
**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-002115-21T2
(AM-000367-21)
ELECTRONICALLY FILED**

JOHN SACCHI ("**Consumer**"),
Individually and on behalf
of all others similarly
situated,

Plaintiff-Respondent,

CIVIL ACTION

ON APPEAL FROM

SUPERIOR COURT, LAW DIVISION
MONMOUTH COUNTY:

v.

Hon. Linda Grasso Jones, J.S.C.
Issued Subject Ruling Below
Docket No. Below: MON-L-01503-20

QUEST DIAGNOSTICS
INCORPORATED ("**Quest**") and
DOES 1 through 10, inclusive,

Defendants-Petitioners.

**BRIEF AND APPENDIX OF RESPONDENT JOHN SACCHI IN SUPPORT OF
MOTION TO DISQUALIFY ATTORNEYS MICHAEL T. HENSLEY AND MICHAEL E.
PREVOZNIK FROM REPRESENTING QUEST DIAGNOSTICS INC. IN THIS ACTION**

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Quest Attorneys Michael T. Hensley and Michael E. Prevoznik Conspired to Weaponize the N.J. Attorney General's Division of Criminal Justice By Making False Statements in Their Unethical Attempt to Spark a Criminal Investigation Against Quest Patient John Sacchi And Extinguish This Pending Civil Action

Preliminary Statement

I represent Plaintiff and Quest patient John Sacchi ("**Mr. Sacchi**" or "**Patient**") in the above-referenced action and respectfully submit this brief in support of Mr. Sacchi's Motion to Disqualify Attorneys Michael T. Hensley and Michael E. Prevoznik ("**Quest Attorneys**") from representing Defendant Quest Diagnostics Incorporated ("**Quest**") in this action.

Quest's ongoing effort to litigate a defenseless case is motivated solely by its attorneys Michael T. Hensley's and Michael E. Prevoznik's disqualifying and shared "personal interest" in evading formal exposure of their individually having made a shameful, bogus, and unethical ***criminal*** complaint against the 72-year-old stroke victim and Quest patient Mr. Sacchi rather than simply provide him (i) *his own medical information* and (ii) clarification of the amount of money that Mr. Sacchi *must pay to avoid Quest's collection activity and reporting of unpaid billings to credit rating agencies*.

N.J. Rule of Professional Conduct 1.7 mandates that attorneys Michael T. Hensley and Michael E. Prevoznik be disqualified from representing Quest in this action because their joint desire to avoid the inevitable finding that their unethical criminal complaint was improper constitutes a *non-consentable* conflict of interest that deprives Quest of unbiased legal counsel regarding this litigation that would

have otherwise ended years ago; instead, the Quest Attorneys improperly advance their own personal interests and thereby needlessly impose additional and ever increasing burdens on the Appellate Division and Superior Court while causing Quest to inexplicably disavow its undeniable duties to provide patients access to their own medical records and billing statements.

Once Quest has independent counsel, Quest will then be free to decide upon the litigation conduct that best benefits Quest itself by securing a quick, efficient, and just resolution of the action as opposed to the existing feverish, scorched-earth, wasteful, and futile *faux* defense of a defenseless case that is driven solely by Mssrs. Hensley's and Prevoznik's desperate effort to evade disciplinary action, malpractice claims, and likely termination of employment and partnership at their respective workplace. All to the continuing detriment of the state and federal¹ judiciaries, Quest, and Quest patient Mr. Sacchi and in abject defiance of the U.S.

Department of Health & Human Services' clear edict that:

[a]ccess to your health information is your right. ***Having access to your health records is a powerful tool in staying healthy.*** With access to your health information you can make better decisions with you doctor, better track your progress and do more to be healthy. The Health Insurance Portability and Accountability Act, or HIPAA, for short, gives you the important right to see and get copies of your health information. . . . **Check to make sure your health information is correct and complete** . . . [and] ask to change any wrong information in your file or add

¹Mssrs. Hensley and Prevoznik also advised Quest to make a costly, wasteful, and meritless motion to remove the action to the U.S. District Court for the District of New Jersey. The Honorable Michael A. Shipp promptly granted Mr. Sacchi's motion to remand the action back to the Superior Court. Sacchi v. Quest Diagnostics, No. 3:20-cv-12804 (D.N.J. Mar. 23, 2021).

information to your file if you think something is missing or incomplete. . . ***[Even if the healthcare provider] believes the [medical information] is correct, you still have the right to have your disagreement noted in your file.*** . . . Know your rights. Take control. Get better care. . . INFORMATION IS POWERFUL MEDICINE. Access to your health information is your right. Get it. Check it. Use it.

"Health Information Privacy," U.S. Dep't Health & Human Svcs. website

(www.hhs.gov)(emphases in original).

Statement of Relevant Facts

A. Plaintiff John Sacchi Spent Months Attempting to Obtain His Own Medical Records And Billing Statements Prior to Filing Court Complaints

As detailed in the First Amended Complaint ("FAC"), Patient John Sacchi ("**Mr. Sacchi**" or "**Patient**"), a 72-year-old stroke victim, filed a lawsuit and a first amended complaint only after many months of being repeatedly rebuffed by Quest in Mr. Sacchi's attempts by electronic mail, telephone, overnight courier, and Quest's Web portal to obtain from Quest (i) the identity of the doctors who had reportedly ordered glucose tolerance and tuberculosis tests for him and (ii) the amount of monetary payment needed to satisfy any outstanding bills with Quest in order to avoid Quest's commencement of collection activity and reporting of such bills as "delinquent" to credit rating agencies. See, e.g., FAC ¶¶ 16 & 63-71; Exhs. A, B, C & D (Pa26 & Pa48 – Pa50; Pa61, Pa65, Pa68 & Pa72).

B. Once the Lawsuit Was Filed, the Quest Attorneys Still Refused to Respond And Instead Simply Made a False and Unethical Complaint to Criminal Law Enforcement Authorities Against Mr. Sacchi

Upon receipt of the civil lawsuit, Quest Attorneys Michael T. Hensley and Michael E. Prevoznik² still made no effort to respond to Mr. Sacchi's requests nor even contact opposing counsel, but instead proceeded *only* to file a criminal complaint with the New Jersey Attorney General's Division of Criminal Justice in which the attorneys made false statements and baselessly accused plaintiff and Quest patient John Sacchi of criminal activity. Quest Memorandum of Attorneys Michael T. Hensley and Ross A. Fox, Jan. 28, 2020 ("**Quest Memorandum of Attorneys**") (Pa16 & Pa28).

As detailed in the First Amended Complaint, the Attorneys did so because they anticipated that their memorandum would extinguish the civil action such that Quest would not have to respond thereto. FAC ¶ 77 (Pa54).

The Quest Attorneys specifically advised the New Jersey Attorney General that they were not simply reporting purported criminal activity, but that they also wanted to personally "assist/cooperate with the Attorney General's office in any way possible" and they explained to the Division of Criminal Justice that Quest had "authorized" them to submit the memorandum in their unethical and collusive stratagem designed to prompt a criminal prosecution against the opposing

²As indicated by Mr. Hensley's representation therein, Quest General Counsel Michael E. Prevoznik must have authorized and/or ratified Mr. Hensley's criminal submission on Quest's behalf. Mr. Prevoznik also had personally received Mr. Sacchi's pre-litigation requests for his medical records but never responded thereto.

party in a pending civil action—72-year-old stroke victim and Quest patient John Sacchi. Quest Memorandum of Attorneys, at 2. FAC ¶ 61(a) (Pa47).

Because the Attorneys’ criminal referral was clearly baseless, the Division of Criminal Justice immediately wrote on January 30, 2020—just 2 days after the date of the Quest Memorandum of Attorneys—that no criminal activity was indicated. But it was only *after* the Quest Attorneys learned that the Division of Criminal Justice had so quickly rejected and exposed their criminal accusation as baseless and unethical that the Attorneys *for the first time contacted opposing counsel* as Mssrs. Hensley and Prevoznik then realized they had failed to extinguish the action notwithstanding their baseless, bad-faith, and unethical criminal statement. And, again, the Quest Attorneys made no effort to provide Mr. Sacchi’s medical records, but simply requested an extension to respond to the Complaint now that the Quest Attorneys realized their unethical criminal complaint had failed to extinguish Mr. Sacchi’s civil action. FAC ¶ 16 (Pa26).

Procedural History

A. The Superior Court Denied Quest’s Motion to Dismiss In Its Entirety

The Honorable Kerry E. Higgins, J.S.C., denied in its entirety Quest’s Motion to Dismiss the FAC and subsequently entered a detailed, clear, and well reasoned eight-page Statement of Reasons that accompanied her Order issued on February 2, 2022 (Pa1 - Pa9).

Judge Higgins had heard extended argument from the Parties on the motion to dismiss with considerable questioning posed by Judge Higgins herself

throughout regarding the seven causes of action for nearly *one and one-half hours* (T1 – T66) and addressed each and every one of Quest’s defenses including Quest’s frivolous proposition that “no contractual relationship” exists between a diagnostics laboratory and the patient who pays the lab to process his blood samples (T24).

And, notably, Judge Higgins recognized the precedent detailed by Mr. Sacchi that encompasses state and federal courts nationwide regularly invoking their equitable power to order production of medical records that healthcare providers have wrongfully withheld in contravention of the federal statute mandating same, HIPAA (T29 & T31).

B. The Appellate Division Granted Quest Leave to Appeal

The Appellate Division granted Quest leave to appeal the denial of its motion to dismiss on March 16, 2022 and set a briefing schedule that extends through June.

C. The Superior Court Ruled That It Lacks Jurisdiction to Decide This Motion to Disqualify the Quest Attorneys

Mr. Sacchi brought his Motion to Disqualify the Quest Attorneys on March 14, 2022.³ Because the Appellate Division had by then granted Quest’s leave to appeal the denial of its motion to dismiss, Quest opposed the motion on the procedural ground that contended

³This motion (and its predecessor last month in the Superior Court) were both made only after Mr. Hensley’s repeated failure to cease his representation of Quest despite Mr. Sacchi’s multiple requests and written notification that he would proceed to file same.

the Appellate Division is vested with the exclusive jurisdiction to hear [Mr. Sacchi's] application to disqualify Quest's counsel.

