

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
(Newark Vicinage)**

JOHN SACCHI (“Consumer”), Individually  
and on behalf of all others similarly situated,

Plaintiff,

v.

QUEST DIAGNOSTICS INCORPORATED  
 (“Quest”), RAMONA WELDON, GITA  
 “DOE” and DOES 1 through 10, inclusive,

Defendants.

Civil Action No. 2:20-cv-12804

**NOTICE OF REMOVAL  
(Federal Question)**

TO: Clerk,  
United States District Court  
District of New Jersey  
Martin Luther King Building  
& U.S. Courthouse  
50 Walnut Street  
Newark, NJ 07102

Stephen J. Simoni, Esq.  
Simoni Consumers Class  
Action Law Offices  
c/o Jardim, Meisner & Susser, P.C.  
30B Vreeland Road, Ste. 100  
Florham Park, New Jersey 07932  
Attorneys for Plaintiffs

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendant Quest Diagnostics Incorporated, by and through its counsel, hereby gives notice of the removal to this Court of a civil action originally filed as John Sacchi (“Consumer”), Individually and on behalf of all others similarly situated v. *Quest Diagnostics, Incorporated (“Quest”), Ramona Weldon, Gita “Doe” and DOES 1-10, inclusive.*, Docket Number MON-L-1503-20, in the Superior Court of the State

of New Jersey, Law Division, Monmouth County Vicinage. In support of this Notice of Removal, Defendant states as follows:

1. This is an action of a civil nature in which the District Courts of the United States have been given jurisdiction pursuant to 28 U.S.C. § 1331 in that claims asserted in the Complaint arise under a federal law, the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 110 Stat. 1936, 42 USC § 1320d et seq. and the HIPAA Privacy Rule, 45 CFR § 164.500, et seq., a federal question. Plaintiff’s filed a class action generally alleging that Quest violated a federal statute, HIPAA, by failing to comply with Plaintiff’s request for Protected Health Information.

2. Under the provisions of 28 U.S.C. §§ 1441, *et seq.*, the right exists to remove this case from the Superior Court of New Jersey, Law Division: Monmouth County Vicinage, to the United States District Court for the District of New Jersey, Newark Vicinage.

3. Pursuant to Local Rule 40.1, this matter is properly allocated to the Newark Vicinage. Defendant Quest’s principal place of business is in Secaucus, New Jersey located in the Newark Vicinage. Furthermore, the cause of action arose in the Newark Vicinage as Plaintiff claims concern Quest’s corporate policies and procedures. Additionally, relevant documents are likely located at Quest’s headquarters in the Newark Vicinage, and counsel for Plaintiffs and Quest are located in the Newark Vicinage.

4. On May 14, 2020, Plaintiff John Sacchi, individually and on behalf of all others similarly situated, electronically filed a Summons and Verified Complaint in the Superior Court of the State of New Jersey, Monmouth County Vicinage, under the docket number MON-L-1503-20. Plaintiffs’ Verified Complaint named Quest Diagnostics Incorporated (“Quest”) as a Defendant. See Summons and Verified Complaint attached hereto as Exhibit A.

5. On August 18, 2020, Quest was served with a copy of the Summons and Verified Complaint. See Affidavit of Service attached hereto as Exhibit H.

6. This Notice of Removal is timely filed, within thirty (30) days of service of the Summons and Verified Complaint, pursuant to 28 U.S.C. § 1446(b) and the Federal Rules of Civil Procedure.

7. Removal from the Superior Court of New Jersey, Law Division: Monmouth County Vicinage, is proper under 28 U.S.C. § 1441(a) and (c), which authorizes the removal of any civil action of which the District Courts of the United States have original jurisdiction and “if a civil action includes a claim arising under the Constitution, laws or treaties of the United States”

8. This Court has original jurisdiction over the subject matter pursuant to 28 U.S.C. § 1331 insofar as the Complaint alleges violations of a federal law, HIPAA, 110 Stat. 1936, 42 USC § 1320d et seq. and the HIPAA Privacy Rule, 45 CFR § 164.500, et seq., a federal question. HIPAA Privacy Rule, 45 CFR § 164.500, et seq., a federal question.

9. Specifically, Count II of the Complaint alleges Quest violated HIPAA and the HIPAA Privacy Rule 45 CFR 164.524 by “knowingly refuse[ing] to provide Plaintiff with required Protected Health Information within thirty days of request as mandated by the HIPAA Privacy Rule.” Exhibit A ¶ 45. Count II further alleges that Quest violated the HIPAA Privacy Rule by “deliberately refus[ing] to repair its lab test notification system and refuse to change its company-wide policy that refuses to provide Protected Health Information to patients.” *Id.* ¶ 46.

10. Count III of the Complaint sets forth a theory of recovery under negligence per se that Quest breached “the statutory duty they owe to Plaintiff and other prospective Class member

to provide the Protected Health Information as required by the HIPAA Privacy Rule and implementing regulations.” *Id.* ¶49.

11. Similarly, Count IV of the Complaint is a claim of negligence, alleging Quest breached its duty to “change its companywide policy that refuses to provide Protected Health Information as required by the HIPAA Privacy Rule to patients.” *Id.* ¶54.

12. Further, Count I of the Complaint is a restatement of Count II of the Complaint, seeking recovery under the New Jersey Consumer Fraud Act for Quest’s alleged violation of the HIPAA Privacy Rule when it refused to provide Plaintiff requested Protected Health Information as required by the HIPAA Privacy Rule and refused to repair its lab test notification system and change its companywide policy to provide Protected Health Information to patients. *Id.* ¶¶ 34, 37.

13. Accordingly, this is a civil action alleges a claim arising under federal law of which the United States District Courts have original jurisdiction pursuant to 28 U.S.C. § 1331, and therefore may be removed to this Court pursuant to 28 U.S.C. § 1441(a) and (c). Although the primary claims are all based on HIPAA and therefore raise a federal question, to the extent this Court determines a claim is not related to HIPAA, this Court nevertheless maintains supplemental jurisdiction over any non-related claims pursuant to 28 U.S.C. § 1367.

14. By filing this Notice of Removal, Quest does not waive and hereby expressly reserves the right to assert any defense or motion available.

15. Pursuant to Local Rule 5.2(1) Quest attaches herewith as Exhibits A - I copies of all documents previously filed with the Superior Court of New Jersey.

16. Promptly after filing this Notice of Removal, a written Notice of Filing of Removal will be served on Plaintiff's counsel, and to the Clerk of the Superior Court of New Jersey, Law Division: Monmouth County Vicinage as required by 28 U.S.C. § 1446(d).

**WHEREFORE**, Defendant Quest Diagnostics Incorporated removes this entire action from the Superior Court of New Jersey, Law Division: Monmouth County Vicinage, to the United States District Court for the District of New Jersey, Newark Vicinage, and requests that this Court assume full jurisdiction over this case as provided by law.

