptance.

10. Pursuant to the SOW, Kaleida was required to pay Harp \$182,888.07 upon execution of the SOW and \$182,688.08 on September 30, 2018, for a total of \$365,376.15, as pre-payment for the services Harp was to perform under the SOW.

11. Kaleida made both of the aforementioned pre-payments pursuant to the terms of the SOW.

12. Despite full pre-payment by Kaleida, Harp has not performed its obligations under the SOW.

13. As a healthcare provider, it is of the utmost importance for Kaleida to ensure that the vendors it contracts with are legitimate, qualified, credentialed, and well-regarded within their respective industries.

14. As such, the General Terms contained in the SOW's Appendix D, required Harp to ensure that its employees and subcontractors complied with Kaleida's credentialing requirements.

15. Pursuant to the SOW's General Terms, in the event Harp failed to comply with any of Kaleida's credentialing requirements, Kaleida had the right to terminate the SOW.

16. The General Terms also contained a "Warranties" section, wherein Harp represented and warranted to Kaleida that it "(a) is competent, experienced and trained to provide all Services herein, and (b) it will use commercially reasonable efforts to provide the Deliverables in a timely manner in accordance with (i) the applicable Required Specifications, and (ii) industry standards where this Agreement does not prescribe or regulate HarpData's provision of the Deliverables."

17. In February 2020, Kaleida became concerned that the individuals Harp had designated to perform the services pursuant to the SOW were not competent or trained, and did not possess the requisite credentials or qualifications.

18. Kaleida also learned that Harp had at least one judgment lien levied against it as a result of its failure to honor its obligations one of its vendors related to the Project.

19. On February 12, 2020 Kaleida, through Theo Kornyoh, requested that the funds advanced to Harp be returned. Harp did not return Kaleida's advance payment, or any portion thereof. Instead, Harp requested a meeting with Kaleida.

20. On February 13, 2020 Robert Diamond (Senior Vice President / Chief Information Officer of Kaleida) declined Harp's request for a meeting and set out Kaleida's rational request for a refund of the advance money paid.

21. On February 14, 2020, Kaleida requested that Harp provide it with the names of the individuals, together with their respective qualifications, who would be working on the Project.

22. Harp failed to provide the requested information to Kaleida.

23. On or about March 11, 2020, Kaleida again requested that Harp provide assurance that its employees possessed the necessary qualifications to move forward with the Project pursuant to the terms of the SOW. A true and accurate copy of Mr. Diamond's March 11, 2020 letter to Mr. Robinson is attached hereto as **Exhibit B**.

24. Harp again failed to provide Kaleida with the requested information.

25. Despite demand by Kaleida, Harp has failed to establish that it has the capabilities, including the required certified staff, to perform the services provided for in the SOW.

26. In addition, Harp has failed and continues to refuse to refund Kaleida the pre-payments advanced to Harp for the services that Harp has failed—and in fact, does not have the ability to—to perform.

27. Accordingly, and as a direct result of Harp's actions, Kaleida has suffered damages in the amount of \$365,376.15.

FIRST CAUSE OF ACTION
BREACH OF CONTRACT

28. Kaleida repeats and re-alleges all paragraphs above as if fully set forth herein.

29. On or about August 22, 2018, Kaleida and Harp entered into the SOW whereby Harp was to upgrade the IT network infrastructure across and throughout Kaleida's healthcare platform.

30. Kaleida fully performed its obligations pursuant to the SOW, namely, providing Harp with the full pre-payment for the services Harp was obligated to perform pursuant to the SOW.

31. Harp had adequate time to provide proof that it possessed the requisite certified and experienced staff to complete the services as set forth in the SOW and in alignment with industry standards.

32. Despite Harp's acceptance of Kaleida's pre-payments, Harp has failed to perform under the SOW and failed to provide Kaleida with assurance that it had the ability to perform.

33. Harp has similarly failed and refused to refund Kaleida for the services it has failed to, and cannot, perform.

34. Accordingly, Defendant has breached its obligations under the SOW.

35. As a direct and proximate result of Harp's breach, Kaleida has sustained damages in the amount of \$365,376.15, plus interest, attorneys' fees and costs.

SECOND CAUSE OF ACTION
UNJUST ENRICHMENT

36. Kaleida repeats and realleges all paragraphs above as if fully set forth herein.

37. Kaleida provided Harp with the pre-payment of the services Harp was obligated to perform under the SOW in good faith and with the expectation that Harp would fulfill its obligations pursuant to the SOW.

38. Harp accepted Kaleida's pre-payment, but has failed and refused to perform its obligations pursuant to the SOW.

39. By reason of the foregoing, Kaleida has sustained damages in the amount of \$365,376.15, plus interest, attorneys' fees and costs.

WHEREFORE, Plaintiff Kaleida Health respectfully demands judgment against Defendant HarpData LLC as follows:

- (a) On Plaintiff's first cause of action, damages in the amount of \$365,376.15, plus interest, attorneys' fees and costs;

- (b) On Plaintiff's second cause of action, damages in the amount of \$365,376.15, plus interest, attorneys' fees and costs;
- (c) For such other and further relief as this Court deems just, proper and equitable.

Dated: Buffalo, New York
April 9, 2020

BARCLAY DAMON LLP

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