Quest Oppst'n Br. at 7 (Pa104). The Honorable Linda Grasso Jones, J.S.C. (to whom the case is now assigned) held in declining to substantively adjudicate the Motion to Disqualify that

[j]urisdiction in this matter is [] now held by the Appellate Division, and this court does not have jurisdiction to grant (or deny on the merits) the relief requested.

Order of Apr. 14, 2022, at 2 (Pa12 - Pa13) (electronic highlighting added to relevant portion).

LEGAL ARGUMENT

POINT I

**The Quest Attorneys Continue To Improperly Burden the Courts
By Pressing A Meritless Defense In Order To Avoid A Judicial Finding of The
Undeniable: They Conspired and Made a Bogus Criminal Complaint About
Mr. Sacchi In An Unethical Attempt To Extinguish This Pending Civil Action
(Raised Below: Pa83 - Pa85)**

It was in January 2020 that Quest Attorneys Michael T. Hensley and Michael E. Prevoznik admittedly conspired to weaponize the N.J. Attorney General's Division of Criminal Justice by making false statements in their unethical attempt to spark a criminal investigation against Plaintiff and Quest patient John Sacchi and thereby extinguish the pending civil action instead of simply responding to the patient's repeated requests for *his own medical records over many months*.

As detailed herein, the New Jersey Rules of Professional Conduct mandate Attorneys Hensley's and Prevoznik's disqualification in this action due to

their prohibited "personal interest" in preventing the Court from finding that they made a false and unethical criminal complaint to the N.J. Attorney General in their illicit scheme to extinguish a pending civil action. See N.J. RPC 1.7(a)(2).

The Quest Attorneys continue to improperly burden this Court by pressing a meritless defense in order to delay a judicial finding of the undeniable: Together, the Quest Attorneys colluded and made a *criminal* complaint that included false statements against plaintiff John Sacchi in an ongoing civil action in their unethical attempt to extinguish the lawsuit in clear violation of the New Jersey Rule of Professional Conduct that specifically forbids attorneys from "**presenting . . . criminal charges to obtain an improper advantage in a civil matter.**" N.J. RPC 3.4(g) (emphasis added). The New Jersey Supreme Court made clear in its seminal decision of *In re Barrett*, 88 N.J. 450, 454 (1982), that violation of this ethical mandate cannot be excused: There, the New Jersey Supreme Court agreed with the Disciplinary "Committee conclu[sion] that the [attorney's] filing of the criminal complaint was obviously done for the purpose of effecting a settlement of the civil suit" (emphasis added)). See also *In re Kasper-Ansermet*, 132 F.R.D. 622, 626 (D.N.J. 1990) ("[I]t would be unethical for a member of the bar of this court to threaten criminal action to gain an advantage in a civil negotiation[.]"), aff'd, 132 F.R.D. 622, 623, 1990 U.S. Dist. LEXIS 18580, **1-2 (D.N.J. Mar. 23, 1990) (adopting Magistrate's Opinion and Order).⁴

⁴To the extent that attorneys in New Jersey are required to "inform the appropriate professional authority" when they "know[] that another lawyer has committed a violation of the Rules of Professional Conduct," N.J. RPC 8.3(a), the undersigned understands that the Attorney General's Division of Criminal Justice itself has already sent to the Office of Attorney Ethics of the Supreme Court of New Jersey the

POINT II

N.J. Rule of Professional Conduct 1.7 Mandates that Attorneys Michael T. Hensley and Michael E. Prevoznik Be Disqualified from Representing Quest Because “It May Be Difficult Or Impossible For Them To Give [Quest] Detached Advice” (Raised Below: Pa84)

Where Quest Attorneys Hensley and Prevoznik admittedly counseled Quest to create a baseless criminal prosecution against 72-year-old stroke victim and Quest patient Mr. Sacchi in a pending civil action—rather than to simply pick up the telephone and contact Mr. Sacchi’s lawyer to discuss any purported concerns and arrange for provision of Mr. Sacchi’s overdue medical records—Attorneys Hensley and Prevoznik cannot now serve as Quest’s counsel to address the lawsuit in which their admitted unethical activity occurred.

As RPC 1.7(a)(2) cautions, Attorneys Hensley’s and Prevoznik’s “personal interest” in evading individual culpability for their unethical conduct poses a “significant risk that the[ir] representation of [Quest] will be materially limited.” In fact, Quest already has suffered considerably after Attorneys Hensley and Prevoznik apparently counseled Quest to reject the extremely favorable baseless, wasteful, and unethical memorandum that included knowingly false statements and was presented to criminal authorities by attorneys Michael T. Hensley and Ross A. Fox, presumably approved and/or ratified by Quest General Counsel Michael E. Prevoznik, and *obviously designed to extinguish the instant action so that Quest would not have to respond to the Complaint.* The undersigned has since spoken with and provided documents to ethics authorities while represented by counsel to detail the meritorious nature of the action and prove that Mr. Sacchi made repeated pre-litigation written, electronic, and telephonic requests to Quest with the assistance of an attorney that were never answered until litigation was filed *and only after* the N.J. Attorney General had rejected the Quest Attorneys’ baseless claims. Ethics authorities required, *inter alia*, documentation that evidenced Mr. Sacchi had in fact sent his Oct. 29, 2019 pre-litigation “demand letter” by both electronic-mail and priority mail that Quest never replied to (Pa65-Pa66).

settlement offer made by Mr. Sacchi as discussed *infra* Point IV when Mr. Sacchi attempted to obtain his medical records as quickly as possible and resolve all billing matters to avoid Quest's collection activity and report of delinquent accounts to credit-rating agencies.

The American Bar Association explains further in the commentary to Rule 1.7(a)(2) why disqualification is mandated in such circumstances:

[I]f the probity of a lawyer's own conduct in a transaction is in serious question, ***it may be difficult or impossible for him to give a client detached advice.***

2016 ABA Model Rules of Professional Conduct 1.7 cmt. 10 (emphasis added).

Accord DC RPC 1.7(a)(4) cmt. 11.

For the same reason, this “non-consentable conflict” created by the lawyer’s “personal interest” in the client’s litigation or transaction similarly prohibits a lawyer from representing the buyer or seller in a real estate transaction if the lawyer will also receive a percentage of the sales price as a commission for dual service as the real estate broker to the transaction. As the New York State Ethics Commission explained,

[T]he ***personal interest*** of a lawyer-real estate broker in the brokerage fee that will be generated by a closing of a real estate transaction so conflicts with the lawyer's responsibility to provide independent legal judgment with respect to that transaction as to preclude the dual roles and to make the ***conflict non-consentable*** by the client.

N.Y. State Ethics Opinion 933 P7 (2012) (emphases added).

A. Mssrs. Hensley and Prevoznik Likely Face Employment and Partnership Termination for Their Demonstrated Unethical Conduct

Quest Attorneys Hensley's and Prevoznik's personal interest in continuing the meritless defense of the action could not be more significant as indicated by the public instances in which lawyers have lost jobs as both a *Chief Legal Counsel and Partner* where they had merely *possibly engaged* in unethical activity.

Morgan Stanley Dean Witter's Chief Legal Officer Christine Edwards left her position after it was reported that Morgan Stanley had improperly communicated with the Manhattan District Attorney's Office in the bank's reported effort to *facilitate a criminal prosecution of an employee who had filed a pending civil action against the bank*. See "Morgan Stanley's Top Lawyer Quits," N.Y. Post, June 11, 1999 (www.nypost.com) (stating that even though the Chief Legal Office was reportedly "cleared by outside counsel," the incident had "happened on her watch").

And mergers and acquisitions attorney Gordon Caplan was reportedly let go as Co-Chairman of the law firm Willkie Farr & Gallagher for alleged involvement with the "Varsity Blues" college admissions scandal. See "College Admission Scandal's Other Big Names Are Titans in Finance and Law," N.Y. Times, Mar. 14, 2019 (www.nytimes.com).

POINT III

The Quest Attorneys' "Personal Interest" in Avoiding Discipline for Their Blatantly Unethical Conduct Mandates Their Disqualification Due to the Non-Consentable Nature of Their Conflict With Quest's Interests in Obtaining a Quick, Efficient, and Just Resolution of the Instant Action While Complying With Its Duties to Provide Patients Medical Records and Billing Statements
(Raised Below: Pa85)

As RPC 1.7(a)(2) cautions, Attorneys Hensley's and Prevoznik's "personal interest" in evading individual culpability for their unethical conduct poses a "significant risk that the[ir] representation of [Quest] will be materially limited." In fact, Quest already has suffered considerably after Attorneys Hensley and Prevoznik apparently counseled Quest to reject the extremely favorable settlement offer made by Mr. Sacchi as discussed *infra* Point IV.

And now the Quest Attorneys' ongoing "personal interest" is wrongfully necessitating involvement of both the Superior Court and the Appellate Division simply because the Quest Attorneys pursue a meritless defense of the action rather than letting Quest acknowledge that it was improper to follow their attorneys' unethical counsel to make a bogus accusation of criminal activity against a patient and to continue withholding the patient's own medical records and account billing statements for more than two and one-half years after initially requested; indeed, Quest has still not provided the medical records and billing statements as of the date of this filing as noted *infra* Point V.A.

New Jersey Supreme Court and U.S. Court of Appeals for the Third Circuit cases that have involved disqualification on this basis require the identification of a clear conflict between the client and the personal interests of the

attorney, such as that which exists here in great measure. For example, in United States v. Merlino, 349 F.3d 144 (3d Cir. 2003), the Third Circuit held that the attorney's alleged [conduct] raised the serious potential for conflict because “[a]n attorney who faces criminal or disciplinary charges for his or her actions in a case will not be able to pursue the client’s interests free from concern for his or her own.” Id. See also Circle Chevrolet v. Giordano, Halleran & Ciesla, 142 N.J. 280, 291-92 (1995) (noting that a lawyer’s potential liability to a client for malpractice may cause a conflict of interest under RPC 1.7 . . . after the lawyer becomes aware that he or she has made an error); State v. Rivera, 232 N.J. Super. 165, 178-79 (App. Div.), certif. den., 117 N.J. 169 (1989) (disqualifying under RPC 1.7 two defense lawyers . . . and holding that the lawyers’ possible criminal liability would hamper their representation of the defendant); United States v. Lacerda, 929 F. Supp. 2d 349 (D.N.J. 2013) (disqualifying defense counsel . . . because of counsel’s personal stake in protecting himself against potential . . . malpractice claims . . .).