Dated: Florham Park, New Jersey  
September 17, 2020

By: s/Michael T. Hensley  
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# **EXHIBIT A**

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*Counsel for Plaintiff  
and the Proposed Class*

JOHN SACCHI (" <b>Consumer</b> "),	:	<b>ELECTRONICALLY FILED</b>
Individually and on behalf	:	SUPERIOR COURT OF
of all others similarly	:	NEW JERSEY
situated,	:	LAW DIVISION
	:	MONMOUTH COUNTY
Plaintiff,	:	
	:	Hon. _____
vs.	:	
	:	Docket No. MON-L-____-2020
QUEST DIAGNOSTICS	:	
INCORPORATED (" <b>Quest</b> ")	:	<b>CIVIL ACTION CLASS ACTION</b>
and DOES 1 through	:	<b>COMPLAINT</b>
10, inclusive,	:	FOR INJUNCTIVE RELIEF
	:	AND COMPENSATORY
Defendants.	:	AND PUNITIVE DAMAGES
	:	<b>JURY TRIAL DEMANDED</b>

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**QUEST DELIBERATELY REFUSES TO ADDRESS  
ONGOING SYSTEMIC COMPUTER NOTIFICATION  
ERRORS, DELIBERATELY VIOLATES THE HIPAA  
PRIVACY RULE, AND INSTEAD MAKES FALSE STATEMENTS TO  
CRIMINAL AUTHORITIES IN RESPONSE TO PATIENT INQUIRIES**

QUEST DIAGNOSTICS INCORPORATED ("**Quest**") openly acknowledged systemic errors in its computerized lab test notification program in an audiotaped October 29, 2019 telephone call, but refuses to comply with the HIPAA Privacy Rule when patients request access to the required

Protected Health Information needed to ascertain the validity of the subject lab test notifications.

Quest routinely rebuffs individual patients who seek remediation of an apparent Quest computer virus and/or malfunction that may erroneously direct patients to appear for time-consuming, expensive, and invasive lab tests that have **not**, in fact, been ordered for the respective patient by any of the patient's licensed medical prescribers.

Plaintiff, for one, had made repeated inquiries to Quest since October 2019 regarding the apparent computer virus and waited three months with no response as to whether a tuberculosis test and glucose tolerance testing had been ordered by one (or more) of Plaintiff's licensed medical providers after Plaintiff received electronic mail notifications from Quest for those tests. Plaintiff requested the identity of the prescribers who had purportedly ordered those lab tests for him ("**Protected Health Information**"), which information must be provided to patients within thirty days of request pursuant to the HIPAA Privacy Rule.

But due to Quest's blatant multi-month refusal even to access Plaintiff's Protected Health Information to ascertain whether such lab tests had in fact been ordered for him and remained uncompleted, Plaintiff then was required to incur the time, expense, and effort of filing an action in his continuing effort to obtain the information. Quest still failed to provide the Protected Health Information nor even discuss the request with



Plaintiff; instead, Quest and its outside counsel, Michael T. Hensley and Ross A. Fox, responded by writing a surreptitious memorandum to the New Jersey Attorney General's Division of **Criminal Justice** in Quest's ongoing effort to shirk its plain obligations under, *inter alia*, the HIPAA Privacy Rule.

Incredibly, rather than simply provide the information, Quest made false statements to the Division of Criminal Justice in Quest's effort to manufacture a criminal case against Plaintiff. Quest's memorandum was dated January 28, 2020. Quest wrote to the Division of Criminal Justice that criminal activity was somehow indicated because Plaintiff's letter demanding the Protected Health Information was purportedly "sent only a few hours" after the audiotaped October 29, 2019 telephone call in which Quest refused to access Plaintiff's Protected Health Information to ascertain whether the tuberculosis test and glucose tolerance test had in fact been ordered by one or more medical prescriber(s) for Plaintiff and should therefore be promptly administered. The Division of Criminal Justice—after reading the memo—immediately wrote on January 30, 2020 (just 2 days after the date of Quest's memorandum)<sup>1</sup> that no criminal activity was indicated.

Undeterred, and still refusing to even discuss Plaintiff's request for his Protected Health Information, Quest threatened to **personally** sanction the seventy-year

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<sup>1</sup> Plaintiff did not learn of Quest's criminal communications until several months later when informed by a third party in April of 2020.

old stroke survivor if he continued to seek the required Protected Health Information in his record set at Quest, which would indicate whether the expensive and time-consuming blood tests were properly ordered for him (and, if so, by which medical prescriber(s)), and should therefore be administered.

**QUEST DELIBERATELY JEOPARDIZES THE HEALTH  
AND SAFETY OF NEW JERSEY MEDICAL PATIENTS  
PURSUANT TO ITS COMPANY WIDE POLICY THAT OPENLY  
REFUSES TO ADDRESS ITS ACKNOWLEDGED AND ONGOING  
SYSTEMIC MISDIRECTED LAB TEST NOTIFICATIONS THAT DEPRIVE  
COUNTLESS PATIENTS OF CRITICAL LAB TESTS WHILE DIRECTING  
OTHERS TO APPEAR AT A QUEST LABORATORY TO UNDERGO  
AND PAY FOR TESTS THAT WERE NOT ORDERED FOR THEM**

QUEST DIAGNOSTICS INCORPORATED ("**Quest**")

knowingly and deliberately jeopardizes the health and safety of thousands of New Jersey medical patients pursuant to its company wide policy that openly refuses to address its acknowledged and ongoing systemic misdirected lab test appointment notifications (as openly acknowledged by Quest in an audiotaped October 29, 2029 telephone call) that thereby apparently deprive countless patients of critical lab tests while subjecting other patients to anxiously search which prescribers—*if any*—may have prescribed the noted lab tests and wrongly directing them to appear at a Quest test laboratory to undergo tests that may never have been ordered for them.

Quest announced its company wide policy by which it flatly refuses to take any remedial action with regard

to what it **openly acknowledges** as its ongoing systemic misdirection of countless lab test appointment notifications ("**Misdirected Notifications**") in an audiotaped telephone call on October 29, 2019. The Misdirected Notifications falsely inform recipients ("**recipients**") that lab tests were ordered for them and directs them to appear at a Quest lab for an appointment to undergo and pay for tests that were **not** ordered for them while, upon information and belief, failing to provide any notification to the actual patients for whom those lab tests had in fact been ordered ("**non-recipients**").

Quest thereby deprives non-recipients of the critical lab tests that have been ordered for them while causing recipients of Misdirected Notifications to (i) anxiously contact multiple prescribers in what may be a futile effort to ascertain which prescriber(s)—*if any*—had actually ordered the subject lab tests for them and thereby refrain from undergoing critical lab tests and/or (ii) present themselves at the noted Quest lab to undergo and pay for tests that may not have been ordered for them.

Significantly, despite multiple mailed, electronic, website-generated, and telephonic requests for specific Protected Health Information ("**PHI**") concerning the lab tests apparently ordered for Plaintiff along with the identity of the medical prescriber(s) who ordered those tests, Quest refused to (i) provide Senior Citizen and stroke victim John Sacchi ("**Consumer**" or "**Plaintiff**") the PHI in his record set at Quest that would definitively

indicate whether the subjects tests had in fact been ordered for him and, if so, by which of his medical prescriber(s); (ii) refused to alert the actual patient for whom the tests may have been ordered; and (iii) refused to take any remedial action to prevent or minimize its acknowledged issuance of future Misdirected Notifications and to change its existing policy by which it fails to provide Misdirected Notifications' recipients and non-recipients the required Protected Health Information needed to ensure they undergo and pay for all lab tests actually ordered for them by his or her treating prescribers and refrain from undergoing and paying for tests that had **not** been so ordered.

Instead, as evidenced by an audiotaped telephone call of October 29, 2019,<sup>2</sup> Quest simply repeats its company wide policy of refusing to inform patients who received Misdirected Notifications ("**recipients**") of the patients' Protected Health Information contained in their record set at Quest that would resolve whether the subject lab tests had in fact been ordered for them and, if so, the identity of the prescriber(s). Quest, moreover, refuses to inform the actual patients who should have received the

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<sup>2</sup> The United States Department of Health and Human Services' Office for Civil Rights ("**OCR**"), Eastern & Caribbean Region, is evaluating a parallel prospective administrative action against Quest (HIPAA Complaint Reference Number 20-378578). Plaintiff informed OCR that the audiotaped telephone call will be provided to OCR upon receipt from Quest pursuant to Quest's discovery obligations in connection with the instant action in an effort to facilitate OCR's work.

