

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK  
CENTRAL ISLIP DIVISION**

SOLAMED O2, LLC, formerly	)	
known as SOLAMED INC.	)	
	)	
Plaintiff,	)	
	)	Case No. 19-cv-5762
v.	)	
	)	
AIRGAS USA, LLC,	)	
Successor in Interest to	)	
AIRGAS-EAST INC.	)	
	)	
Defendant.	)	

**COMPLAINT**

1. NOW COMES the Plaintiff, Solamed O2, LLC, by and through its attorneys, Nathan & Kamionski LLP, and sues the Defendant, Airgas USA, LLC, and in support thereof, states as follows:

**INTRODUCTION**

2. Plaintiff, Solamed O2, LLC, contracted with Defendant, Airgas USA, LLC, for the delivery of critical oxygen supplies to nursing home facilities throughout Pennsylvania, New York, and New Jersey. Recently, Defendant has brazenly and defiantly violated material provisions of their agreement, going so far as to suspend delivery of oxygen needed for thousands of vulnerable residents and patients at nursing home facilities.

**PARTIES AND JURISDICTION**

3. This Court has diversity jurisdiction under 28 U.S.C. § 1332 because Plaintiff, Solamed O2, LLC, is incorporated under the laws of the State of New York with its principal place of business in Brooklyn, New York, and Defendant, Airgas USA, LLC, is a Delaware business entity with its principal place of business in Radnor, Pennsylvania. The amount

in controversy is in excess of seventy-five thousand dollars (\$75,000.00), as further alleged below.

4. Venue and personal jurisdiction are proper in the Eastern District of New York under 28 U.S.C. § 1391(b). On information and belief, Airgas USA, LLC continuously operates and conducts business throughout this district and maintains an office at 195 Oval Dr. Islandia, NY 11749.

#### **FACTS COMMON TO ALL COUNTS**

5. Plaintiff, Solamed O2, LLC (“Plaintiff”) is a closely held small business that contracts with nursing home facilities throughout Pennsylvania, New York, and New Jersey to provide oxygen for their residents and patients. Plaintiff contracts with oxygen suppliers who deliver directly to the nursing home facilities.
6. Defendant, Airgas USA, LLC (“Defendant”) is one of the largest medical gas distributors in the nation.
7. Plaintiff and Defendant entered into a contract styled Product Sale Agreement (“PSA”) in September 2009 in which Plaintiff agreed to pay for oxygen to be delivered by Defendant to Plaintiff’s clients.
8. The PSA provides:

Term: The initial term of this agreement shall be for two (2) years and shall commence upon the date of first delivery of Product by Seller hereunder; (“Effective Date”), and thereafter shall automatically renew for successive two (2) year terms unless terminated upon not less than thirty (30) days written notice by either party prior to either: (a) the end of the initial term, or; (b) the end of the renewal term, as the case may be.
9. Additionally, the PSA provides that Defendant may not raise rates by more than five percent annually, and that any rate increase must be preceded by 30-days written notice.
10. Finally, the PSA provides:

Non-Solicitation: During the term of this Agreement and for a period of one (1) year following termination of the Agreement, Seller will not, directly or indirectly, solicit or accept business from those clients of Buyer to which Seller shall deliver any product(s) during the term of the Agreement.

11. On May 22, 2019, Defendant unilaterally increased rates by more than two-hundred percent (200%). Although this rate increase breached the PSA, Plaintiff continued to pay Defendant and Defendant continued to deliver oxygen to Plaintiff's clients.
12. In a brazen display of bad faith, beginning in Fall 2019, Defendant began soliciting business from a number of Plaintiff's clients, in direct violation of the terms of the contract.
13. Defendant's tactics appeared to be the result of a shift in attitude by new personnel at the corporation seeking to take advantage of unsuspecting small businesspeople.
14. On October 4, 2019, Defendant informed Plaintiff via email that it would no longer make oxygen deliveries to Plaintiff's clients, effective October 7, 2019, in direct violation of the terms of the PSA.
15. In fact, on October 7, 2019, Defendant failed to perform according to its contractual obligations and suspended delivery of oxygen to more than nine nursing home facilities across multiple states leaving thousands of patients' lives at risk.
16. Since October 7, 2019, Defendant has continued to directly solicit business from Plaintiff's client's, threatening that Defendant will no longer service them unless they breach their contracts with Plaintiff and contract directly with Defendant.
17. Defendant's combined breach of the oxygen delivery and anti-solicitation clauses of the PSA are calculated to force Plaintiff's nursing home clients into choosing between placing the lives of their residents at risk or abandoning their business relationship with Plaintiff. These blatant violations of the PSA and strong-arm tactics are unlawful.

