IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON ex rel. ELLEN F. ROSENBLUM, Attorney General for the State of Oregon, Plaintiff, vs. CENTER FOR COVID CONTROL, LLC, an Illinois limited liability corporation; and DOCTORS CLINICAL LABORATORY, INC., an Illinois corporation, Defendants.	Case No. **COMPLAINT** (Unlawful Trade Practices Act; ORS 646.607 & 646.608) **CLAIM NOT SUBJECT TO MANDATORY ARBITRATION** **ORS 20.140 - State fees deferred at filing; standard filing fee (ORS 21.135(2)(g))**

For its Complaint, Plaintiff, State of Oregon ("the State") alleges as follows:

INTRODUCTION

1.

In the two years since the first Oregon resident was diagnosed with COVID-19 over 700,000 cases of COVID-19 have been confirmed in the state and 7,147 Oregon residents have died.[1] According to the Centers for Disease Control ("CDC"), "[a] robust and responsive testing infrastructure is essential to the success of stopping the spread of SARS-CoV-2, the virus that causes COVID-19."

2.

In 2020, Illinois couple Aleya Siyaj and Akbar Ali Syed formed Center for Covid Control, LLC ("CCC"), purportedly to address the critical need for COVID-19 testing. Prior to

[1] https://coronavirus.oregon.gov/Pages/default.aspx (last updated April 1, 2022)

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forming CCC, Syed and Siyaj ran an axe throwing lounge and a photography studio. Syed and Siyaj had no experience in the medical field or medical testing.

3.

CCC partnered with Doctors Clinical Laboratory ("DCL") in Illinois to perform PCR testing and to submit reimbursement requests to the federal government and insurance companies.

4.

CCC and DCL advertised accurate PCR test results within 24 to 72 hours. The accuracy and timeliness of the test results were material facts that influenced patients to choose Defendants' testing service. In a statement, the company acknowledged that: "Beyond vaccination, regular testing is the primary vehicle to help contain the virus. Corporations, schools, travelers, families and many in our communities rely on accurate, timely testing results from CCC."

5.

In the fall of 2021, Defendants rapidly expanded their number of test sites nationwide. CCC started as a single test site located in Siyaj's former axe throwing lounge. In less than a year, CCC and DCL opened approximately 300 test sites across the United States, including 5 sites in Oregon. CCC became "one of the largest testing center operators in the country." Despite pushing to expand their test center footprint, however, Defendants did not expand its testing capabilities or staffing to be able to support the expanded operations.

6.

In or around late 2021, the number of PCR specimens sent to CCC and DCL for testing increased ten-fold, from 8,000 to 85,000 per day. Defendants lacked the capacity to properly store and timely process the thousands of test specimens they were receiving each day.

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7.

Instead of pausing collections or increasing testing capacity to meet demand, Defendants continued to funnel the millions of dollars received from the federal government for testing to the companies' owners. Syed posted pictures of the couple's purchases on social media, including a $1,360,000 mansion and multiple luxury cars worth millions, including a sky blue Lamborghini, a red Lamborghini Countach, a Tesla Model Y, and a Ferrari Enzo, which, on information and belief, Syed purchased for $3.7 million.

8.

While raking in millions, Defendants were returning results of questionable accuracy to patients. Defendants neither did nor could properly store specimens prior to testing due to a lack of proper equipment. Moreover, Defendants failed to properly educate their employees on how to properly collect test specimens, and specimens were consistently tested in a manner inconsistent with the manufacturers' instructions, resulting in potentially inaccurate results. Thus, the tests did not have the characteristics, qualities, benefits, or uses that Defendants represented. Defendants violated Oregon's Unlawful Trade Practices Act ("UTPA") by advertising accurate COVID-19 testing while knowing that by failing to properly handle, store, and process the specimens, the results were of questionable validity.

9.

Defendants also advertised their ability to return test results in 24-72 hours, although due to testing backlogs that developed early and were never fully addressed, many test results were never delivered or were delivered far later than promised. By continuing to advertise timely test results, but delivering results too late to inform patients' decisions about returning to work or school, travel, or visiting family and friends, Defendants again misrepresented to consumers the qualities, benefits, and uses of their COVID-19 tests. Thus, Defendants' willfully and repeatedly violated the UTPA by falsely advertising that patients would receive their PCR test results in 24

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to 72 hours while knowing that their laboratory could not process all the tests it received in that time frame

10.