Misdirected Notifications ("**non-recipients**") and thereby leaves them bereft of the prescribed lab tests.

Quest, unfortunately, has proven it will take no action unless ordered by a court despite its farcical public claim that it has "enhance[d the] patient experience [with] improved . . . appointment scheduling." SEC Form 10-K, Dec. 31, 2018, at 6. And because few consumers have the wherewithal to pursue the matter in a judicial forum against a worldwide corporation, Quest essentially enjoys little chance of being held accountable in the absence of a class action proceeding.

**NEW JERSEY'S CONSUMER FRAUD ACT PROVIDES FOR  
TREBLE DAMAGES, ATTORNEYS' FEES, AND MULTIPLE  
PENALTIES OF \$20,000.00 FOR EACH VIOLATION**

Fortunately, the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-2.2 et seq. ("**NJCEFA**") provides for, *inter alia*, treble damages, attorneys' fees, penalties of \$10,000.00 for the first violation and \$20,000.00 for the second and every subsequent violation, and enhanced damages for violations perpetrated against Senior Citizens and/or persons suffering from a disability including a \$30,000.00 penalty for a scheme perpetrated against such vulnerable consumers. Consumer is a Senior Citizen and receives medical care following his cerebral vascular accident, or "stroke," which he suffered prior to the actions detailed herein.

Quest has apparently perpetrated its company wide policy against thousands, if not millions, of consumers in New Jersey as Quest likely constitutes the most used test laboratory by licensed prescribers in New Jersey given its public statement that it "is the world's leading provider of diagnostic information services." SEC Form 10-K, Dec. 31, 2018, at 1.

Consumer, individually and on behalf of the Class defined below, brings this action for damages, restitution, statutory damages, punitive damages, sanctions, interest, court costs, attorneys' fees, and injunctive relief for Quest's wrongdoing. Plaintiff demands a trial by jury, and complains and alleges as follows:

#### INTRODUCTION

1. Defendant QUEST DIAGNOSTICS INCORPORATED ("**Defendant**," "**Quest**," or "**Company**") is a corporation incorporated in Delaware and headquartered in New Jersey. Defendants operate test laboratories ("**labs**") throughout, *inter alia*, New Jersey, which includes Quest's lab in Red Bank (Monmouth County), New Jersey where Quest communications directed Consumer to undergo and pay for his putative lab tests.

2. Plaintiff brings this action to challenge the Company's deliberate company-wide policies of (i) refusing to provide the required Protected Health Information ("**PHI**") contained in patients' record set at Quest that is needed to ascertain whether any pending lab tests have in

fact been ordered and remain uncompleted for patient as indicated in apparent "Misdirected Notifications" (term defined *supra*); and (ii) refusing to repair its lab test notification system in order to prevent and/or promptly correct future Misdirected Notifications.

3. All of the claims asserted herein arise out of Company's common practice and arise from a common fact pattern as to each member of the Class defined below.

#### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the Defendants in this action because their actions and omissions complained of herein occurred in and/or were targeted to cause damages in Monmouth County. This Court also has jurisdiction over the Defendants in this action because Quest is headquartered in New Jersey and Quest markets and sells the subject lab services in Monmouth County.

5. Venue is proper in Monmouth County in that the acts and omissions complained of, and the resulting damages, (i) occurred in Monmouth County where Quest apparently falsely directed Consumer to undergo lab tests at its facility in Red Bank, New Jersey and (ii) concern multiple violations of the New Jersey Consumer Fraud Act.

6. The total amount of all relief at issue is less than five million dollars (\$5,000,000.00) and the total amount of relief at issue for any individual Class Member, including the Named Plaintiff, is less than seventy-five thousand dollars (\$75,000.00).

**THE PARTIES**

7. Plaintiff ("**Plaintiff**") is a Senior Citizen adult male stroke survivor and Medicare beneficiary who received multiple apparent Misdirected Notifications for lab tests from Quest that directed him to present himself at a Quest laboratory located in Red Bank (Monmouth County), New Jersey to undergo and pay for lab tests that may not have been ordered by one or more of his treating prescribers.

8. Defendant Quest ("**Defendant,**" "**Quest,**" or "**Company**") is incorporated in Delaware and headquartered in New Jersey.

9. Except as described herein, Plaintiff is ignorant of the true names of Defendants sued as Does 1 through 10, inclusive, and the nature of their wrongful conduct, and therefore sues the Doe Defendants by such fictitious names. Plaintiff will seek leave of the Court to amend this complaint to allege their true names and capacities when ascertained.

10. At all times herein mentioned, Quest, and the Doe Defendants, and each of them, were an agent or joint venturer of each of the other, and in doing the acts alleged herein, were acting within the scope of such agency. Each Defendant had actual and/or constructive knowledge of the acts of each of the other Defendants, and ratified, approved, joined in, acquiesced and/or authorized the wrongful acts of each co-Defendant, and/or retained the benefits of said wrongful acts.



11. Defendants, and each of them, aided and abetted, encouraged and rendered substantial assistance to the other Defendants in committing the wrongful acts alleged herein. In taking action, as particularized herein, to aid and abet and substantially assist the commission of these wrongful acts and other wrongdoing complained of, each of the Defendants acted with an awareness of its primary wrongdoing and realized that its conduct would substantially assist the accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.

12. At all times herein mentioned, Defendants conspired by means of mutual understanding, either expressly or impliedly, among themselves and others in engaging and/or planning to engage in the activities detailed herein to accomplish the wrongful conduct, wrongful goals, and wrongdoing.

#### **FACTUAL ALLEGATIONS**

13. On or about October 21, 2019, Plaintiff received a notification from Quest with unique Confirmation Code NGHSEK (apparent "**Misdirected Notification**") informing him that he had a scheduled appointment for several critical lab tests (a tuberculosis test and glucose tolerance testing) at the Quest laboratory in Red Bank (Monmouth County), New Jersey later that month (attached hereto as **Exhibit A**).<sup>3</sup>

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<sup>3</sup> Plaintiff had scheduled an appointment at Quest during the prior month of September 2019 and subsequently presented himself at the Quest facility that month along with an

14. Because Plaintiff, a Senior Citizen Medicare beneficiary and stroke victim, was unaware whether one or more of his numerous treating prescribers in fact ordered the specified lab tests for him, Plaintiff commenced his multi-month and still ongoing effort to ascertain whether one or more of his treating prescribers had in fact ordered the tests. Plaintiff also was concerned that the Quest system may have automatically generated those two tests based on the results of the lab tests that had been processed during his September 2019 appointment.

15. Plaintiff made extensive efforts to ascertain whether any of his numerous treating prescribers in fact ordered the specified lab tests for him, but no prescriber has thereby been identified.

16. Plaintiff made multiple electronic, website-based, telephonic, and written entreaties to Quest in order to ascertain whether the subject lab tests had in fact been ordered for him<sup>4</sup> and—despite using an attorney (who also is his healthcare proxy and spouse) to pursue the matter directly with Quest (attached hereto as **Exhibit B**)—Plaintiff still remains uncertain whether any of his numerous treating prescribers in fact ordered the specified

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order for multiple lab tests he had received from a medical prescriber. His medical prescriber also faxed an additional lab test to that Quest facility in September 2019.