Once Quest has independent counsel, Quest will then be free to decide upon litigation conduct that best benefits Quest itself to effect a quick, efficient, and just resolution of the action as opposed to the existing feverish, scorched-earth, wasteful, and futile *faux* defense of a defenseless case that is driven solely by Mssrs. Hensley’s and Prevoznik’s desperate effort to evade disciplinary action, malpractice claims, and likely termination of employment and partnership at their respective workplace.

POINT IV

The Attorneys Rejected A Settlement Offer Extremely Favorable to Quest In Their Effort to Somehow Retroactively Justify Their Earlier Unethical Complaint to the New Jersey Attorney General's Division of Criminal Justice That Had Baselessly Accused Mr. Sacchi of Criminal Activity in Their Bad-Faith Effort to Extinguish Consumer's Action (Raised Below: Pa85 - Pa88)

Mr. Sacchi's simple request for his own medical records and his account billing statements, which was made repeatedly by *pre-litigation* electronic mail messages, Quest website inquiry form, telephone call, and overnight courier, has still never been afforded by Quest. Quest repeatedly refused to respond, perhaps due at first to mere malfeasance of customer service representatives, which necessitated the instant litigation by a conscientious consumer and elderly stroke survivor (with a litigator for a spouse) determined to vindicate his right to obtain his medical records and billing statements and that could easily have been resolved by Quest's simply complying with the HIPAA Privacy Rule and parallel mandates of state law by timely providing Mr. Sacchi's medical records and billing statements.

Indeed, Mr. Sacchi had made a settlement offer in March of 2020 that simply sought provision of the medical and billing records (which would resolve central issues by definitively indicating (i) whether the glucose tolerance and tuberculosis tests had—or had not—been ordered for him and, if so, by which medical prescriber(s) and (ii) the amount of money, if any, he needed to pay in order to prevent Quest's initiation of collection activity and reporting of delinquent accounts to credit-rating agencies), a commitment by Quest to assist other patients with similar requests, and *mere payment of Mr. Sacchi's court filing fee* as follows in his settlement proposal:

FOR SETTLEMENT PURPOSES ONLY:

Mr. Hensley

Michael,

Thank you for your call. I understand Quest is engaged with coronavirus issues (and as I noted, I am personally with a 70-yr-old spouse and a 94-yr-old mother (in Calif.) trying to enter a facility). Of course, an extension is granted. Pursuant to our discussion, a proposed settlement would encompass, *inter alia*, the points below. Plaintiff reserves the right to make further additions and revisions. Kindly advise whether this is acceptable to Quest or whether any modifications are proposed:

- 1) Plaintiff represents that neither he (nor his spouse) ordered a "TB" and glucose tolerance test nor scheduled same for October 28, 2019. Plaintiff received two "appointment" reminders by electronic mail for such a date and repeatedly requested Quest's assistance by website communication, electronic mail, telephone, and letter in identifying who, if any, of Plaintiff's licensed medical prescribers ordered such tests--or whether such activity had somehow occurred in error. Plaintiff did not receive a substantive response until the instant action was filed.
- 2) Plaintiff had scheduled an appointment in Sept. 2019 for tests ordered by his physician in connection with his annual physical examination. Plaintiff's physician later stated that he had not ordered the additional two tests although his physician had sent a urinalysis test order by facsimile to Quest's Red Bank facility.
- 3) Quest represents that its computer system allows individuals to schedule appointments and designate laboratory tests for the subject appointment by entering the patient's name, birthdate, and e-mail address but does not otherwise require that the individual authenticate him/herself.
- 4) Quest represents that it does not record the ISP address of the individual who made the appointments and reportedly selected the laboratory tests during the relevant time period. Quest represents that the October 28, 2019 appointment and the associated tests were scheduled via the Internet on _____ but that it cannot ascertain the ISP address from which that electronic activity originated. Plaintiff and counsel have offered to provide Quest with access to all of their Internet-accessible devices for search thereof.
- 5) Quest represents that its system does not spontaneously generate subsequent laboratory tests in response to results obtained from prior tests.
- 6) Quest commits to providing the above explanation to any and all other patients who inquire regarding putative appointments and laboratory tests.
- 7) Quest will reimburse Plaintiff for his filing fee.

8) Neither Quest nor Plaintiff will be bound by confidentiality and may speak truthfully regarding the genesis, progression, and resolution of the lawsuit and the underlying facts, theories, allegations, and defenses. Significantly, all Parties and their in-house and outside counsel may of course remain free to make any and all truthful statements to ethics authorities.

9) Quest commits to researching why Plaintiff has been billed for certain charges despite his Medicare coverage and "Medigap" supplemental policy that typically cover all charges—including co-pays--of tests conducted in connection with his annual Medicare authorized physical examination. In the event the charge is properly not covered by any such coverage, Plaintiff will pay the charge within ten days and Quest will not report any purported non-payment thereof and will not engage in any collection activity.

Thank you, -Stephen

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

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ADMITTED IN CA, NY, NJ, & MA (ret.)**

Electronic-mail message from S. Simoni to M. Hensley, Mar. 17, 2020. Certification of Stephen J. Simoni, Mar. 14, 2022 ("**Simoni Certif.**") Exh. A (Pa76).

Incredibly, the Quest Attorneys rejected the settlement offer. The reason for the inexplicable rejection of this settlement offer—which was extremely favorable to Quest—only became apparent to the undersigned in the following month of April 2020: It was in April of 2020 that I learned that the Quest Attorneys—rather than advise Quest to provide the statutorily required medical records and billing statements after Mr. Sacchi had filed the initial action in January of 2020—had instead made false statements to the New Jersey Attorney General's Division of Criminal Justice in their bad-faith effort to manufacture a bogus criminal case

against Mr. Sacchi pursuant to their above-referenced Memorandum of Quest Attorneys.

Even worse, as noted earlier, the Quest Attorneys never even contacted the undersigned to discuss any purported concerns prior to wasting the time of criminal law enforcement authorities.

Apparently, the Quest Attorneys wrongly advised Quest that the lawsuit was somehow criminal because the pre-litigation electronic mail messages, telephone call, and overnight courier letter demanding the medical records originated from the undersigned's law office account (Pa121). It is true that I am Mr. Sacchi's spouse, attorney, and health care proxy and properly assisted him, an elderly stroke victim, in repeatedly attempting to obtain the medical records *prior to* commencing litigation (Pa121 -122). But that of course does not in any way justify the completely baseless and false complaint Mssrs. Hensley and Prevoznik made to the New Jersey Attorney General's Division of Criminal Justice and Quest's continuing failure to provide Mr. Sacchi access to his own medical records and billing statements.

The undisputed facts here, moreover, clearly demonstrate that no reasonable observer—and certainly no qualified attorney—would even suspect criminal activity. In their effort to brazenly prod the N.J. Attorney General's Division of Criminal Justice to criminally prosecute Mr. Sacchi, the Quest Attorneys freely admit that their perceived basis of criminal activity was merely the circumstance that the Quest Attorneys' so-called "investigation" had discovered: "[T]he contact information utilized to schedule the blood draw appointment at issue was

[Patient's] counsel's business contact information and [Patient] (or his husband/attorney) used his counsel's phone number and e-mail address in connection with the scheduling of the appointment." Quest Oppst'n Br., at 3 (Pa100).

As detailed in his court filings, Patient openly sought to obtain his medical records from Quest while repeatedly using his attorney's contact information (phone number and e-mail address) and sending messages from his attorney's e-mail account and on his attorney's stationery, *which was obvious to Quest throughout the many months Patient continually requested his records*. There was no secret that Quest patient John Sacchi was requesting his medical information and stated he could be contacted at the specified telephone number and e-mail address, which even identified his attorney by name (StephenSimoniLAW@gmail.com), who also is Mr. Sacchi's spouse and healthcare proxy who handles the medical affairs of the 72-yr-old stroke survivor Mr. Sacchi.

Indeed, the one and **only** reason that a lawsuit and the First Amended Complaint were even filed was Quest's inexplicable, wrongful, and repeated failure to even respond to Patient—let alone permit him to access his own medical records and billing statements as required by multiple parallel provisions of federal and state law.

No reasonable person would suspect criminal activity based on such a circumstance. And no ethical attorney would even think about defaming a client's patient and wasting law enforcement's time before picking up the telephone to inquire of the patient's lawyer about any purported concerns.

POINT V

The Quest Attorneys Continue to Litigate This Defenseless Case Because Resolving the Action Would By Necessity Implicitly Acknowledge Their Improper Activity of Counseling Quest to Wrongfully Deny Mr. Sacchi Access to His Medical Records *Since 2019* and Instead Make Baseless and False Statements In Their Unethical Effort to Criminally Prosecute Him (Raised Below: Pa88 - Pa89)

The Quest Attorneys continue to litigate this defenseless case by pursuing, *inter alia*, the entirely frivolous and likely sanctionable argument made in their unsuccessful motion to dismiss that contended “no contractual relationship” exists between a diagnostic laboratory and a patient who pays the lab to process his blood samples (Pa88; T24).

United States Supreme Court Justice Sonia Sotomayor, then sitting on the Southern District of New York bench, explained why she sanctioned similar defense attorney conduct as follows:

This Court has had to spend countless hours slogging through three sets of [Defendant's attorney's] incoherent submissions, which were ***intended merely to camouflage his client's plain liability***. To decline to impose sanctions in a case such as this would send [the attorney and his firm], and others like [the]m, the message that our legal system will tolerate ***lawyers who practice law without care***, and who ***needlessly delay litigations by pressing meritless [defenses]*** and creating confusion where there need not be any.