**COUNT I**  
**Breach of Contract**  
**(Unilateral Rate Increase)**

18. Plaintiff incorporates by this reference paragraphs 1 through 17 of this complaint as if they were repeated verbatim.
19. At all relevant times, the PSA was and continues to be a valid contract since it was supported by consideration and was signed by Plaintiff on September 9, 2009 and by Defendant on September 23, 2009.
20. At all times Plaintiff has performed according to all material terms of the PSA.
21. Defendant violated the PSA by unilaterally increasing rates by more than two-hundred percent (200%) on or about May 22, 2019.
22. Defendant's failure to perform according to the terms of the PSA has caused Plaintiff damages in excess of one-million dollars (\$1,000,000.00).

**COUNT II**  
**Breach of Contract**  
**(Soliciting Plaintiff's Clients)**

23. Plaintiff incorporates by this reference paragraphs 1 through 17 of this complaint as if they were repeated verbatim.
24. At all relevant times, the PSA was and continues to be a valid contract since it was supported by consideration and was signed by Plaintiff on September 9, 2009 and by Defendant on September 23, 2009.
25. At all relevant times, Plaintiff has performed according to all material terms of the PSA.
26. Defendant violated the PSA by directly soliciting Plaintiff's clients on numerous occasions during the past months as more fully set forth above.

27. For example, on or about, October 7, 2019, Defendant blatantly solicited Solamed O2's client, Allaire Health Services, regarding services for its Grandview facility in Danville, PA.

28. Defendant's failure to perform according to the terms of the PSA has caused Plaintiff damages in excess of one-million dollars (\$1,000,000.00).

**COUNT III**  
**Breach of Contract**  
**(Delivery Suspended)**

29. Plaintiff incorporates by this reference paragraphs 1 through 17 of this complaint as if they were repeated verbatim.

30. At all relevant times, the PSA was and continues to be a valid contract since it was supported by consideration and was signed by Plaintiff on September 9, 2009 and by Defendant on September 23, 2009.

31. At all times Plaintiff has performed according to the terms of the PSA.

32. Defendant violated the PSA by unilaterally suspending delivery to the various sites it is contractually obligated to service including nine facilities across multiple states.

33. Defendant's failure to abide by the anti-solicitation term of the PSA has caused Plaintiff damages in excess of one-million dollars (\$1,000,000.00).

**COUNT IV**  
**Anticipatory Breach of Contract**  
**(Continued Suspended Delivery and Client Solicitation)**

34. Plaintiff incorporates by this reference paragraphs 1 through 17 of this complaint as if they were repeated verbatim.

35. At all relevant times, the PSA was and continues to be a valid contract since it was supported by consideration and was signed by Plaintiff on September 9, 2009 and by Defendant on September 23, 2009.
36. At all times Plaintiff has performed according to the material terms of the PSA.
37. Defendant plainly stated its intention to violate the PSA by unilaterally and indefinitely suspending oxygen delivery to the nursing homes it is contractually obligated to service.
38. Defendant also plainly demonstrated its intention to violate the PSA by unilaterally and indefinitely suspending delivery to the sites it is contractually obligated to service through its actions of October 7, 2019 until the present when Defendant unilaterally suspended delivery to at least nine nursing homes it is contractually obligated to service.
39. Defendant also plainly demonstrated its intention to violate the PSA by soliciting business from Plaintiff's clients through its brazen actions to continuously solicit business from Plaintiff's clients.
40. Defendant's failure to perform according to the terms of the PSA has and will continue to cause Plaintiff damages in excess of one-million dollars (\$1,000,000.00).

**COUNT V**  
**Tortious Interference with Contract**

41. Plaintiff incorporates by this reference paragraphs 1 through 17 of this complaint as if they were repeated verbatim.
42. Plaintiff maintains contractual agreements with dozens of nursing home facilities throughout Pennsylvania, New York, and New Jersey.
43. Plaintiff contracted with Defendant to fulfill Plaintiff's oxygen procurement obligations to its nursing home facility clients.

44. Defendant was at all relevant times aware of Plaintiff's contractual relationships with the nursing home facilities.

45. Defendant's intentional interference with Plaintiff's contractual relationships by way of Defendant threatening not to provide oxygen to the nursing home facilities unless they breach their contracts with Plaintiff and enter into new contracts with Defendant have caused the nursing home facilities to breach their contractual obligations with Plaintiff.

46. Defendant's tortious intentional interference with Plaintiff's contractual relationships has caused Plaintiff damages in excess of one-million dollars (\$1,000,000.00).

WHEREFORE, Plaintiff respectfully demands (a) that judgment be entered in its favor and against the Defendant, with respect to all counts set forth in this Complaint; (b) that it be granted reasonable compensatory damages in an amount to be determined at trial in excess of one-million dollars (\$1,000,000.000); (c) that this Honorable Court compel the Defendant to perform according to the terms of the contract; (d) that this Honorable Court enjoin the Defendant from continuing to take harmful action against the Plaintiff and in violation of its contractual obligations; and (e) that costs and attorneys' fees be assessed against the Defendant.

Dated: October 11, 2019

Respectfully submitted,

/s/ Shneur Z. Nathan (NY Att. No. 4733010)

Shneur Z. Nathan

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