<sup>4</sup> Laboratories, including Quest, are mandated by, *inter alia*, the HIPAA Privacy Rule to provide all PHI, which includes not only test results, but also "test orders" themselves and associated "ordering provider information." See Comment & Response to HIPAA Privacy Rule revision, 79 Fed. Reg. 25, at 7295 (Feb. 6, 2014).

lab tests for him and, if so, the identity of the treating prescriber(s). ***That question would be definitively answered by Quest's simple provision of Plaintiff's Protected Health Information in his record set at Quest, which encompasses laboratory tests ordered for Plaintiff and the respective medical prescriber(s) who ordered same, and which Quest is required to do by, inter alia, the HIPAA Privacy Rule.*** Quest, however, simply sent a second notification later in October 2019 for the same two lab tests to Plaintiff. After Plaintiff waited three months with no further response—and thereby was forced to incur the time, expense, and effort of filing an earlier action—Quest responded by writing a surreptitious memorandum to the New Jersey Attorney General's Division of ***Criminal Justice*** in Quest's ongoing effort to shirk its plain obligations under, *inter alia*, the HIPAA Privacy Rule.

Incredibly, rather than simply provide the required Protected Health Information, Quest made false statements to the Division of Criminal Justice in Quest's effort to manufacture a criminal case against Plaintiff. Quest's memorandum was dated January 28, 2020. The Division of Criminal Justice—after reading the memo—immediately wrote on January 30, 2020<sup>5</sup> that no criminal activity was indicated.

Undeterred, and still refusing to even discuss Plaintiff's request for his required Protected Health

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<sup>5</sup> Plaintiff did not learn of Quest's criminal communications until months later when informed by a third party in April of 2020.

Information, Quest threatened to **personally** sanction the seventy-year old stroke survivor if he continued to seek the required Protected Health Information in his record set at Quest, which would indicate whether the expensive and time-consuming blood tests were in fact ordered for him (and, if so, by which medical prescriber(s)), and should therefore be administered.

a. **Quest admitted in writing that it never provided Plaintiff the requested Protected Health Information even though Quest recognized the applicable dictates of "HIPAA regulations," including specifically the HIPAA Privacy Rule.** Quest Memorandum of Michael R. Hensley and Ross A. Fox, Jan. 28, 2020, at 2.

17. Plaintiff accordingly has not undergone the subject lab tests that may in fact have been ordered for him. Plaintiff's medical treatment therefore may be critically deficient due to the absence of the noted lab test results and his unidentified treating prescribers' putative incorrect belief that Plaintiff knowingly refused to undergo tests that had in fact been ordered for him.

18. If the subject lab tests in the Misdirected Notification received by Plaintiff had in fact been ordered for a different Quest patient, meanwhile, that prospective Class Member apparently remains unaware that a treating prescriber had ordered those tests for him or her because that Class Member is a non-recipient of the Misdirected Notification referencing the subject tests.

19. Plaintiff, moreover, would similarly be unaware that other lab tests had been ordered for him by one or more of his treating prescribers in the event that Quest sent notice thereof in other Misdirected Notifications to a different Quest patient that wrongly informed that prospective Class Member that the subject tests had been ordered for him or her.

20. As Quest freely acknowledges, Plaintiff is not the sole individual who has received a Misdirected Notification from Quest: ***Quest openly stated in an audiotaped October 29, 2019 telephone call*** that Misdirected Notifications are a frequent occurrence as they can occur due to an error in merely one character of a telephone number and/or electronic-mail address (which Quest apparently uses to identify patients in its appointment scheduling system for lab tests). See Exhibit B.

21. Incredibly, Quest's company wide policy, as confirmed by its Patient Team Representative and her supervisor in a recorded telephone call on October 29, 2019, refuses to inform Misdirected Notifications' recipients and non-recipients of their Protected Health Information, which is needed to ensure that each patient undergo and pay for all lab tests actually ordered by his or her treating prescriber(s) and refrain from undergoing and paying for tests that had **not** been so ordered. Quest refused to change its company wide policy despite the Plaintiff's provision of his Misdirected Notification's Confirmation Code and explanation that countless patients

may thereby be deprived of crucial lab tests that had been ordered for them by treating prescribers while others may undergo tests that had not in fact been ordered for them. See Exhibit B.

22. Defendants deliberately refuse to repair its apparently malfunctioning lab test notification system and refuse to change its company wide policy that refuses to provide accurate information to Misdirected Notifications' recipients and non-recipients, which subjects Plaintiff and all other Class Members to new and recurring injuries as either (i) a recipient and/or (ii) non-recipient of future Misdirected Notifications given Quest's open acknowledgement that its appointment scheduling system commonly generates such Misdirected Notifications and Quest's public statement that it "is the world's leading provider of diagnostic information services." SEC Form 10-K, Dec. 31, 2018, at 1. Quest's conduct is particularly egregious in light of Plaintiff's detail to Quest of how simply Quest could move to rectify the issue:

As we discussed when we spoke weeks ago, Plaintiff's needs an accurate explanation of which licensed medical provider(s)--if any--prescribed the noted lab tests. Quest has refused a substantive response despite multiple written, telephonic, and electronic inquiries and now in response to a filed action. As noted, neither [Plaintiff] nor I ordered those tests nor scheduled their Oct. 28 date. Yes, we scheduled an appointment for several tests in Sept. 2019 that did NOT encompass the two specified tests (the Complaint does not currently allege that Quest sent Misdirected Notifications to e-mail addresses that were not initially present in Quest's prescriber database). To date, none of [Plaintiff's] licensed medical providers has indicated s/he was the source of the prescribed tests. As we further discussed and as also detailed in the Complaint, Quest's customer service rep and her supervisor similarly refused to research the matter in accordance with apparent Quest policy, which ascribes the issue to routine Misdirected Notifications caused by errors in a single character of e-mail or

telephone numbers, which, if accurate, indicates the compelling need for a class action to properly inform patients of ordered tests and enact safeguards to minimize further Misdirected Notifications and patients' wrongly undergoing invasive, time consuming, and expensive tests (glucose tolerance testing, for one, requires a multi-hour presence at the Quest lab while multiple venipunctures are made). Any individual consumer is simply ignored or, if he seeks judicial resolution, is personally threatened with a sanctions motion for purported extortion.

### CLASS ACTION ALLEGATIONS

23. Plaintiff brings this action on behalf of himself and all persons similarly situated pursuant to Rule 4:32 of the New Jersey Rules of Court. This action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of the Rule. The Class is defined as follows:

All individuals who, commencing six years before the filing of this action, (i) received one or more notifications ("**recipient**") for one or more tests at one or more Quest locations in New Jersey for which no order had been made by a licensed treating prescriber for the respective recipient; and/or (ii) received one or more notifications ("**recipient**") for one or more tests at one or more Quest locations in New Jersey for which Quest failed to inform the recipient of the identity of the licensed treating prescriber who ordered the test(s); and/or (iii) failed to receive ("**non-recipient**") one or more notifications for one or more tests at one or more Quest locations in New Jersey for which a prescription had been ordered by

a licensed treating prescriber for the respective non-recipient. Excluded from the Class are:

(1) employees of the Defendants, including their officers or directors; (2) Defendants' affiliates, subsidiaries, or co-conspirators; and (3) the Court to which this case is assigned.

24. Plaintiff does not know the exact number of Class members because such information is in the exclusive control of the Defendants. However, Plaintiff believes that due to the widespread use of Quest labs by licensed prescribers in New Jersey, Class members are sufficiently numerous, most likely many thousands of consumers, and geographically dispersed throughout New Jersey, such that joinder of all Class members is impracticable. The information as to the identity of the Class members can be readily determined from records maintained by the Defendants, because all lab test orders were written and recorded in Defendants' paper and electronic records and are contained within the respective Class member's medical record set of Protected Health Information maintained by Quest.