Ping He Co. v. Nonferrous Metals (U.S.A.) Inc., 22 F. Supp. 2d 94, 104 (S.D.N.Y. 1998)

(emphases added).⁵

⁵Although Judge Sotomayor subsequently vacated the sanctions order on a technicality concerning whether sufficient notice had been provided given that multiple sanctions motions had been filed, she simultaneously allowed the litigants the option of bringing a renewed motion for sanctions. Ping He Co. v. Nonferrous

A. Quest Still Has Not Provided Mr. Sacchi's Medical and Billing Records

Incredibly, the Quest Attorneys, meanwhile, continue to wrongfully block release of Mr. Sacchi's *own medical records* and billing statements. Although the Superior Court held definitively held that Mr. Sacchi "is entitled to obtain discovery from Quest," Order of Hon. L. Grasso Jones, Mar. 4, 2022, at 2 (Pa11), and Mr. Sacchi subsequently provided Quest a HIPAA authorization in accordance with the Order, the Quest Attorneys now falsely claim, *inter alia*, that Quest first must receive Mr. Sacchi's social security number and a copy of his power of attorney to release the records when, in fact, the records must be provided without requiring the disclosure of such sensitive and confidential information.

The improper demand for this confidential information is of particular concern given that ***the same Quest Attorneys in this action previously publicly disclosed the social security number of a different patient*** in a public court filing of a different action. Sheridan v. Quest, Dock. No. CAM-L-03586-20 (N.J. Super.).

The Quest Attorneys' baseless and repeated assertion that the confidential disclosures are "required by HIPAA to disclose Mr. Sacchi's medical records" is patently false, 45 CFR 164.508(c)(1), and only the most recent manifestation of the Quest Attorneys' ongoing desperate effort to stymie vindication of Mr. Sacchi's absolute rights under HIPAA and parallel provisions of state law in order to evade responsibility for their unethical and bad-faith criminal complaint to the New Jersey Attorney General and therefore mandates their immediate disqualification from representing Quest herein.

Metals (U.S.A.) Inc., 187 F.R.D. 121 (S.D.N.Y. 1999).

As explained simply to Quest last year in another effort to end the litigation,

[G]ood-faith requests for, and complaints about, [protected health information ("PHI")] access ***never warrant retaliation by, inter alia, making false accusations of criminal activity against the patient.*** Nothing excuses that and Mr. Sacchi [still] . . . ***seeks the PHI in his designated record set,*** resolution of the outstanding invoice, and a payment given the extensive work and time expended to date. Perhaps Quest mgm't (and in-house counsel) feel foolish for having authorized a criminal complaint (and thereby wasting law enforcement's time), but ***a route to resolution may involve Quest owning that fact and moving on versus continuing with a scorched-earth litigation strategy in a herculean effort to avoid acknowledging it may have been—at the very least—"ill-advised" to authorize a criminal complaint and something that Quest actually wants in retrospect to disavow and preclude recurrence thereof.*** Mr. Sacchi, of course, is human while Quest is a corporation and Mr. Sacchi's reputation is something for which he is prepared to litigate because his reputation, as it is for all people, is priceless.

Electronic-mail message from S. Simoni to M. Hensley, Jan. 22, 2021 (emphases added). Simoni Certif. Exh. B (Pa79).

POINT VI

The Quest Attorneys Have Caused Quest To Obstruct the Explicit Mandates of HIPAA In Direct Contravention of the U.S. Dept. of Health and Human Services' National Educational Campaign (Raised Below: Pa89 - Pa90)

Mr. Sacchi's request for his own medical records, as mandated by HIPAA and parallel provisions of state law, accords with the edict of the U.S. Department of Health and Human Services, referenced *supra* the Preliminary Statement, which educates consumers about their rights under HIPAA and urges

patients nationwide to exercise those rights to maintain and improve their health as Mr. Sacchi has been attempting to do here since October of 2019:

Access to your health information is your right. ***Having access to your health records is a powerful tool in staying healthy.*** With access to your health information you can make better decisions with you doctor, better track your progress and do more to be healthy. The Health Insurance Portability and Accountability Act, or HIPAA, for short, gives you the important right to see and get copies of your health information. . . . ***Check to make sure your health information is correct and complete . . . [and] ask to change any wrong information in your file or add information to your file if you think something is missing or incomplete. . . [Even if the healthcare provider] believes the [medical information] is correct, you still have the right to have your disagreement noted in your file. . . .*** Know your rights. Take control. Get better care. . . . INFORMATION IS POWERFUL MEDICINE. Access to your health information is your right. Get it. Check it. Use it.

"Health Information Privacy," U.S. Dep't Health & Human Svcs. website (www.hhs.gov) (emphases in original).

CONCLUSION

N.J. Rule of Professional Conduct 1.7 mandates that attorneys Michael T. Hensley and Michael E. Prevoznik be disqualified from representing Quest in this action as their joint desire to avoid the inevitable finding that their unethical criminal complaint was improper now deprives Quest of unbiased legal counsel regarding this litigation that would have otherwise ended years ago.

Once Quest has independent counsel, Quest will then be free to decide on litigation conduct that best benefits Quest itself as opposed to the existing feverish, scorched-earth, wasteful, and futile *faux* defense of a defenseless case that is driven

by Mssrs. Hensley's and Prevoznik's desperate effort to evade deserved disciplinary action, malpractice claims, and likely termination of employment and partnership at their respective workplace.

Continued litigation will inevitably be driven by Attorneys Hensley's and Prevoznik's continued stewardship of the action and will only work to the detriment of the Superior Court, the Appellate Division, Quest, and Mr. Sacchi, who—to this day of April 16, 2022—*still remains without access to his own medical records that were first requested in 2019 and remains without the billing statements he must pay to avoid Quest's initiation of collection activity and reporting of a "delinquent" account to credit-rating agencies.*

Florham Park, NJ
Dated: Apr. 16, 2022

s/Stephen J. Simoni
Stephen J. Simoni

PREPARED BY THE COURT

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.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MONMOUTH COUNTY
DOCKET NO: MON-L-1503-2020

ORDER

THIS MATTER having come before the court upon the Motion of Bressler, Amery & Ross P.C., the undersigned attorneys for Defendants, Quest Diagnostics Incorporated, ("Quest"), to dismiss Plaintiffs' Complaint with Prejudice, and the Court having reviewed the papers submitted in support of the Motion and those submitted in opposition, and heard oral argument, and good cause having been shown;

IT IS on this 3rd day of January, 2022

ORDERED that the Quest's Motion to Dismiss Plaintiffs' Complaint as to the Quest Defendants is hereby **DENIED**; and it is further

ORDERED that a copy of the within Order shall be deemed served upon all counsel of record within seven (7) days of its posting on e-Courts.

/s/ Kerry E. Higgins
Hon. Kerry E. Higgins, J.S.C.

For the reasons set forth below.

STATEMENT OF REASONS

January 3, 2022
Sachi v. Quest Diagnostics
Docket No.: MON-L-1503-20

INTRODUCTION

This matter arises out of a class action Complaint Plaintiff filed on behalf of himself, John Sacchi (“**Plaintiff**” or “**Sacchi**”), and similarly situated individuals, alleging that Defendant Quest Diagnostics (“**Defendant**” or “**Quest**”) violated the classes’ rights to the proper access of their protected healthcare information. The Complaint identifies seven causes of action, the majority of which, Plaintiff argues, are viable by way of the federal Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”). Plaintiff contends that Defendant’s refusal to supply Protected Health Information is a violation of the New Jersey Consumer Fraud Act; violates HIPAA’s Privacy Rule; constitutes negligence; breach of covenant of good faith and fair dealing; engaged in improper billing and breach of contract to not retaliate for the filing of a HIPAA Complaint.

STATEMENT OF FACTS

Defendant Quest Diagnostics operates thousands of clinical laboratories throughout the United States and abroad, offering medical testing services to its customers. Through their website, Quest utilizes an online scheduler where appointments can be scheduled for patients by their doctors, physicians, or by the patient themselves. Plaintiff is a “Senior Citizen Medicare beneficiary and stroke victim” who has and continues to be prescribed treatment and services from several healthcare professionals. In October of 2019, an appointment was scheduled for Plaintiff through Defendant’s website for tests at Defendant’s Red Bank, New Jersey location. It is disputed between the parties whether Plaintiff made the appointment himself or whether it was made on his behalf.

STATEMENT OF REASONS

Attempting to ascertain how and by whom the appointment was made, Plaintiff contacted his treating prescribers and Defendant. During his communications with Defendant, Plaintiff unsuccessfully made repeated attempts to attain records of his Protected Health Information related to the appointments. Plaintiff ultimately filed this suit against Defendant alleging that their online scheduling system inadvertently registers mistaken or redundant appointments for the wrong patients, resulting in parties similarly situated to Plaintiff subject to additional financial expenses and mental hardship.

Plaintiff's Complaint was filed in May of 2020 and then amended in September 2020 to include additional causes of action, alleging Defendant of following: **(1)** Violation of NJ Consumer Fraud Act N.J.S.A. 56:8-2.2 ("**NJCFA**"); **(2)** Violation of the HIPAA Privacy Rule; **(3)** Negligence Per Se; **(4)** Negligence; **(5)** Breach of Contract and Contractual Covenant of Good Faith and Fair Dealing; **(6)** Breach of Contracts to Process Payments from Third Parties and Respond to Billing Inquiries; **(7)** Breach of Contract to Not Retaliate Against "any Individual for Filing a Complaint" about HIPPA Privacy Rule Violations. Shortly after, Defendant attempted to remove this matter to the United States District Court for the District of New Jersey, Newark Vicinage, arguing that Plaintiff's HIPAA-based claims should be heard in federal court. Plaintiff then filed to remand the matter back to this Court, which was ultimately granted by the Honorable Michael A. Shipp.