The State brings this action to permanently enjoin Defendants from engaging in these unlawful trade practices, for restitution to patients that have suffered an ascertainable loss, for disgorgement of profits obtained from unlawful trade practices, and for civil penalties for each willful violation of the UTPA.

PARTIES

11.

Ellen F. Rosenblum is the Attorney General for the State of Oregon and, acting in her official capacity, brings this action pursuant to ORS 646.632.

12.

CCC is an Illinois limited liability company registered to do business in Oregon as a foreign limited liability company. At all times material to this Complaint, CCC, through its agents, employees, representatives, and in concert with others, marketed, promoted, and provided PCR and rapid antigen COVID-19 testing to Oregon residents, including residents of Multnomah County.

13.

DCL is an Illinois corporation that operates a CLIA-certified clinical laboratory in Rolling Meadows, Illinois. At all times material to this Complaint, DCL, through its agents, employees, representatives, and in concert with others, marketed, promoted, and provided PCR and rapid antigen COVID-19 testing to Oregon residents, including residents of Multnomah County.

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14.

Each Defendant was served with a notice in writing that identified the alleged unlawful conduct and the relief the State would seek. No Defendant executed and delivered a satisfactory assurance of voluntary compliance as provided in ORS 646.632(2).

CORPORATE RELATIONSHIPS

15.

CCC was formed by Syed and Siyaj in December 2020. CCC named Siyaj manager and Syed referred to himself as the "founding father" of the company on his Facebook page. Syed and Siyaj co-owned CCC at all times material to this Complaint.

16.

DCL was formed in 2005, and operated by Mary Jane Aramburo, an MD with training from the University of Chicago Medical Center. On information and belief, DCL's ownership changed in 2021. Mohammed Shujaddin ("Shujaddin") became DCL's registered agent in April 2021, and, in its July 2021, annual filing with the State of Illinois, represented himself as the president, secretary, and director of the lab.

17.

On information and belief, Syed and/or Siyaj acquired an ownership interest in DCL in 2021. In August 2021, Syed stated in a Tik Tok post: "I opened up a covid testing site than [sic] bought the lab and now I have 65 sites."

18.

CCC and DCL worked in concert to advertise and perform COVID testing. The operations of DCL and CCC were intertwined such that with respect to PCR testing, from June 2021, on, neither could operate without the other.

19.

CCC employed personnel essential for the operation of DCL, including administrative staff responsible for entering patient information and labeling specimens, accounting staff, and

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computer programmers to create DCL's website and manage patient data. CCC also handled DCL's customer service calls and provided marketing services for DCL. In exchange for these services, DCL remitted 37 percent of its collections to CCC.

20.

DCL operated the laboratory that performed PCR tests on specimens collected by CCC, including specimens collected in Oregon. DCL was responsible for releasing test results to patients using contact information collected by CCC. DCL also contracted with and oversaw a third-party billing company that submitted bills to insurance companies and the federal government for each PCR and rapid test performed.

21.

Externally, CCC and DCL did not hold themselves out as independent companies. CCC employees and test site operators drew no distinction between CCC and DCL. Employees believed Syed and Siyaj owned DCL. Laboratory technicians running PCR tests identified themselves as CCC employees. CCC purchased equipment necessary to store specimens and run PCR tests. Oregon site operators believed that DCL was merely what CCC called its lab.

22.

Starting in June 2021, CCC and DCL also shared office space at 1685 Winnetka Circle, Rolling Meadows, Illinois, which served as each company's principal place of business.

THE ROLE OF TEST SITES

23.

As part of its agreement with DCL, CCC opened and managed test sites around the country that collected specimens from patients and shipped them to Defendants' shared office in Illinois for processing by CCC and subsequent PCR testing by DCL.

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24.

Among these sites were five test sites CCC operated in Portland, Tigard, and Salem, Oregon. CCC opened the first Oregon test site at Johnson Creek Market in Southeast Portland in late August or early September 2021

25.

Each test site had a designated site operator. CCC gave each site operator a unique "@centerforcovidcontrol" email address.

26.

To allow CCC to maintain control over the test sites, CCC was the named lessee on all leases for Oregon test sites.

27.

When a new site was opened, CCC provided the site operator a "starter kit" containing marketing items, including banners and yard signs, for public display at the site. The marketing items prominently displayed CCC's name and logo.

28.