25. Plaintiff's claims are typical of, and not antagonistic to, the claims of the other Class members because Plaintiff was injured by Defendants' practices and by asserting his claims, Plaintiff will also advance the claims of all members of the Class who were damaged by the same wrongful conduct of Defendants and their co-



conspirators as alleged herein, and the relief sought is common to the Class.

26. The common legal and factual questions which do not vary from Class member to Class member, and which may be determined without reference to individual circumstances of any Class member, include, but are not limited to, the following:

a. Did Defendants deliberately and systemically refuse to provide recipients and non-recipients of past Misdirected Notifications with accurate information as to whether the subject lab tests had in fact been ordered for Class Members and, if so, the identity of the prescribers?

b. Did Defendants deliberately and systemically refuse to undertake remedial action to prevent future wrongful conduct by repairing its lab test notification system and thereby preventing and/or promptly correcting future Misdirected Notifications and provide recipients and non-recipients of Misdirected Notifications with accurate information as to whether lab tests had in fact been ordered for Class Members and, if so, the identity of the prescribers?

c. Did Defendants deliberately and systemically fail to properly process purported patient billings with third-party payors including, e.g., Medicare, Medicaid and private

healthcare coverage plans and programs, such that patients were wrongly billed for amounts that would have otherwise been remitted by one or more third-party payors?

d. What is the appropriate measure of damages for Defendants' wrongful conduct?

e. Was Defendants' policy deliberate such that punitive damages may be awarded? and

f. Are Plaintiff and the Class Members entitled to the injunctive and equitable relief requested herein to (i) force Quest to provide accurate information to all recipients and non-recipients of past Misdirected Notifications and (ii) force Quest to repair its lab test notification system and thereby prevent and/or promptly correct future Misdirected Notifications?

27. These common questions and others predominate over questions, if any, that affect only individual members of the Class.

28. The claims of the representative Plaintiff are typical of the claims of the Class. There are no material conflicts with any other member of the Class that would make class certification inappropriate. Plaintiff and counsel will fairly and adequately represent the interests of the Class.

29. A class action is superior to other available methods for the fair and efficient adjudication of this

controversy because individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome on the courts if individual litigation of numerous cases would proceed. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented in this Complaint, presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

30. Prosecution of separate actions by individual Class members would create the risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for the Defendants, and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues.

31. Injunctive relief is appropriate as to the Class as a whole because Defendants have acted or refused to act on grounds generally applicable to the Class.

32. Whatever difficulties may exist in the management of the class action will be greatly outweighed by the benefits of the class action procedure, including, but not limited to, providing Class members with a method for the redress of claims that may otherwise not warrant individual litigation: Individual consumers typically lack the resources, ability, and knowledge to legally pursue their respective remedy after Quest's wrongdoing and the relatively small amounts at issue would not warrant an

attorney's involvement on an isolated claim. Accordingly, if a class were not certified, the alternative to a class action would be not be multiple individual actions, but rather **no actions** and Company would thereby have succeeded in committing—and continuing to commit—its wrongdoing with legal impunity.

### CAUSES OF ACTION

#### AS AND FOR A FIRST CAUSE OF ACTION

#### **(Violation of New Jersey Consumer Fraud Act, N.J.S.A. 56:8-2.2 et seq. ("NJCFA"))**

33. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

34. Defendants deliberately refused to provide Plaintiff with the Protected Health Information contained in his medical record set at Quest, which encompasses the laboratory tests ordered for Plaintiff and the respective medical prescriber(s) who ordered same. That information would confirm whether, in fact, Plaintiff had uncompleted orders for the tuberculosis and glucose tolerance tests as had been indicated in multiple communications from Quest and, if so, the identity of the medical prescriber(s) who had ordered same. Laboratories, including Quest, are mandated by, *inter alia*, the HIPAA Privacy Rule to provide all PHI, which includes not only test results, but also "test orders" themselves and associated "ordering provider information." See Comment & Response to HIPAA Privacy Rule revision, 79 Fed. Reg. 25, at 7295 (Feb. 6, 2014).

35. Despite numerous requests made via Quest's website, electronic mail, telephone, and U.S. Mail, Quest continued to deliberately refuse to provide Plaintiff the required Protected Health Information needed to conclusively determine whether any treating prescriber(s) had in fact ordered the subject tests for him and, if so, the identity of the prescriber(s). After Plaintiff waited three months with no additional response—and thereby was forced to incur the time, expense, and effort of filing an earlier action—Quest responded by writing a surreptitious memorandum to the New Jersey Attorney General's Division of **Criminal Justice** in Quest's ongoing effort to shirk its plain obligations under, *inter alia*, the HIPAA Privacy Rule.<sup>6</sup> Incredibly, rather than simply provide the required Protected Health Information, Quest made false statements to the Division of Criminal Justice in Quest's effort to manufacture a criminal case against Plaintiff. Quest's memorandum was dated January 28, 2020. The Division of Criminal Justice—after reading the memo—immediately wrote on January 30, 2020<sup>7</sup> that no criminal activity was indicated. Undeterred, and still refusing to even discuss Plaintiff's request for his Protected Health Information, Quest threatened to **personally** sanction the seventy-year old stroke survivor if he continued to seek the required

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<sup>6</sup> 42 C.F.R. § 403.812 and 45 C.F.R. parts 160, 162 & 164 (issued pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA")).

<sup>7</sup> Plaintiff did not learn of Quest's criminal communications until months later when informed by a third party in April of 2020.

Protected Health Information in his record set at Quest, which would indicate whether the expensive and time-consuming blood tests were in fact ordered for him (and, if so, by which medical prescriber(s)), and should therefore be administered.

a. ***Quest admitted in writing that it never provided Plaintiff the requested Protected Health Information even though Quest recognized the applicable dictates of "HIPAA regulations," including specifically the HIPAA Privacy Rule.*** Quest Memorandum of Michael R. Hensley and Ross A. Fox, Jan. 28, 2020, at 2.

36. Due to Quest's wrongful conduct, Plaintiff may remain without lab results of critical tests that may severely impact his medical treatment and is relegated to continually attempting to ascertain whether any one or more of his treating prescribers had in fact ordered the subject tests for him.

37. Defendants deliberately refused to repair its lab test notification system and refuses to change its company wide policy that refuses to provide required Protected Health Information to patients impacted by Misdirected Notifications as evidenced in an October 29, 2019 audiotaped telephone call, which subjects Plaintiff to recurring injuries as either (i) a recipient and/or (ii) non-recipient of future Misdirected Notifications given Quest's public statement that it "is the world's leading provider of diagnostic information services." SEC Form 10-K, Dec. 31, 2018, at 1.

38. As a direct and proximate result of Defendants' conduct, Plaintiff has been damaged by, alternatively, failing to undergo critical lab tests that were ordered for him and necessary to his proper medical treatment or subjecting himself to undergo and pay for tests that have not in fact been prescribed for him. Plaintiff exerted, and continues to exert, considerable time and effort in his ongoing effort to ascertain whether the tests were in fact ordered for him and continues to experience potential damage to his medical health thereby along with the worry and uncertainty that would be eliminated if Quest simply provided the required Protected Health Information upon inquiry to those patients, both recipients and non-recipients, who are impacted by Misdirected Notifications, which Quest acknowledged in an October 29, 2019 audiotaped telephone call are a routine occurrence.

39. As a direct and proximate result of Defendants' conduct, Plaintiff remains subject to recurring damages from future Misdirected Notifications due to Quest's refusal to remedy its appointment scheduling system to prevent or minimize the possibility of future errors and change its company wide policy that currently refuses to provide accurate information to patients—both recipients and non-recipients—of Misdirected Notifications.