In his Amended Complaint, Plaintiff alleges that Defendant has "knowingly and deliberately" jeopardized the wellbeing of those who use its online scheduling system by failing to address the system's alleged scheduling errors. Central to his Complaint, Plaintiff believes that Defendant has violated HIPAA and has premised the several causes of action on the alleged violation of the law. In their motion to this Court, Defendant argues that Plaintiff's Amended

STATEMENT OF REASONS

Complaint should be dismissed with prejudice as a private right of action under HIPAA does not exist as a matter of law and because all of Plaintiff's claims are legally insufficient, that they are only vague and conclusory allegations not supported by the documents and exhibits provided, the Complaint should be dismissed pursuant to Rule 4:6-2(e).

The parties then appeared before this Court for oral argument following Defendant's Motion to Dismiss Plaintiff's Complaint for failure to state a claim upon which relief can be granted.

ANALYSIS & APPLICATION

A motion under Rule 4:6-2(e) is a statement by a defendant that there is no legal claim alleged by the plaintiff. A court is "to approach with great caution applications for dismissal under R. 4:6-2(e) for failure to state a claim on which relief may be granted." Printing Mart v. Sharp Electronics Corp., 116 N.J. 739, 771-72 (1989). Pursuant to Rule 4:6-2(e), a Complaint shall be dismissed when a party has failed to state a claim upon which relief may be granted. It has been long held that "[i]n reviewing a complaint dismissed under R. 4:6-2(e), the inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint." Printing Mart-Morristown, 116 N.J. at 746 (1989).

A motion made under R. 4:6-2(e), unlike a summary judgment motion, is based on the pleadings themselves. Sellers v. Schonfeld, 270 N.J. Super. 424 (App. Div. 1993). The court's inquiry is limited to examining the "allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim." Banco Popular N. Am. v. Gandi, 184 N.J. 161, 183 (2005). Generally, every reasonable inference is granted in favor of the plaintiff. Lieberman v. Port Authority of N.Y. and N.J., 132 N.J. 76 (1993).

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The court is to search the complaint in depth to determine if a claim is even suggested in the papers. The court is not concerned with plaintiff's ability to prove the allegations but rather only that a cause of action can be gleaned from the complaint. Printing Mart, supra, at 746; Smith v. SBC Communications, Inc., 178 N.J. 265, 282 (2004).

For purposes of this analysis, claimants are entitled to every reasonable inference of fact. Independent Dairy Workers Union v. Milk Drivers Local 680, 23 N.J. 85, 89 (1956). "The examination of a complaint's allegations of fact required by the [aforementioned] principles should be one that is at once painstaking and undertaken with a generous and hospitable approach." Printing Mart, 116 N.J. at 746 (1989). Therefore, when considering a motion to dismiss under R. 4:6-2(e), the reviewing court must assess the complaint in depth and with liberality to determine if a cause of action can be gleaned even from an obscure statement. Id.

All facts alleged in the complaint are to be taken as true. Craig v. Suburban Cablevision, 140 N.J. 623, 625 (1995). These allegations must be reviewed with great liberality, and all inferences resolved in favor of the plaintiff. Communication Workers of America v. Whitman, 298 N.J. Super. 162, 166-167 (App. Div. 1997). However, it should be remembered that discovery is intended to lead to facts supporting or opposing a legal theory, not to the formulation of one. Camden County Energy Recovery Assocs, L.P. v. N.J. Dep. Of Environmental Protection, 320 N.J. Super. 59, 64 (App. Div. 1999). Legal sufficiency requires allegation of all the facts that the cause of action requires. Cornett v. Johnson & Johnson, 414 N.J. Super. 365, 385 (App. Div. 2010). Without such allegations, the claim must be dismissed. Id.

STATEMENT OF REASONS

A motion made under R. 4:6-2(e) should be granted only in rare circumstances and ordinarily without prejudice. F.G. v. MacDonell, 150 N.J. 550, 556 (1997). Moreover, a complaint should not be dismissed where a cause of action is suggested by the facts and a theory of actionability may be articulated by amendment of the complaint. Printing Mart, 116 N.J. at 746. However, if the complaint states no basis for relief and discovery would not provide one, dismissal of the complaint is appropriate. Energy Rec. v. Dep't of Env'tl Protection, 320 N.J. Super. 59, 64 (App. Div. 1999); Flinn v. Amboy Nat. Bank, 436 N.J. Super., 274, 286 (App. Div. 2014). Thus, the Court "searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Di Cristofaro v. Laurel Grove Memorial Park, 43 N.J. Super. 244, 252 (App. Div. 1957).

The majority of counts pled in Plaintiff's Amended Complaint contain an underlying allegation that Defendant has violated HIPAA, and that the violation gives rise to its various causes of action. For instance, Plaintiff contends that Defendants have violated the HIPAA Privacy Rule under 45 C.F.R. §§ 164.502 and that this violation led to harm suffered by Plaintiff and others similarly situated. Defendant argues that since it is clear that a violation of HIPAA does not give rise to a private cause of action, the Complaint must be dismissed.

Congress must create a cause of action to enforce federal law. Alexander v. Sandoval, 532 U.S. 275, 286 (2001). To determine as such, Courts should inquire into whether Congress, either through explicit means or by implication, intended to create a private of cause of action. Id. For a private cause of action to be enforced through federal law, Congress must have demonstrated that they enacted the law for such a purpose.

STATEMENT OF REASONS

New Jersey state courts, citing to federal rulings in their decisions, have held that an individual citizen may not utilize HIPAA as a means to pursue private causes of actions. The Appellate Division in Cmty. Hosp. Grp., Inc. v. Blume Goldfaden Berkowitz Donnelly Fried & Forte, P.C., 381 N.J. Super. 119, 126 (App. Div. 2005), expressly held that no private cause of action is available under HIPAA as Congress did not, explicitly or implicitly, intend the legislation to be utilized in such a way. See also, Boone v. Connections Cmty. Support Programs, No. 18-1746 (MN), 2019 U.S. Dist. LEXIS 203688, at *8-9 (D. Del. Nov. 22, 2019). Instead, that ability belongs solely within the “the exclusive province of the Secretary of Health and Human Services...” Polanco v. Omnicell, Inc. 988 F.Supp.2d 451,469 (D.N.J. Dec. 26, 2013) (citing Acara v. Banks, 470 F.3d 569, 571 (5th Cir. 2006)). The appropriate remedy for an individual who believes that an entity has failed to comply with the regulations and directives of HIPAA is by filing a complaint with the Secretary of Health and Human Services.

Plaintiff’s Amended Complaint relies almost entirely on causes of action based on violations of HIPAA. In fact, prior to this matter appearing before this Court, United States District Court Judge Michael A. Shipp, in an Order remanding this matter from federal court, found that private causes of action cannot be maintained solely on one’s alleged violation of HIPAA. See Defendant Exhibit I. However, Judge Shipp did not dismiss the Complaint but rather referred it back to the state court for analysis under its laws. Although a private cause of action does not exist for HIPAA violations, counts sounding in violations of the NJCFA and in negligence and breach of contract and fair dealing are cognizable in state court.

Additionally, the Complaint alleges that Defendant has breached their contractual duties to “submit [Plaintiff’s] purported charges for [Defendant’s] services to Medicare” and to “minimize the

STATEMENT OF REASONS

possibility of future Misdirected Notifications by... changing its existing company-wide policy of failing to provide accurate information” to their recipients. See Plaintiff Am. Compl. at ¶¶64-70. To succeed on a breach of contract claim, a plaintiff must demonstrate the following: (1) that the parties entered into a contract containing certain terms; (2) that plaintiff did what the contract required of them to do; (3) that the defendant failed to fulfill their obligations under the contract; and (4) that as a result of defendant’s failure to abide by their requirements of the contract, the plaintiff suffered a loss. Globe Motor Co. v. Igdaley, 225 N.J. 469, 482 (2016). The court is not concerned with plaintiff’s ability to prove the allegations but rather only that a cause of action can be gleaned from the complaint. Printing Mart, supra, at 746; Smith v. SBC Communications, Inc., 178 N.J. 265, 282 (2004).

CONCLUSION

All facts alleged in the complaint are to be taken as true. Craig v. Suburban Cablevision, 140 N.J. 623, 625 (1995). These allegations must be reviewed with great liberality, and all inferences resolved in favor of the plaintiff. Communication Workers of America v. Whitman, 298 N.J. Super. 162, 166-167 (App. Div. 1997).

Generally, if a matter is to be dismissed under R. 4:6-2(e), “(it) should be without prejudice to a plaintiff filing an amended complaint.” Printing Mart, supra, at 772. However, when the plaintiffs have not offered either a certification or a proposed amended pleading that would suggest their ability to cure the defects of the complaint, and it appears to the court that the opportunity to amend would be futile, the appellate court has found it proper to dismiss the complaint with prejudice. Johnson v. Glassman, 401 N.J. Super. 222, 246-247 (App. Div. 2008). Amendment remains a matter addressed to the court's sound discretion. Id. In determining whether dismissal under R. 4:6-2(e) is warranted, the court should not concern itself with plaintiffs' ability to prove their allegations. Wreden v.

STATEMENT OF REASONS

Township of Lafayette, 436 N.J. Super. 117, 124-125. If "the fundament of a cause of action may be gleaned even from an obscure statement of claim," then the complaint should survive this preliminary stage. Craig at 626.

The present motion turns, not on whether Plaintiffs can prove their allegations, but on whether the court can glean a scenario where the plaintiff is entitled to relief. Plaintiff alleges a violation of the NJCFA, breach of contract and negligence claims. If proven, such claims could survive regardless of whether HIPAA had been violated. Defendant's alleged refusal to provide requested PHI may give rise to claims of breach of contract and negligence. It may be that plaintiff moves to amend its complaint to clarify that it is not seeking relief for a violation of HIPAA, but that defendant has breached a contract and/or acted in a negligent manner. So, accepting as true that the failure to provide requested PHI and engaging in improper billing techniques constitutes a breach of contract and/or negligence, the court can glean a cause of action.

As such, Defendant's Motion to Dismiss Plaintiff's Complaint with prejudice for failure to state a claim upon which relief is hereby **DENIED**.