CCC also provided supplies necessary to collect specimens for PCR testing, including swabs, biohazard bags, DCL-branded patient information cards, and shipping materials, rapid antigen tests, and personal protective equipment for test site employees to use.

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29.

A sample starter kit is pictured:

30.

Site operators paid a fee to CCC for the supplies. In return, CCC paid site operators a fixed rate for each test they collected or performed.

31.

CCC and DCL did not require site operators to have any experience with COVID testing or in the medical industry generally. Instead, CCC and DCL were responsible for ensuring that staff at the test sites had the appropriate education, training, certification, and experience needed to perform their duties.

32.

Although CCC and DCL may have made available to site operators some basic information about running a test site, on information and belief, the training materials, including videos, did not include adequate instructions about how to handle or store tests as required by the FDA's Emergency Use Authorization ("EUA") and test manufacturer instructions. On

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information and belief, the training videos also did not provide instruction on state and federal statutes and regulations applicable to test sites.

33.

CCC also did not provide any HIPAA training to Oregon test site operators until November 2021. CCC did not provide Oregon test site operators with any CDC training materials until January 2022.

DEFENDANTS' TESTS

34.

Despite not adequately training the local staff, Defendants nonetheless offered two kinds of COVID-19 tests in Oregon—a molecular diagnostic test or "PCR test" and an antigen test, sometimes called a "rapid test."

35.

A PCR test detects the presence of the genetic material from the virus. PCR tests are performed on a nasal, throat, or saliva specimen collected from a patient. The specimen is tested by a laboratory.

36.

Antigen tests check for the presence of specific proteins on the surface of the COVID-19 virus. Antigen tests are conducted by an individual providing a nasal swab that can be tested immediately with results available shortly thereafter.

37.

PCR tests are more accurate than antigen tests in diagnosing a COVID-19 infection. Because false negatives are more common with rapid tests, it is recommended that in symptomatic individuals, negative test results be confirmed by the more accurate PCR tests.[2]

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[2] https://www.cdc.gov/coronavirus/2019-ncov/lab/resources/Antigen_Testing_Algorithm_CommunitySettings.pdf

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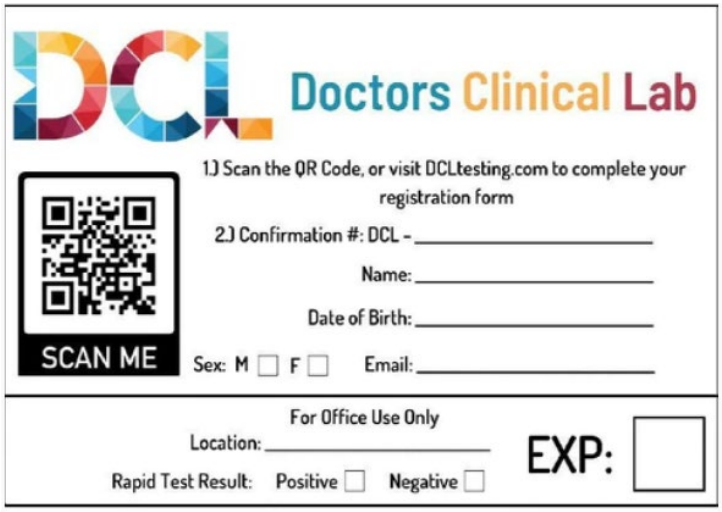
THE TESTING PROCESS

38.

At Defendants' Oregon test sites, patients who wanted a COVID-19 test received a 3x5 card prominently featuring DCL's name and logo. The card contained a QR code, which took patients to a website displaying the name and logo for Doctors Clinic Laboratory:



39.

On information and belief, CCC created and maintained the DCLtesting.com website.

40.

On the website, patients entered identifying information, including insurance information, into an electronic form. The form also required patients to upload a picture of a driver's license or other photo identification. After patients submitted the completed form, patients received an email with the patients' name, test site location, registration date, and a unique confirmation number. Patients were instructed to write down the confirmation number on the 3x5 card.

41.

Until early December, nearly all patients automatically received both a PCR and a rapid test, allowing Defendants to bill insurance companies or the federal government for two tests instead of one.

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42.

For PCR tests, test site staff instructed patients to self-administer a nasal swab, then place the specimen tube inside a biohazard bag with the 3x5 card, which was used to identify the specimen. Test site staff instructed patients to deposit the biohazard bag into an unrefrigerated bin.