40. NJCFA provides for, *inter alia*, treble damages, attorneys' fees, penalties of \$10,000.00 for the first violation and \$20,000.00 for the second and every subsequent violation, and enhanced damages for violations perpetrated against Senior Citizens and/or persons suffering from a disability including a \$30,000.00 for a scheme perpetrated against such vulnerable consumers.

41. Plaintiff is a Senior Citizen who suffered a cerebral vascular accident and has been receiving medical treatment for his "stroke" prior to receipt of the Misdirected Notifications.

42. NJCFA imposes personal liability<sup>8</sup> upon individuals who violate the statute notwithstanding their having purported to contract solely in the corporate entity's name.

43. Plaintiff also seeks injunctive relief (i) requiring Quest to inform Plaintiff whether the subject lab tests had in fact been ordered by a treating prescriber for him and, if so, the identity of the prescriber(s); (ii) requiring Quest to inform him whether any other tests had been ordered for him and the identity of the respective prescriber(s) but for which he did not receive a Misdirected Communication; (iii) requiring Quest to repair its lab test notification system and thereby prevent and/or promptly correcting future Misdirected Notifications.

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<sup>8</sup> Gennari v. Weichert Co. Realtors, 148 N.J. 582 (1997).



**AS AND FOR A SECOND CAUSE OF ACTION**

**(Violation of the HIPAA Privacy Rule)<sup>9</sup>**

44. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

45. Defendants knowingly refused to provide Plaintiff the required Protected Health Information within thirty days of request as mandated by the HIPAA Privacy Rule. Recipients and non-recipients of Misdirected Notifications need their Protected Health Information to ascertain whether the subject lab tests have in fact been ordered for them by a medical prescriber. Defendants refuse to provide Protected Health Information despite Plaintiff's numerous entreaties and Quest's acknowledgment that countless patients remain in receipt of Quest communications directing them to undergo and pay for lab tests that had not been ordered and/or remain falsely assured that no Quest lab tests have been ordered by the patient's treating prescriber(s) as evidenced in an audiotaped Oct. 29, 2019 telephone call.

46. Defendants deliberately refuse to repair its lab test notification system and refuse to change its company wide policy that refuses to provide Protected Health

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<sup>9</sup> The United States Department of Health and Human Services' Office for Civil Rights ("**OCR**"), Eastern & Caribbean Region, is evaluating a parallel prospective administrative action against Quest (HIPAA Complaint Reference Number 20-378578). Plaintiff informed OCR that the audiotaped telephone call will be provided to OCR upon receipt from Quest pursuant to Quest's discovery obligations in connection with the instant action in an effort to facilitate OCR's work.

Information to patients impacted by Misdirected Notifications, which subjects Plaintiff to recurring injuries as either (i) a recipient and/or (ii) non-recipient of future Misdirected Notifications given Quest's open acknowledgement that its appointment scheduling system commonly generates such Misdirected Notifications and Quest's public statement that it "is the world's leading provider of diagnostic information services." SEC Form 10-K, Dec. 31, 2018, at 1.

47. As a direct and proximate result of Defendants' conduct, Plaintiff and Class members have been damaged.

**AS AND FOR A THIRD CAUSE OF ACTION**

**(Negligence *Per Se*)**

48. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

49. Defendants breached, and continue to breach, the statutory duty they owe to Plaintiff and other prospective Class members to provide the Protected Health Information as required by the HIPAA Privacy Rule and implementing regulations that is needed to ascertain whether subject lab tests had in fact been ordered for the patient and, if so, the identity, of the associated medical prescriber(s), for both recipients and non-recipients impacted by Misdirected Notifications.

50. Defendants breached, and continue to breach, the statutory duty they owe to Plaintiff.

51. Defendants' breach of this statutory duty constitutes negligence *per se*.

52. As a direct and proximate result of Defendants' conduct, Plaintiff and Class members have been damaged.

**AS AND FOR A FOURTH CAUSE OF ACTION**

**(Negligence)**

53. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

54. Defendants breached, and continue to breach, the duty they owe to Plaintiff to conduct its appointment scheduling system in a manner that minimizes the possibility of Misdirected Notifications and change its company wide policy that refuses to provide Protected Health Information as required by the HIPAA Privacy Rule<sup>10</sup> to patients, both recipients and non-recipients, impacted by Misdirected Notifications who need the information to ascertain whether in fact such tests had been ordered for them and should be administered.

55. Defendants breached, and continue to breach, the duty they owe to Plaintiff to provide him accurate information—including whether the tests were in fact ordered for Plaintiff and, if so, the identity of his treating prescriber(s) who ordered same.

56. Defendants breached, and continue to breach, the duty they owe to Plaintiff to minimize the

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<sup>10</sup> E.g., Byrne v. Avery Center for Obstetrics and Gynecology, P.C., 327 Conn. 540, 570 (2018) (HIPAA and its implementing regulations inform the applicable standard of care owed to patients in matters encompassed therein in the context of civil negligence actions).

possibility of future Misdirected Notifications by repairing its appointment scheduling system and changing its existing company wide policy of failing to provide accurate information to patients, both recipients and non-recipients, of Misdirected Notifications.

57. As a direct and proximate result of Defendants' conduct, Plaintiff and Class members have been damaged.

**AS AND FOR A FIFTH CAUSE OF ACTION**

**(Breach of Contractual Covenant of Good Faith and Fair Dealing)**

58. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

59. Defendants breached, and continue to breach, the contractual covenant of good faith and fair dealing they owed to Plaintiff, which required them to respond with clarification of purported lab tests he was directed to take by Quest communications. Quest breached this duty by failing to simply access Plaintiff's records at Quest after Plaintiff made multiple requests, ***which records would have definitely indicated whether Plaintiff indeed had the ordered, but unprocessed, lab tests of tuberculosis testing and glucose tolerance testing.*** Quest refused to access and provide his records and instead made false statements to criminal authorities in an effort to manufacture a criminal prosecution against Plaintiff and then threatened to personally sanction Plaintiff if he did not cease demanding such information. Defendants breached the duty they owe to Plaintiff to conduct its appointment scheduling system in a manner that minimizes

the possibility of Misdirected Notifications and change its company wide policy that refuses to provide accurate information to patients, both recipients and non-recipients, impacted by Misdirected Notifications.

60. Defendants breached, and continue to breach, the duty they owe to Plaintiff to provide him accurate information—including whether the tests were in fact ordered for Plaintiff and, if so, the identity of his treating prescriber(s) who ordered same.

61. Defendants breached, and continue to breach, the duty they owe to Plaintiff to minimize the possibility of future Misdirected Notifications by repairing its appointment scheduling system and changing its existing company wide policy of failing to provide accurate information to patients, both recipients and non-recipients, of Misdirected Notifications.

62. As a direct and proximate result of Defendants' conduct, Plaintiff and Class members have been damaged.

**AS AND FOR A SIXTH CAUSE OF ACTION**

**(Breach of Contract To  
Process Payments from Third Parties)**

63. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

64. Defendants breached, and continue to breach, the contractual duty they owe to Plaintiff to submit his purported charges for Quest services to Medicare and his supplemental health insurance policy. Plaintiff's policies have always covered all charges for Plaintiff's

annual physical and left him with a zero balance owed to Quest.

65. In its invoice number 197256843 dated March 5, 2020, Quest demanded money from Plaintiff upon the completion of his laboratory tests in September 2019 and threatened to pursue collection activity and report a purported "non-payment" to credit rating bureaus if such money were not remitted.