/s/ Kerry E. Higgins

Hon. Kerry E. Higgins, J.S.C.

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*Counsel for Plaintiff
and the Proposed Class*

JOHN SACCHI (" Consumer "),	:	
Individually and on behalf	:	SUPERIOR COURT OF
of all others similarly	:	NEW JERSEY
situated,	:	LAW DIVISION
	:	MONMOUTH COUNTY
Plaintiff,	:	
	:	Hon. Kerry E. Higgins
vs.	:	
	:	Dock. No. MON-L-1503-20
QUEST DIAGNOSTICS	:	
INCORPORATED (" Quest "),	:	
RAMONA WELDON,	:	
GITA "DOE," and	:	<u>PROPOSED ORDER</u>
DOES 1 through 10, inclusive	:	
	:	
Defendants.	:	
	:	

Upon the Parties' submissions [and any oral argument
that may have been heard], it is

HEREBY ORDERED THAT:

Motion is DENIED.

1. ~~Consumers' Motion for an Interlocutory~~

Sacci may submit a request for production of documents to Quest, with a signed
~~Injunction pursuant to N.J. Court Rule 4:52-2 is hereby~~
HIPAA release, in accordance with the court's decision concerning the appropriate
~~granted on the grounds that Quest has refused to respond to~~
scope of discovery at this stage of the proceedings. This matter is in litigation
~~Mr. Sacchi's repeated requests for copies of his medical~~
and requests made by plaintiff for production of documents once litigation has
~~records and protected health information ("PHI") since~~

commenced should be made pursuant to the New Jersey Rules of Court as a ~~October 2019 despite Quest's requirement to do so pursuant~~
~~request for production of documents pursuant to Rule 4:18-1 et seq.~~
~~to multiple and parallel provisions of state and federal~~
~~law including the contractual duty that Quest plainly~~
~~acknowledges on its own website;~~

DENIED

2. ~~Quest is hereby compelled to provide Mr.~~
~~Sacchi copies of his Protected Health Information in his~~
~~designated record set at Quest that was created in~~
~~September and October 2019 within ten (10) days of the~~
~~entry of this Order; and it is further~~

ORDERED that this Order shall be deemed served upon
all counsel of record within two (2) days of its posting on
eCourts.

March 4, 2022
Dated: ~~June~~ , 2021

/s/ Linda Grasso Jones, J.S.C.
~~Hon. Kerry E. Higgins, J.S.C.~~
HON. LINDA GRASSO JONES, J.S.C.

Motion is DENIED. The motion to dismiss the complaint filed by Quest was decided by the Honorable Kerry Higgins, J.S.C. on February 2, 2022, and Sacchi is entitled to obtain discovery from Quest. In order for Quest to have an obligation to provide discovery, however, a discovery request must be made as provided under the New Jersey Rules of Court. The court does not find in the First Set of Requests for Production of Documents, dated August 15, 2020 a request for plaintiff's medical records. Additionally, as Sacchi is requesting production of medical records, Sacchi's notice to produce requesting the medical records should be accompanied by a signed HIPAA release.

Oral argument was heard on this motion on March 4, 2022.

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*Counsel for Plaintiff
and the Proposed Class*

JOHN SACCHI (" Consumer "),	:	
Individually and on behalf	:	SUPERIOR COURT OF
of all others similarly	:	NEW JERSEY
situated,	:	LAW DIVISION
	:	MONMOUTH COUNTY
Plaintiff,	:	
	:	Hon. Linda Grasso Jones
vs.	:	
	:	Dock. No. MON-L-1503-20
QUEST DIAGNOSTICS	:	
INCORPORATED (" Quest "),	:	
RAMONA WELDON,	:	
GITA "DOE," and	:	PROPOSED ORDER
DOES 1 through 10, inclusive	:	
Defendants.	:	
	:	
	:	
	:	

Upon the Parties' submissions [and any oral argument
that may have been heard], it is

HEREBY ORDERED THAT:

1. Consumers' Motion to Disqualify/Relieve
Attorneys Michael T. Hensley and Michael E. Prevoznik from
Representing Quest Diagnostics Incorporated in this action
is hereby **DENIED** due to lack of jurisdiction (see below),
~~GRANTED~~ and it is further

ORDERED that this Order shall be deemed served upon all counsel of record within seven (7) days of its posting on eCourts.

Dated: Apr. 14, 2022

/s/ Linda Grasso Jones, J.S.C.

Hon. Linda Grasso Jones, J.S.C.

This matter is currently pending before the New Jersey Superior Court, Appellate Division on a motion for leave to appeal of an order entered on the trial court level. By order entered March 15, 2022 the Appellate Division has granted the motion for leave to appeal and a briefing schedule has been issued. Jurisdiction in this matter is thus now held by the Appellate Division, and this court does not have jurisdiction to grant (or deny on the merits) the relief requested.

Oral argument was heard by the court on April 14, 2022.

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*Counsel for Plaintiff
and the Proposed Class*

JOHN SACCHI (" Consumer "),	:	ELECTRONICALLY FILED
Individually and on behalf	:	SUPERIOR COURT OF
of all others similarly	:	NEW JERSEY
situated,	:	LAW DIVISION
	:	MONMOUTH COUNTY
Plaintiff,	:	
	:	Hon. Daniel L. Weiss
vs.	:	
	:	Docket No. MON-L-1503-20
QUEST DIAGNOSTICS	:	
INCORPORATED (" Quest "),	:	CIVIL ACTION CLASS ACTION
RAMONA WELDON,	:	FIRST AMENDED COMPLAINT
GITA "DOE," and	:	FOR INJUNCTIVE RELIEF
DOES 1 through 10, inclusive,	:	AND COMPENSATORY
Defendants.	:	AND PUNITIVE DAMAGES
	:	JURY TRIAL DEMANDED

**QUEST IS FIRED BY FLORIDA AFTER ITS FIVE-MONTH DELAY IN
REPORTING COVID-19 TEST RESULTS, REFUSES TO FIX SYSTEMIC
COMPUTER NOTIFICATION ERRORS, VIOLATES THE HIPAA PRIVACY
RULE, AND ILLEGALLY RETALIATES BY MAKING FALSE STATEMENTS
TO CRIMINAL AUTHORITIES IN RESPONSE TO PATIENT COMPLAINTS**

QUEST DIAGNOSTICS INCORPORATED ("**Quest**") openly
acknowledged systemic errors in its computerized lab test
notification program in an audiotaped October 29, 2019
telephone call and was then publicly fired by the State of
Florida for multiple egregious reporting failures of

critical COVID-19 test results. Florida's Governor publicly complained in a statement in which he:

slammed Quest for the delay and held it up as reason to be skeptical about the data and numbers surrounding the global pandemic. He said he learned Monday th[at Quest] would be adding a slew of test results to the DOH reporting system, ***some of them up to five months old. "The law requires all COVID-19 results to be reported to DOH in a timely manner.*** To drop this much ***unusable and stale data*** is irresponsible," the governor said.

N.Y. Daily News, Sept. 2, 2020 (retrieved at www.nydailynews.com/coronavirus/ny-coronavirus-florida-quest-lab-back-log-test-results) (emphases added).

Nevertheless, Quest still refuses to comply with the HIPAA Privacy Rule when ***individual*** patients request access to the Protected Health Information needed to ascertain the validity of their subject lab test notifications and illegally retaliates when patient complaints ensue.

Quest routinely rebuffs individual patients who seek remediation of an apparent Quest computer virus and/or malfunction that may erroneously advises patients to take 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 multiple 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 and provide 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. But because individual patients do not hold the same negotiating power as the State of Florida, Quest still failed to provide the Protected Health Information nor even discuss the request with Plaintiff; instead, Quest's outside counsel, Michael T. Hensley and Ross A. Fox, presumably in coordination with Quest's General Counsel Michael E. Prevoznik, illegally retaliated against Plaintiff¹ by writing a surreptitious memorandum to the New Jersey Attorney General's Division of **Criminal Justice** in Quest's ongoing effort to (i) shirk its plain obligations under, *inter alia*, the HIPAA Privacy Rule and (ii) block public disclosure of its audiotaped October 29, 2019

¹ It is unclear whether Quest retaliated against Florida for making its complaint.

telephone call in which multiple Quest representatives blatantly violated the HIPAA Privacy Rule that requires reporting of laboratory tests and ***acknowledged the company-wide policy that mandated same.***

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 immediately wrote on January 30, 2020 (just 2 days after the date of Quest's memorandum)² that no criminal activity was indicated.

Undeterred, and still refusing to even discuss Plaintiff's request for his Protected Health Information, Quest repeatedly threatened to ***personally*** sanction the seventy-year old stroke survivor if he continued to seek the required Protected Health Information in his record set

² Plaintiff did not learn of Quest's criminal communications until several months later when informed by a third party in April of 2020.

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, 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 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.

a. Quest Patient Team Representative Ramona Weldon is an adult female who, upon information and belief, resides in or near Kansas as she stated that she works in Quest's Lenexa, Kansas facility.

b. Quest Supervisor Gita "Doe" is an adult female who, upon information and belief, resides in or near Kansas as she stated that she works in Quest's Lenexa, Kansas facility. Her actual name will be substituted in the instant action upon receipt of Quest's production of documents no later than September 23, 2020 in response to the Document Request served on August 18, 2020.

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**).³

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, Ramona Weldon, and Gita "Doe" in order to ascertain whether the subject lab tests had in fact been ordered for him⁴ and—

³ 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 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.

⁴ 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).

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 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, 2020⁵ that no criminal activity was indicated.

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

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

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 Ramona Weldon 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, Plaintiffs 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.***

Electronic-mail message from Sacchi to Quest, Mar. 9, 2020, at 1 (emphasis added). On the date this electronic mail message was written, Consumer was unaware that Quest had 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 immediately wrote on January 30, 2020 (just 2 days after

the date of Quest's memorandum)⁶ that no criminal activity was indicated.

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

⁶ Plaintiff did not learn of Quest's criminal communications until several months later when informed by a third party in April of 2020.

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 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.⁷ 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 immediately wrote on January 30, 2020⁸ 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 Protected Health

⁷ 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**")).