43.

Test site staff did not place identifying information on the specimen tube itself so there was no way to identify a specimen if it became separated from the 3x5 card.

44.

Specimens were kept in outdoor bins or inside the test sites. Specimens were not consistently refrigerated at the test sites.

45.

At the end of each day, the test sites shipped the specimens to Illinois for testing. The specimens were not shipped with any type of cold pack or dry ice to maintain their temperature.

46.

Once the specimens were received in Illinois and processed by CCC, DCL conducted PCR tests using LumiraDx RNA STAR PCR kits to identify SARS-CoV-2 RNA.

47.

For antigen tests, patients at Portland area test sites self-administered the rapid antigen test from start to finish, with a local "technician" present to answer any questions. Once the test was complete, CCC "technicians" would determine whether the test was positive or negative, report the result to the patient, and record the result in a DCL website. The DCL website would automatically generate emails to the patients with their results once the CCC technician submitted the result.

48.

CCC later changed the procedure, having patients self-administer the swab and then

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return it to the local "technician." The "technician" did not monitor the patient as they were taking the specimen, and there were no controls in place to ensure the specimen was properly collected.

49.

After receiving the patient's specimen, the "technician" was supposed to apply the specimen to the rapid test cartridge and read the test results after a set time period. As before, the employee was then supposed to record the results via a DCL website using the patients' confirmation numbers. That website would automatically generate emails to the patients with the results once the employee submitted them.

50.

Until on or around November 16, 2021, Defendants used CareStart brand rapid antigen tests at its Oregon test sites. After that date, Defendants switched to INDICAID rapid antigen tests.

51.

Both the PCR and rapid antigen tests must be administered according to the manufacturer's instructions for use and the Food and Drug Administration's Emergency Use Authorization. Deviations from the authorized procedures can cause inaccurate results.

DEFENDANTS' REPRESENTATIONS TO PATIENTS ABOUT TESTING

52.

In advertising Defendants' business as free, walk-in COVID-19 test sites that were "available for all" and did not require an appointment, CCC and DCL made numerous representations to patients about the testing it performed.

53.

On its website, CCC stated that it "is a distinctive organization applying the highest level of service in the fight against SARS-coV-02." CCC also stated, "Safeguarding the health of everyone during these times is of utmost importance, we are on a mission to help stop the spread

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of the virus. Giving people the comfort that they need to be around one another by getting tested regularly."[3]

54.

DCL claimed on its website that it offered "Convenient and accurate testing available for everyone" and that its tests were "conducted using reliable methods for COVID-19 detection." DCL further represented on its website that it "use[d] EUA tests following the FDA's guidance."

55.

CCC advertised its PCR test as the "gold standard" because of its "accuracy and reliability…."

56.

CCC and DCL implied through their advertising that tests would be processed according to the manufacturers' instructions and laboratory standards to ensure results would be accurate and timely. CCC and DCL also implied that they were qualified and authorized to offer the tests they were providing.

57.

DCL held itself out as follows:

> DCL is a licensed laboratory, ***working to provide quality care and treatments to safeguard the health of the public***. With the help of the latest PCR technology and equipment, ***we ensure that our patients receive the most accurate results without excessive delays***. Your diagnosis and treatments will be done with the utmost efficiency while making sure the necessary precautions are taken.

(Emphasis added).[4]

58.

CCC and DCL touted their turn-around time for PCR and rapid testing.

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[3] Text available at https://www.centerforcovidcontrol.org/about as of February 11, 2022.

[4] Text available at https://labdcl.com/ as of February 11, 2022.

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59.

At different times during 2021, CCC's website provided different statements regarding how long it would take to provide test results to patients. At various times the website stated that PCR results would be emailed within "24 to 48 hours," "within 48 hours," or "within 72 hours." However, at all times material to this Complaint, CCC advertised test results within a maximum of 72 hours.

60.

CCC also advertised that rapid antigen test results "are verbally given within 15 minutes and an email confirmation is given within 3 hours."

61.

On its Facebook page, CCC advertised "Fast Results Guarenteed [sic] within 48 hours To get you Back to your life" with the following graphic:

62.

CCC also promoted its testing on Twitter, boasting "results in 24 to 48 hours" in its account bio, and tweeting that results from its rapid antigen tests are "emailed in 1 hour".

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63.