66. Plaintiff wrote Quest by electronic mail and U.S. mail on March 16, 2020 for an explanation of why he purportedly owed money uniquely for his 2019 annual physical labs, whereas his previous annual physicals have always resulted in a zero balance after Quest complied with its contractual duty to process the charges through Plaintiff's third-party payors Medicare and his supplemental health insurance policy.

67. Plaintiff advised Quest that the apparently improper billing may be related to the computer issues that indicated Plaintiff had been ordered to undergo a tuberculosis test and glucose tolerance testing that none of his medical prescribers to date has stated had been ordered for Plaintiff. Plaintiff was concerned that such tests were not part of an annual physical and therefore may not be covered by Medicare and/or his supplemental healthcare policy. Plaintiff wrote to Quest (emphasis added):

[Plaintiff] hopes that Quest's research of the dubious charges may facilitate **identification of [his] medical licensed prescribers, if any, who may have ordered the noted tests.** Or, as appears increasingly likely, Quest may identify the computer virus that wrongly directed [Plaintiff] to appear at a Quest facility to undergo and pay

for tests that had not been ordered by any one or more of his licensed medical prescribers.

68. Quest never responded as of the date of this filing.

69. Defendants breached, and continue to breach, the contractual duties they owe to Plaintiff (i) to process his purported Quest charges through his third-party payors and demand money from Plaintiff only if the third-party payors have properly denied payment thereof, and (ii) respond to Plaintiff's requests for assurance that purported charges were properly processed and confirmation, if true, that a balance remains.

70. Defendants breached, and continue to breach, the duty they owe to Plaintiff to minimize the possibility of future Misdirected Notifications by repairing its appointment scheduling system and changing its existing company wide policy of failing to provide accurate information to patients, both recipients and non-recipients, of Misdirected Notifications.

71. As a direct and proximate result of Defendants' conduct, Plaintiff and Class members have been damaged by Quest's apparently improper requirement that patients pay a purported balance that, upon information and belief, would have been eliminated by third-party payor payments if Quest had properly processed all purported charges through patient's third-party payors as contractually required.

WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

**PRAYER FOR RELIEF**

1. Certification of the proposed Class and notice and claims administration to be paid by Defendants;
2. Statutory damages and penalties;
3. Compensatory, general, incidental, and consequential damages according to proof;
4. Special damages according to proof;
5. Punitive damages to punish Defendants for their willful illegal and deliberate tortious conduct and to deter others who may otherwise engage in similar willful illegal and deliberate conduct;
6. Restitution and disgorgement according to proof;
7. Injunctive relief against Defendants, and each of them, (a) to prevent future wrongful conduct by repairing its lab test notification system and thereby preventing and/or promptly correcting future Misdirected Notifications and (b) to require Defendants to inform all respective Class Members (i) of which Quest notifications were misdirected to the Class Members and/or never received by the intended Class Member including the associated prescribers for the subject prescriptions, (ii) the identity of the prescriber who ordered one or more tests for which Quest had sent a notification to patient but never informed the patient of the prescriber's identity, and (iii) the actual amount owed as payment for all properly ordered tests after complete processing by Quest with all third-party payors;
8. Prejudgment interest at the maximum legal rate;



9. Costs of the proceedings herein;
10. Reasonable attorneys' fees; and
11. All such other and further relief as the Court deems just but the entirety of any and all relief will be less than five million dollars (\$5,000,000.00) and the total amount of relief for any individual Class Member, including the Named Plaintiff, will be less than seventy-five thousand dollars (\$75,000.00).

Dated: May 12, 2020

Respectfully submitted,

By: /s/\_\_\_Stephen J. Simoni\_  
STEPHEN J. SIMONI  
StephenSimoniLAW@gmail.com

**SIMONI CONSUMERS**

**CLASS ACTION LAW OFFICES**

c/o Jardim, Meisner &

Susser, P.C.

30B Vreeland Road, Ste. 100

Florham Park, NJ 07932

Telephone: (917) 621-5795

*Counsel for Plaintiff and  
the Proposed Class*

**DEMAND FOR JURY TRIAL**

Plaintiff on behalf of himself and all others similarly situated hereby requests a jury trial on all claims so triable.

Dated: May 12, 2020

Respectfully submitted,

By: /s/\_\_\_Stephen J. Simoni\_  
STEPHEN J. SIMONI  
StephenSimoniLAW@gmail.com

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Florham Park, NJ 07932

Telephone: (917) 621-5795

*Counsel for Plaintiff and  
the Proposed Class*

**RULE 4:5-1 CERTIFICATION**

In accordance with Rule 4:5-1, I hereby certify that the matter in controversy is related to an ongoing investigation of HIPAA Complaint Reference Number 20-378578 by the United States Department of Health and Human Services' Office for Civil Rights ("**OCR**"), Eastern & Caribbean Region. OCR has been informed that the instant action would be filed and that discovery obtained pursuant to the instant action and needed for OCR's investigation would be provided to them. I further certify that I am unaware of any other party who should be joined in this action at this time. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change of facts stated in this original certification.

Dated: May 12, 2020

Respectfully submitted,

By: /s/\_\_\_Stephen J. Simoni\_  
STEPHEN J. SIMONI  
StephenSimoniLAW@gmail.com

**SIMONI CONSUMERS**

**CLASS ACTION LAW OFFICES**

c/o Jardim, Meisner &  
Susser, P.C.

30B Vreeland Road, Ste. 100  
Florham Park, NJ 07932  
Telephone: (917) 621-5795

*Counsel for Plaintiff and  
the Proposed Class*

# **EXHIBIT A**



Stephen Simoni LAW OFFICES <stephensimonilaw@gmail.com>

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## Re: Other

1 message

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**Stephen Simoni LAW OFFICES** <stephensimonilaw@gmail.com>

Wed, Oct 23, 2019 at 2:24 PM

Reply-To: StephenSimoniLAW@gmail.com

To: MyQuestSupport <MyQuestSupport@questdiagnostics.com>

Bcc: Stephen Simoni <stephensimoni@yahoo.com>

Here is the Message I received from Quest. Please call to advise which MD Ordered the two tests and who scheduled the appointment date of Oct. 28. MY PHONE : (917) 621-5795



---

## Hi John,

We look forward to seeing you at your upcoming Quest Diagnostics appointment. Please arrive on time to have the best experience possible.

The code below will speed up your check-in process. If your location has self check-in, scan it at the kiosk and take a seat. You'll be called when it's your turn.

# Appointment Reminder

If your location offers self check-in, scan this code when you arrive. You can scan from your phone or a printed copy.

### Confirmation Code

NGHSEK

### Date and Time

Monday, October 28, 2019  
01:30 PM EDT

### Location

240 Maple Ave  
Red Bank, NJ 07701-1731

[Change or cancel your appointment](#)



Add this appointment to your calendar with the email attachment.

*Stephen J. Simoni, Esq., C.P.A., R.N.*

**SIMONI CONSUMERS**  
**CLASS ACTION LAW OFFICES**  
% Jardim, Meisner & Susser, P.C.  
30B Vreeland Road, Suite 100  
Florham Park, NJ 07932  
[\(917\) 621-5795](tel:9176215795)  
[StephenSimoniLAW@Gmail.com](mailto:StephenSimoniLAW@Gmail.com)  
ADMITTED IN CA, NY, NJ, & MA (ret.)

On Wed, Oct 23, 2019 at 3:04 PM MyQuestSupport <[MyQuestSupport@questdiagnostics.com](mailto:MyQuestSupport@questdiagnostics.com)> wrote:

Thank you for contacting Quest Diagnostics.

We are unable to locate a MyQuest account using the information provided.

If you have registered for a MyQuest account, please provide us with the information below to further assist you.