⁸ Plaintiff did not learn of Quest's criminal communications until months later when informed by a third party in April of 2020.

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 liability⁹ 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.

⁹ Gennari v. Weichert Co. Realtors, 148 N.J. 582 (1997).

AS AND FOR A SECOND CAUSE OF ACTION**(Violation of the HIPAA Privacy Rule)¹⁰**

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.

a. The U.S. Department of Health and Human Services has explained for years the need for medical laboratories, such as Quest, to comply with HIPAA's

¹⁰ As noted below in the Seventh Cause of Action, Plaintiff complained about Quest's HIPAA Privacy Rule violation to the United States Department of Health and Human Services' Office for Civil Rights ("**OCR**"), Eastern & Caribbean Region (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, which is due from Quest no later than September 23, 2020.

Privacy Rule and provide patients with access to their health information pursuant to 45 CFR § 164.524:

Providing individuals with easy access to their health information empowers them to be more in control of decisions regarding their health and well-being. For example, individuals with access to their health information are better able to monitor chronic conditions, adhere to treatment plans, find and fix errors in their health records, track progress in wellness or disease management programs, and directly contribute their information to research. . . . ***Putting individuals “in the driver’s seat” with respect to their health also is a key component of health reform and the movement to a more patient-centered health care system.***

The regulations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which protect the privacy and security of individuals’ identifiable health information and establish an array of individual rights with respect to health information, have always recognized the importance of providing individuals with the ability to access and obtain a copy of their health information. With limited exceptions, ***the HIPAA Privacy Rule (the Privacy Rule) provides individuals with a legal, enforceable right to see and receive copies upon request of the information in their medical and other health records maintained by their health care providers and health plans.***

"Individuals' Right under HIPAA to Access their Health Information 45 CFR § 164.524," U.S. Dep't Health & Human Svcs. website (emphases added) (retrieved on Sept. 2, 2020 at www.hhs.gov).

b. ***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.

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 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 Rule¹¹ 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 possibility of future Misdirected Notifications by repairing its appointment scheduling system and changing

¹¹ 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).

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 Contract and
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 duty and 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. Quest states on its website that patients can request their protected health information and that Quest will "provide a response."

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. Despite Plaintiff's multiple requests by e-mail, Quest's website-based mechanism, telephone, and U.S. Postal Service Mail, Quest still has not provided the PHI contained in Plaintiff's designated record set at Quest that would definitely indicate whether such tests had been ordered for Plaintiff.

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.

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

been damaged by being denied the right to know whether specified laboratory tests—including the glucose tolerance testing and tuberculosis test that Quest e-mails indicated had been ordered for Plaintiff—were ordered for them and, if so, the identity of the prescriber(s) who ordered same.

AS AND FOR A SIXTH CAUSE OF ACTION

**(Breach of Contracts to
Process Payments from Third Parties
and Respond to Billing Inquiries)**

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. As directed by Quest on the invoice, Plaintiff wrote Quest by electronic mail and United States Postal Service Certified Mail No. 70170660000087578688 mail at the address Quest provided 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:

[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.

Letter from Consumer to Quest, Mar. 16, 2020, at 2 (emphasis added) (attached hereto as **Exhibit C**).

68. Quest never responded as of the date of this filing. Instead, more than one month later, Quest simply issued another invoice dated April 19, 2020 that stated, "If we do not receive payment or an explanation from you in the next 14 days your account will be referred to our Collection Agency" (attached hereto as **Exhibit D**).

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. Due to Quest's refusal to respond, Plaintiff and Class members are damaged by either paying Quest money that is not legally owed or Quest sending the purported balances to a Collection Agency and reporting same as non-paid debt to credit bureaus when in fact such money is not legally owed. ***All such damages would be eliminated if Quest satisfied its contractual duty to respond to Plaintiff's inquiries regarding purported monies owed.***

AS AND FOR A SEVENTH CAUSE OF ACTION

**(Breach of Contract To Not Retaliate Against
"Any Individual for Filing a Complaint"
About HIPAA Privacy Rule Violations)**

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

73. Defendants breached, and continue to breach, the contractual and statutory duty they owe to Plaintiff to **not** retaliate against him for complaining about Quest's violations of the HIPAA Privacy Rule. Quest explicitly states on its website that Quest "will **not** retaliate against **any individual** for filing a complaint" (emphasis added).

74. In Plaintiff's ongoing effort to obtain the PHI in his designated record set at Quest—which would definitively indicate whether glucose tolerance testing and a tuberculosis test had been ordered for him as indicated in multiple communications from Quest—Plaintiff complained about Quest's refusal to provide the PHI in, *inter alia*, (i) an October 29, 2019 recorded telephone call with Quest, (ii) an October 29, 2019 letter sent to Quest's Legal Department, (iii) a March 26, 2020 complaint with the U.S. Department of Health and Human Services Office for Civil Rights; and (iv) a January 3, 2020 filing of a complaint in the New Jersey Superior Court for Monmouth County. Sacchi stated in his complaint to the U.S. Department of Health and Human Services:

QUEST HAS THE TAPE-RECORDED PHONE CALL OF ITS HIPAA VIOLATION on Oct. 29, 2019: Quest deliberately refused to provide access to my protected health information that Quest had in its possession as required by the HIPAA Privacy Rule. I requested multiple times in writing, by e-mail, by telephone, and by Quest-web portal that Quest provide information concerning a tuberculosis test and glucose tolerance testing that Quest indicated had been ordered for me. ***I requested whether Quest's records of my "protected health information" encompassed information as to whether those two tests were in fact ordered for me and, if so, the identity of the licensed prescriber(s) who ordered them.*** Laboratories are mandated by 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). ***Quest failed to respond until I had an attorney file a lawsuit and then threatened to sanction me if the lawsuit were not dismissed. Quest never provided its designated record set of my PHI that may indicate uncompleted test orders for me. Patients need access to their pending tests to determine whether the tests were ordered and, if so, by which prescriber(s).***

Sacchi Complaint to U.S. Dep't Health & Human Svcs., Mar. 26, 2020, at 1 (emphases added). Sacchi informed Quest by electronic mail that a complaint had been filed with the U.S. Department of Health and Human Services, provided Quest a copy of the complaint, and informed Quest that it must not destroy any documentation

regarding the complaint including, *inter alia*, the Quest audiotape of the Oct. 29, 2019 telephone call that contained Quest's statement of its company-wide policy that violates the HIPAA Privacy Rule.

75. For nearly one year (and continuing as of the date of this filing), Quest has failed to provide the Protected Health Information; instead, Quest and its outside counsel, Michael T. Hensley and Ross A. Fox, wrote 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 retaliated against Plaintiff by making false statements to the Division of Criminal Justice in Quest's bad-faith effort to manufacture a bogus criminal case against Plaintiff. Quest's memorandum was dated January 28, 2020. Quest wrote to the Division of Criminal Justice a baseless accusation that criminal activity was purportedly 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.

76. Because Quest's criminal referral was baseless and made in bad-faith, the Division of Criminal Justice

immediately wrote on January 30, 2020 (just 2 days after the date of Quest's memorandum)¹² that no criminal activity was indicated.

77. It was only **after** Quest learned that the Division of Criminal Justice had so quickly rejected and exposed Quest's criminal accusation as baseless on January 30, 2020, that Quest contacted Plaintiff. Quest, for the first time, finally responded to Plaintiff's multiple e-mails, letter, phone call, web-site based inquiry, and complaints on the following Monday, February 3, 2020. But rather than provide Plaintiff's PHI or substantively discuss Plaintiff's repeated request for his PHI, Quest simply called Plaintiff's attorney to request an extension for responding to the New Jersey Superior Court filing. Subsequently, and still refusing to even discuss Plaintiff's request for his Protected Health Information, Quest then threatened to **personally** sanction the seventy-year old stroke survivor if he did not withdraw his complaint and instead 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.

a. ***Quest admitted in writing that it never provided Plaintiff the requested Protected Health***

¹² Plaintiff did not learn of Quest's criminal communications until several months later when informed by a third party in April of 2020.

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.

78. As a direct and proximate result of Defendants' conduct, Plaintiff and Class members have been damaged by Quest's illegal retaliation against patients for "filing a complaint" in an effort to obtain the PHI in their designated record set at Quest.

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: Sept. 2, 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: Sept. 2, 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 was filed and that discovery obtained pursuant to the instant action and needed for OCR's investigation, ***including the audiotaped October 29, 2019 telephone call***, would be provided to them, which is due from Quest no later than September 23, 2020. 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: Sept. 2, 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>

Re: Other

1 message

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](#)

Pa061



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

StephenSimoniLAW@Gmail.com

ADMITTED IN CA, NY, NJ, & MA (ret.)

On Wed, Oct 23, 2019 at 3:04 PM MyQuestSupport <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 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

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.



ATT00001
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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,

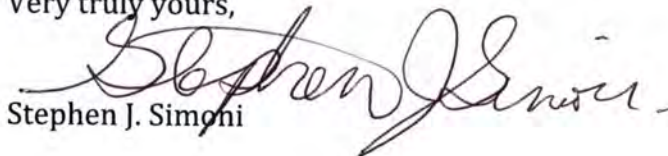

Stephen J. Simon

EXHIBIT C



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.)

March 16, 2020

VIA CERTIFIED MAIL # 7017 0660 0000 8757 8688

Quest Diagnostics
Patient Billing Customer Service
P.O. Box 7308
Hollister, MO 65673-7308

Dear Madam/Sir:

RE: Invoice Number 197256843; Patient Name: John Sacchi

I represent John Sacchi ("**Mr. Sacchi**") and write to dispute the above-referenced invoice dated March 5, 2020 (copy enclosed) and demand that Quest refrain from both pursuing any related collection activity and reporting any related purported non-payments until and unless Quest provides an explanation that demonstrates the amount claimed is properly "due."

Significantly, Mr. Sacchi has had Medicare coverage and a comprehensive "Medigap" supplement plan for many years and has never been liable for lab charges originating from tests ordered by his licensed prescribers in connection with his Medicare-authorized annual physical examination.