At all material times, DCL represented on its website that "A PCR test takes 24 to 48 hours to receive your results… With the rapid antigen test, results are verbally given within 15 minutes and an email confirmation is given within 3 hours."

64.

At Defendants' Oregon test sites, staff verbally told patients that results for PCR tests would be available in 24 to 72 hours. Staff also verbally represented that rapid test results would be emailed within 3 hours.

65.

The representations above were false or misleading, and Defendants knew or should have known they were false or misleading at the time they made representations.

DEFENDANTS' NONADHERENCE TO LABORATORY STANDARDS, MANUFACTURERS' INSTRUCTIONS, AND GOVERNMENT REGULATIONS

66.

Throughout their operations, Defendants failed to adhere to laboratory standards, the manufacturers' instructions for the tests it was processing, and government regulations. As a result of these failures, Defendants provided test results to patients that were not reliable.

(CMS SURVEY)

67.

In November 2021, the Department of Health and Human services and Centers for Medicare & Medicaid Services ("CMS") surveyed Defendants' operations. As part of that survey, CMS prepared a Statement of Deficiencies, which issued December 8, 2021.

68.

In the Statement of Deficiencies, CMS found that DCL:

(a) failed to maintain a unidirectional workflow, thereby increasing the risk of contamination;

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(b) failed to employ enough laboratory personnel with the appropriate education and experience to accurately perform tests and report the results;

(c) failed to ensure all laboratory personnel had the appropriate training for COVID-19 testing;

(d) failed to have the proper equipment to store COVID-19 PCR specimens prior to testing as required per the manufacturers testing instructions; and,

(e) failed to ensure the proper storage of all specimens received.

69.

As a result of these findings, CMS determined that "Immediate Jeopardy" existed at DCL.

70.

Immediate Jeopardy is the highest-level severity of noncompliance. Immediate Jeopardy means a situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a patient.

(PCR SPECIMEN STORAGE REQUIREMENTS)

71.

One of the deficiencies noted by CMS was a failure to ensure the proper storage of all specimens received.

72.

For PCR tests, the manufacturer's instructions require that specimens be stored at 2 to 8 degrees Celsius (35.6 to 46.4 degrees Fahrenheit) for a maximum of 72 hours after collection.

73.

In cases where a delay in testing or shipping is expected and specimens will not be processed for more than 72 hours, specimens must be stored at -70 degrees Celsius (-94 degrees Fahrenheit) or below and shipped on dry ice.

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74.

Regardless, Defendants did not require tests to be shipped with cold packs or dry ice and operated for months without any refrigerators or freezers in its Illinois location.

75.

Even after CCC purchased two 64.8 cubic feet commercial refrigerators on September 24, 2021, Defendants did not have enough refrigerators to store the number of specimens received at the required 2 to 8 degrees Celsius. On information and belief, each refrigerator could hold just a few hundred specimens.

76.

Moreover, until December 3, 2021, Defendants had no freezers at all. Once CCC ordered and installed freezers, they still lacked sufficient space to store all specimens received that could not be tested within 72 hours.

77.

Thus, instead of refrigerating or freezing specimens as required by the manufacturer's instructions, Defendants stored most specimens they received at room temperature in piles of trash bags, biohazard bags, or shipping boxes scattered throughout their offices.

78.

Defendants operated for months with demonstrated inabilities to test all specimens received within 72 hours. Thus, these unrefrigerated specimens sat for days, and sometimes weeks, before being tested.

79.

On information and belief, CCC and DCL's failure to ensure that specimens were shipped and stored in a manner that maintained proper temperatures as instructed by the laboratory equipment manufacturer affected the accuracy of PCR test results. On information and belief, running PCR tests on specimens that had been stored at incorrect temperatures would not produce accurate results.

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(RAPID TEST COMPLIANCE CONCERNS)

80.

CCC failed to ensure rapid test instructions were accurately followed, and thus compromised the accuracy of the tests.

81.

As explicitly stated in the INDICAID manufacturer's instructions: "Test performance is dependent upon proper specimen collection, handling, storage, and preparation. Failure to follow proper procedures may produce inaccurate results…. Failure to follow these Instructions for Use may adversely affect test performance and/or invalidate the test result."

82.

CareStart instructions similarly provides: "It is essential that correct specimen collection and preparation methods be followed. Inadequate specimen collection, improper specimen handling and/or transport may yield false results; therefore, specimen collection requires specific training and guidance due to the importance of specimen quality to obtain accurate test result."