- **Full Name:**
- **Date of Birth:**
- **E-mail address used to register your MyQuest account:**

If you have not previously registered for a MyQuest account, please visit [www.myquest.questdiagnostics.com](http://www.myquest.questdiagnostics.com) and select **CREATE ACCOUNT** to register.

MyQuest Support - MYQ108 | Action from Insight | 500 Plaza Drive | Secaucus, NJ 07094 | <https://myquest.questdiagnostics.com>

**From:** StephenSimoniLAW@gmail.com <StephenSimoniLAW@gmail.com>  
**Sent:** Monday, October 21, 2019 2:05 PM  
**To:** MyQuestSupport <MyQuestSupport@questdiagnostics.com>  
**Subject:** Other

**First Name:** John  
**Last Name:** Sacchi  
**Phone Number:** (917) 621-5795

I just received your notification for TWO additional tests on Oct. 28, but my Doctor's Office (Dr. Mahir Maniar) said that no tests were ordered. Which Doctor sent this Order to Quest Diagnostics? And why did Quest assign me a specific date, i.e., Oct. 28. Thank you. John Sacchi (917) 621-5795

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The contents of this message, together with any attachments, are intended only for the use of the person(s) to which they are addressed and may contain confidential and/or privileged information. Further, any medical information herein is confidential and protected by law. It is unlawful for unauthorized persons to use, review, copy, disclose, or disseminate confidential medical information. If you are not the intended recipient, immediately advise the sender and delete this message and any attachments. Any distribution, or copying of this message, or any attachment, is prohibited.

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ATT00001  
1K

# **EXHIBIT B**





## SIMONI CONSUMER CLASS ACTION LAW OFFICES

**Stephen J. Simoni, Esquire, C.P.A., R.N.**

Attorney-At-Law,\* Certified Public Accountant, Registered Professional Nurse

\*Admitted in California, New York, New Jersey, and Massachusetts (ret.)

October 29, 2019

VIA USPS PRIORITY MAIL & ELECTRONIC MAIL

Stephen H. Rusckowski, CEO (Stephen.H.Rusckowski@questdiagnostics.com)

Michael E. Prevoznik, General Counsel (Michael.E.Prevoznik@questdiagnostics.com)

Gabrielle Wolfson, Chief Information & Digital Officer

(Gabrielle.Wolfson@questdiagnostics.com)

Quest Diagnostics

500 Plaza Drive

Secaucus, NJ 07094

Dear Messrs. Rusckowski and Prevoznik and Ms. Wolfson:

RE: Proposed Nationwide Class Action for Systemic Deliberate Refusal  
To Remedy Routine Errors in Scheduling of Crucial Lab Tests (D.N.I.)

I represent Plaintiff and the proposed Class in connection with the above-referenced proposed Nationwide Class Action against, *inter alia*, Quest Diagnostics ("**Quest**") regarding its routine faulty scheduling of laboratory tests and deliberate refusal to even attempt to remedy same in accordance with apparent Quest practices and standards. Quest Diagnostics' systemic refusal to remedy its faulty scheduling systems has caused, *inter alia*, medical, personal, and financial injuries encompassing patients' missing crucial lab tests, being subjected to unnecessary lab tests, and/or engaging in the needless and entirely avoidable expenditure of time, money, and worry to contact countless prescribers in an effort to remedy the matter individually.

Briefly, my client John Sacchi ("**Mr. Sacchi**"), a Medicare beneficiary and elderly stroke victim, received e-mail notification of an appointment on October 28, 2019 in Red Bank, New Jersey for several lab tests with Confirmation Code NGHSEK. Despite multiple contacts made to Quest by Quest's website, electronic mail, and telephone, Quest refused to provide information concerning the origin of the subject

tests and whether such tests had in fact been ordered by a prescriber for Mr. Sacchi.

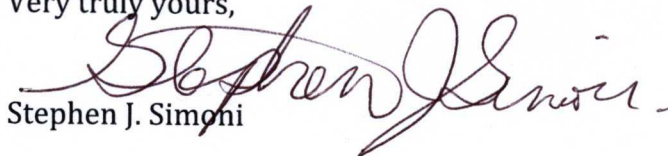
Most recently, during a recorded telephone call today at approximately 2:51 P.M. E.D.T. (866-697-8378), Quest "Patient Team" Representative Ramona and her supervisor Gita (request for their last names was refused) in Quest's Lenexa, Kansas locale deliberately refused to refer the matter to Quest's computer systems department in order to ascertain whether in fact such tests had been ordered for Mr. Sacchi and, if not, which patient may thereby be missing his or her notification of the subject crucial tests.

Significantly, Romana—after consulting with her supervisor Gita—stated that such errors ***routinely occur when one digit of a phone number or e-mail address is incorrect.*** Because Romana and Gita decided that no private medical information had been improperly disclosed (the subject of a separate class action against Quest), moreover, they refused to investigate the matter in accordance with apparent Quest practices and standards and Ramona simply stated "thank you" when informed that Mr. Sacchi would have no alternative but to pursue the matter with Quest's Systems and Legal Departments.

Kindly contact me to discuss service of process, in particular whether you will consent to accept alternative service by mail pursuant to Rule 4(d) of the Federal Rules of Civil Procedure as indicated to, *inter alia*, remedy the faulty systems and preclude recurring injuries to Class Members.

Thank you for your immediate attention to this matter.

Very truly yours,

  
Stephen J. Simoni

THIS PLACEHOLDER DOCUMENT IS BEING UPLOADED BECAUSE THE SYSTEM  
SEEMS TO REQUIRE A WORD DOCUMENT IN ORDER TO ACCEPT THE COMPLAINT.

THIS PLACEHOLDER DOCUMENT IS BEING UPLOADED BECAUSE THE SYSTEM  
SEEMS TO REQUIRE A WORD DOCUMENT IN ORDER TO ACCEPT THE COMPLAINT.

# Civil Case Information Statement

## Case Details: MONMOUTH | Civil Part Docket# L-001503-20

**Case Caption:** SACCHI JOHN VS QUEST DIAGNOSTICS  
IN CORPORATE

**Case Initiation Date:** 05/13/2020

**Attorney Name:** STEPHEN J SIMONI

**Firm Name:** STEPHEN J. SIMONI

**Address:** C/O JARDIM MEISNER 30B VREELAND RD STE  
100

FLORHAM PARK NJ 07932

**Phone:** 9176215795

**Name of Party:** PLAINTIFF : Sacchi, John

**Name of Defendant's Primary Insurance Company**  
(if known): None

**Case Type:** PERSONAL INJURY

**Document Type:** Verified Complaint

**Jury Demand:** NONE

**Is this a professional malpractice case?** NO

**Related cases pending:** NO

**If yes, list docket numbers:**

**Do you anticipate adding any parties (arising out of same  
transaction or occurrence)?** YES

**Are sexual abuse claims alleged?** NO

## THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** NO

**If yes, is that relationship:**

**Does the statute governing this case provide for payment of fees by the losing party?** NO

**Use this space to alert the court to any special case characteristics that may warrant individual  
management or accelerated disposition:**

Coordination with ongoing investigation by the U.S. Department of Health and Human Services in order to  
avoid duplicative discovery.

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

**Please check off each applicable category: Putative Class Action?** NO **Title 59?** NO **Consumer Fraud?** YES

I certify that confidential personal identifiers have been redacted from documents now submitted to the  
court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

05/13/2020  
Dated

/s/ STEPHEN J SIMONI  
Signed



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Quest Diagnostics 'Refuses' to Address Ongoing, Erroneously 'Misdirected' Lab Test Orders](#)

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