83.

In mid-November, CCC gave site operators written instructions for CareStart rapid tests and required that the site operators give the instructions to every patient taking a rapid test.

84.

When Defendants switched from CareStart to INDICAID, CCC failed to provide Oregon site operators INDICAID specific instructions.

85.

Per CCC's explicit mandate, Oregon site operators continued to provide patients with CareStart instructions even after Defendants switched to INDICAID even though CareStart and INDICAID testing procedures differ in several material ways.

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86.

By Defendants failing to properly instruct patients on testing procedures, test accuracy was compromised.

87.

Moreover, the manufacturers' instructions for both CareStart and INDICAID require that the tests be processed shortly after the specimens are collected (4 hours for CareStart and 2 hours for INDICAID) and read within a narrow window of time after the specimen is applied to the device (10-15 minutes for CareStart, 20-25 minutes for INDICAID).

88.

After modifying the procedure to have a local "technician" apply the specimen to the device outside the presence of the patients, patients reported considerable delays in receiving their test results. Tests results were not always delivered within the time frame advertised.

89.

On information and belief, after modifying the procedure tests were conducted more than 2 or 4 hours after specimens were collected and read outside the 10-15 or 20-25 minute windows. For this further reason, test results were not accurate.

(GOVERNMENT REGULATIONS)

90.

While in operation, CCC failed to follow multiple federal and state guidelines regarding operating COVID-19 test sites in Oregon.

91.

Congress passed the Clinical Laboratory Improvement Amendments ("CLIA") establishing quality standards for all laboratory testing to ensure the accuracy, reliability and timeliness of patient test results regardless of where the test was performed.

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92.

A CLIA certification or waiver, depending on the tests administered, is required whenever there is testing on a human specimen for the diagnosis or assessment of health.

93.

The Oregon Laboratory Compliance Section contracts with the Centers for Medicare and Medicaid Services to carry out the CLIA in Oregon.

94.

Because they were performing rapid tests on site, each of the Oregon test sites was required to obtain a CLIA certificate or waiver.

95.

At all times material to this Complaint, Defendants did not obtain CLIA certificates or waivers for the Oregon test sites.

96.

In addition, Oregon law requires clinical laboratories to examine specimens only at the request of an Oregon-licensed physician, dentist, or other person authorized by law to use the findings of laboratory examinations.

97.

DCL named Dr. Wilfredo Dacuycuy as the ordering provider in a submission to OHA. Dr. Dacuycuy is not licensed to practice in Oregon. Dr. Dacuycuy is only licensed to practice in Illinois.

98.

Moreover, at all times material to this Complaint, Oregon law required each laboratory in Oregon to report all COVID-19 test results, positive or negative, to the Oregon Health Authority ("OHA") within 24 hours for positive results or one local public health authority working day for negative results.

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99.

DCL did not report any test results to OHA until February 18, 2022, when it sent reports for five days in January 2022. DCL has not reported any data for August through December 2021.

100.

CCC and DCL held themselves out to patients as approved and qualified to collect specimens in Oregon and perform testing on those specimens. CCC and DCL did not have that approval or qualification, and these representations were therefore false and misleading.

TESTNG VOLUME AND DEFENDANTS' PROCESSING CAPABILITIES

101.

Defendants began expanding their joint operations in June and experienced exponential growth.

102.

In August 2021, the number of specimens CCC collected increased fivefold, causing processing and reporting delays.

103.

Around that time, Defendants opened the first Oregon test site.

104.

By early October, Defendants had fallen greatly behind on their testing and were working on clearing a backlog of tests. However, Defendants continued to receive at least 8,000 additional specimens for PCR testing each day, making it difficult to clear the backlog.

105.

Although CCC managed all customer service calls on behalf of DCL, because each played a role in the process and because of their shared office space, both CCC and DCL were aware of the backlog and failure to process tests within the promised time.

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106.

In a WhatsApp message to site operators on October 28, 2021, a representative from CCC wrote "We know the three day timeline isn't being kept right now in some cases, please bear with us." Despite this knowledge, Defendants continued to advertise test results within 72 hours.

107.

In response, several site operators expressed frustration with the delays, with one writing "Oh man this is not cool … Customer was told something else and now it's a different story …. They have a flight today at 3 …. This is going to be a mess to deal witu [sic] … [a lab tech] told me they would be released latest by 9 am today … I don't mind telling customers what's right instead of giving false information."

108.

Nonetheless, Defendants chose to continue their expansion. In addition to opening more sites throughout the country, CCC opened two additional Oregon test sites in October 2021 and another two Oregon sites in November 2021.

109.

The number of specimens shipped to Defendants continued to increase but Defendants' processing and testing capacity did not similarly grow. During an 11-day period in November 2021, CCC received 84,436 specimens, but Defendants were only able to process, test, and report 43,240 results, leaving over 40,000 specimens untested.

110.

The highest number of PCR tests that DCL was able to complete in a single day between November 14, 2021, and November 30, 2021, was 5,640, although the received volume of specimens was considerably higher. On November 30, 2021, for example, DCL received 13,320 specimens for PCR testing and only completed testing on 1,880. Regardless, Defendants continued to advertise their testing and accept specimens from their test sites.

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111.

As Defendants fell further behind, the number of patients calling to check on the status of their test increased. When patients would call CCC headquarters or DCL to inquire about missing test results, they would be connected to a CCC employee, who would attempt to locate the patient's data in the DCL database. Frequently, however, the patient's specimen had not been processed, and thus there was no test result in the system.

112.

The CCC employees handling customer service calls falsely told patients that the results would be available in 24 hours, even when the employee had no idea when the laboratory would process the test.

113.

CCC responded to some patients with an email template that falsely blamed delays on "technical problems" with new machines that "haven't been functioning correctly since we received them."

114.

CCC falsely told some patients that test results were inconclusive, even when the patient's specimen had not been processed or tested. CCC would also instruct the patient to take another test.

115.

Eventually, Defendants purportedly sought to reduce the number of PCR specimens obtained. On December 4, 2021, in a WhatsApp message between an Oregon site operator and Siyaj, Siyaj advised: "Major Update!!! Good News!!! *RAPIDS ONLY* unless patient specifically wants a PCR."

116.

In a December 16, 2021, WhatsApp message to an Oregon site operator, Syed wrote that the company would "fall apart" if it continued collecting PCR tests from all patients. Syed

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further wrote that the decision to limit PCR testing would "turn the reviews and everything around," explaining that "my idea was even though i'll make 80% less but i'l [sic] be able to grow much faster and have happy pokemons and happy customers."

117.

On information and belief, in December, CCC did not hire sufficient additional staff to allow it to process all the PCR specimens received, and DCL did not hire additional lab staff or obtain additional equipment to allow it to run more tests.

118.

Notwithstanding the fact that nothing had changed operationally, on December 21, 2021, in response to a patient claiming they had been waiting 2 weeks for their PCR results, Syed stated in a TikTok post that Defendants "test 40k ppl a day" and implored the patient to "give us another shot" because Defendants were "ready for the surge now."

119.

On information and belief, Defendants were never capable of processing, testing, and reporting results of 40,000 PCR specimens per day.

120.

This was apparent in an internal communication CCC sent two days later, telling its site operators that "PCRs should only be given to a very small subset of patients that specifically request it. Even if they request it, we should ask them to do just a Rapid instead! Please talk to your employees, send them a message, let them know they need to limit PCRS!"

121.

Three days later, on December 26, 2021, CCC changed its website to state: "Your [PCR] results will be emailed within 48 hours."

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122.

On December 29, 2021, Syed told NBC 5 Chicago that Defendants seen a "dramatic increase in testing," with PCR testing numbers jumping from 8,000 per day to 85,000 per day in a month.

123.

On information and belief, Defendants were never capable of processing, testing, and reporting results of 85,000 PCR specimens per day within a 48-to-72-hour time frame. Syed admitted this, stating in the NBC 5 Chicago interview that "I know that PCR turnaround times for labs that are actually in better hands, doing well, are five days six days turnaround times," implying that Defendants' turnaround times were longer.

124.

At the same time, Defendants continued to plot their expansion with a 6th Oregon site advertised as "coming soon."

CESSATION OF OPERATIONS

125.

On or about January 10, 2022, CCC sent an email to their site operators acknowledging that their laboratories "have not had the capacity to conduct PCR testing" and informing site operators they would pause "all PCR collections."

126.

On or about January 13, 2022, CCC announced in a press release it would "pause further collection of patient specimens effective Friday January 14, 2022, with plans to reopen Saturday, January 22, 2022." In that release Siyaj acknowledged CCC and DCL "haven't been able to meet all our commitments"

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127.

On January 20, 2022, CCC announced it was "extending its pause on operations" following investigations by the Oregon Department of Justice, the FBI, Illinois public health authorities, and other state regulators.

CLAIM FOR RELIEF

(UNLAWFUL TRADE PRACTICES ACT)

128.

All of Defendants' violations of the UTPA set forth herein were willful because Defendants knew or should have known that their conduct violated the UTPA.

(Count 1 – Violation of ORS 646.608(1)(e))

129.

The State re-alleges and incorporates each and every allegation contained in the preceding paragraphs as though set forth herein.

130.

Defendants, acting in the course of their businesses, vocations, or occupations, made false or misleading representations that their COVID-19 testing was reliable and accurate, and by implied representations that PCR and rapid antigen tests would be collected, stored, transported, and processed according to manufacturer instructions and Emergency Use Authorization to ensure reliable results.

131.

At all material times, Defendants, acting in the course of their businesses, vocations, or occupations, falsely represented that they were qualified and authorized to conduct COVID-19 testing.

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132.

At all material times, Defendants, acting in the course of their businesses, vocations, or occupations, represented that PCR test results would be provided within 24 to 72 hours when Defendants knew or should have known that Defendants could not provide test results in that time and regularly failed to provide test results in that time.

133.

Defendants, acting in the course of their businesses, vocations, or occupations, made false or misleading representations that PCR and rapid antigen test results were negative or inconclusive when they were not.

134.

Given the need for quick and accurate testing, Defendants' representations regarding accuracy and timing of their COVID-19 tests were material to patients' decision to seek testing from Defendants.

(Count 2 – Violation ORS 646.608(1)(q))

135.

The State re-alleges and incorporates each and every allegation contained in the preceding paragraphs as though set forth herein.

136.

Defendants, acting in the course of their businesses, vocations, or occupations advertised that PCR test results would be provided within 24-72 hours, when Defendants had no intent to return test results to patients within that time frame.

(Count 3 – Violation of ORS 646.608(1)(t))

137.

The State re-alleges and incorporates each and every allegation contained in the preceding paragraphs as though set forth herein.

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138.

Defendants, acting in the course of their businesses, vocations, or occupations, failed to disclose concurrent with tender or delivery of the testing known material defects and material nonconformities caused by improper collection, transport, storage, and processing of specimens.

(Count 4 – Violation of ORS 646.608(1)(i))

139.

The State re-alleges and incorporates each and every allegation contained in the preceding paragraphs as though set forth herein.

140.

Defendants, acting in the course of their businesses, vocations, or occupations, advertised that PCR test results would be provided within 24-72 hours with the intent not to provide the services as advertised.

141.

Defendants, acting in the course of their businesses, vocations, or occupations, represented that their COVID-19 testing was reliable and accurate, and by impliedly represented that PCR and rapid antigen tests would be collected, stored, transported, and processed according to manufacturer instructions and Emergency Use Authorization to ensure reliable results with the intent not to provide the services as advertised.

(Count 5 – Violation of ORS 646.607(1))

142.

The State re-alleges and incorporates each and every allegation contained in the preceding paragraphs as though set forth herein.

143.

Defendants, acting in the course of business, employed unconscionable tactics by knowingly permitting consumers to enter into transactions from which they did not derive a material benefit.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the State of Oregon, by and through the Attorney General, prays for a judgment in favor of the State and against Defendants, jointly and severally, as follows:

(a) Entering a permanent injunction to prevent Defendants from marketing, promoting, and/or providing PCR and rapid COVID-19 tests in Oregon.

(b) Awarding such relief as the Court finds necessary to redress harm to consumers as a result of the unlawful trade practices, including an award of restitution to consumers that have suffered an ascertainable loss and disgorgement of unlawfully obtained profits.

(c) Awarding civil penalties up to $25,000 for each willful violation of ORS 646.607 and ORS 646.608.

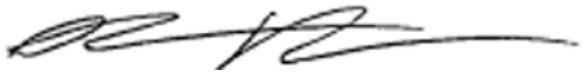
(d) An award of reasonable attorney fees and costs of the investigation, preparation, and litigation, pursuant to ORS 656.632(8).

(e) Such other relief as the Court deems appropriate.

DATED this 7th day of April, 2022.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General



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