~~As the purported charges are dated near the time of Mr. Sacchi's annual physical examination in 2019, it appears, therefore, that the dubious charges may be caused by an apparent computer virus and/or malfunction that spontaneously scheduled Mr. Sacchi for both an October 28, 2019 tuberculosis test and glucose tolerance testing that none of Mr. Sacchi's licensed medical providers has indicated s/he ordered.~~

~~In fact, Mr. Sacchi has been repeatedly requesting the identity of the prescribers that ordered those tests for Mr. Sacchi since last year but has not received a substantive~~

Quest Diagnostics Patient Billing Services

March 16, 2020

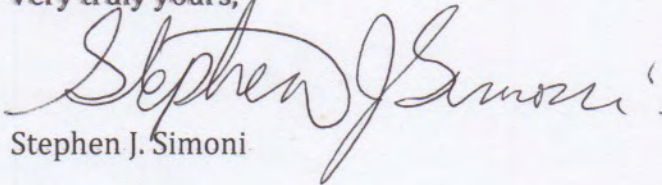
response from Quest. (Instead, Quest accused Mr. Sacchi of fraud and threatened to personally sanction him if he did not end his quest for the crucial medical information.)

Mr. Sacchi hopes that Quest's research of the dubious charges may facilitate identification of Mr. Sacchi's 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 Mr. Sacchi 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.

As a courtesy, and in a continuing effort to prompt Quest's long overdue investigation of the apparent virus, I am copying below the Quest attorney who has appeared in the related litigation of Sacchi v. Quest in New Jersey Superior Court.

Thank you for your immediate attention to this matter. Should you have any questions regarding the above, please have Quest's Legal Department contact me at (917) 621-5795 or StephenSimoniLAW@gmail.com regarding the disputed charges.

Very truly yours,



Stephen J. Simoni

Enclosure

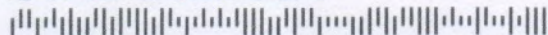
cc: Michael T. Hensley, Esq. (via e-mail MHensley@Bressler.com)

**Quest**
Diagnostics™

Do not use address below:

PO Box 7308
Hollister, MO 65673-7308

AB 01 007185 80396 E 28 B



48065 TBR 197256843

JOHN SACCHI

55 OCEAN AVE PH A

MONMOUTH BCH, NJ 07750-1372

Laboratory Invoice

For services not included in your physician's bill

Invoice Date:	Amount Due:	Due Date:
Mar. 05, 2020	\$21.89	UPON RECEIPT
Invoice Number	Lab Code	Bill Code
197256843	TBR	1001
Patient Name:	JOHN SACCHI	
Responsible Party:	JOHN SACCHI	
Date of Service:	September 30, 2019	

FIFTH NOTICE

Attention: JOHN SACCHI

Dear Patient,

This letter is our last attempt to contact you prior to referring your past due account to our collection agency. We performed laboratory testing on your behalf at the request of your physician. We have sent four invoices to you asking for payment.

If we do not receive payment or an explanation from you in the next 14 days your account will be referred to our Collection Agency.

We would like to prevent taking action which could negatively affect your credit rating or cause you unnecessary expense. Please help us solve this matter amicably. If you have sent your payment, please disregard this notice.

Sincerely,

Patient Billing Customer Service
QUEST DIAGNOSTICS

Quest Diagnostics Incorporated and its subsidiaries (Quest) complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability, or sex.

▲ Please fold and tear along perforation and remit with payment in the envelope provided. ▲

**Quest**
Diagnostics™

LOG ON NOW. Pay your bill online securely anytime -
day or night at www.QuestDiagnostics.com/bill
or call 1-800-631-1388.
Quest Diagnostics also accepts

VISA**DISCOVER**
NETWORK

Please make checks payable to Quest Diagnostics.
Be sure to include invoice number on your check.

☐ Check here if address has changed.
Please provide your new address information on the back.
Quest Diagnostics reserves the right to assign this receivable to any of its affiliates.

Lab Code: TBR

Amount Due: \$21.89

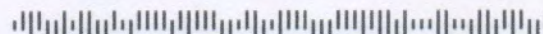
Due Date: UPON RECEIPT Invoice Number: 197256843

Patient Name: JOHN SACCHI

Amount Enclosed: \$

MAIL PAYMENTS ONLY TO:

QUEST DIAGNOSTICS
PO BOX 740985
CINCINNATI, OH 45274-0985



01TBR15010197256843000021899030530772126441960000001

Pa070

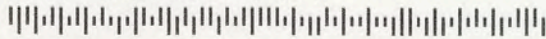
EXHIBIT D

**Quest**
Diagnostics™

Do not use address below:

PO Box 7308
Hollister, MO 65673-7308

MB 01 002866 33036 E 10 A



48065 TBR 197256843

JOHN SACCHI

55 OCEAN AVE PH A

MONMOUTH BCH, NJ 07750-1372

Laboratory Invoice

For services not included in your physician's bill

Page 1 of 1

Invoice Date:	Amount Due:	Due Date:
Apr. 19, 2020	\$21.89	UPON RECEIPT
Invoice Number	Lab Code	Bill Code
197256843	TBR	1001
Patient Name:	JOHN SACCHI	
Responsible Party:	JOHN SACCHI	
Date of Service:	September 30, 2019	

FIFTH NOTICE

Attention: JOHN SACCHI

Dear Patient,

This letter is our last attempt to contact you prior to referring your past due account to our collection agency. We performed laboratory testing on your behalf at the request of your physician. We have sent four invoices to you asking for payment.

If we do not receive payment or an explanation from you in the next 14 days your account will be referred to our Collection Agency.

We would like to prevent taking action which could negatively affect your credit rating or cause you unnecessary expense. Please help us solve this matter amicably. If you have sent your payment, please disregard this notice.

Sincerely,

Patient Billing Customer Service
QUEST DIAGNOSTICS

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▲ Please fold and tear along perforation and remit with payment in the envelope provided. ▲

**Quest**
Diagnostics™

LOG ON NOW. Pay your bill online securely anytime -
day or night at www.QuestDiagnostics.com/bill
or call 1-800-631-1388.

Quest Diagnostics also accepts

VISA**DISCOVER**
NETWORK

Please make checks payable to Quest Diagnostics.
Be sure to include invoice number on your check.

☐ Check here if address has changed.
Please provide your new address information on the back.
Quest Diagnostics reserves the right to assign this receivable to any of its affiliates.

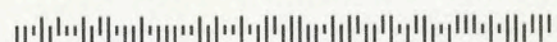
Lab Code: TBR

Amount Due: **\$21.89****Due Date: UPON RECEIPT** **Invoice Number: 197256843**

Patient Name: JOHN SACCHI

Amount Enclosed: **\$****MAIL PAYMENTS ONLY TO:**

QUEST DIAGNOSTICS
PO BOX 740985
CINCINNATI, OH 45274-0985



01TBR15010197256843000021899041930772126441960000004

Pa072

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*

JOHN SACCHI (" Consumer "),	:	
Individually and on behalf	:	SUPERIOR COURT OF
of all others similarly	:	NEW JERSEY
situated,	:	LAW DIVISION
	:	MONMOUTH COUNTY
Plaintiff,	:	
	:	Hon. Linda Grasso Jones
vs.	:	
	:	Dock. No. MON-L-1503-20
QUEST DIAGNOSTICS,	:	
INCORPORATED (" Quest "),	:	
RAMONA WELDON,	:	
GITA "DOE," and	:	CERTIFICATION OF
DOES 1 through 10, inclusive	:	<u>STEPHEN J. SIMONI</u>
Defendants.	:	
	:	
	:	
	:	

**CERTIFICATION IN SUPPORT
 OF PLAINTIFF JOHN SACCHI'S MOTION TO DISQUALIFY
 ATTORNEYS MICHAEL T. HENSLEY AND MICHAEL E. PREVOZNIK
 FROM REPRESENTING QUEST DIAGNOSTICS INC. IN THIS ACTION**

Stephen J. Simoni, of full age, hereby certifies as follows:

1. I am an attorney-at-law duly admitted and licensed to practice law in the State of New Jersey. I am owner of Simoni Consumers Class Action Law Offices and represent the named plaintiff and proposed class ("**Consumers**").

2. I submit this Certification in support of Consumers' Motion to Disqualify Attorneys Michael T. Hensley and Michael E. Prevoznik from representing Defendant Quest Diagnostics Inc. in this action.

3. Attached as **Exhibit A** is a true and correct copy of the electronic-mail message I sent to Quest Diagnostics Inc.'s attorneys on March 17, 2020 detailing a settlement proposal.

4. Attached as **Exhibit B** is a true and correct copy of the electronic-mail message I sent to Quest Diagnostics Inc.'s attorneys on January 22, 2021 detailing a settlement proposal.

5. I hereby certify that all of the above statements by me are true. I am aware that if any of the above statements is willfully false, I am subject to punishment.

Dated: Florham Park, NJ
Mar. 14, 2022

Respectfully submitted,

By: /s/ Stephen J. Simoni
STEPHEN J. SIMONI

EXHIBIT A

From: Stephen Simoni LAW OFFICES <stephensimonilaw@gmail.com>
 Date: Tue, Mar 17, 2020 at 6:17 PM
 Subject: Fwd: John Sacchi v. Quest Diagnostics, Inc.: Proposed Sanctionable Motion
 To: Michael T. Hensley <MHensley@bressler.com>, Andrea L. Bonvicino <ABonvicino@bressler.com>
 Cc: Tom C. Jardim <tom@jmslawyers.com>

FOR SETTLEMENT PURPOSES ONLY:

Mr. Hensley
 Michael,

Thank you for your call. I understand Quest is engaged with coronavirus issues (and as I noted, I am personally with a 70-yr-old spouse and a 94-yr-old mother (in Calif.) trying to enter a facility). Of course, an extension is granted. Pursuant to our discussion, a proposed settlement would encompass, *inter alia*, the points below. Plaintiff reserves the right to make further additions and revisions. Kindly advise whether this is acceptable to Quest or whether any modifications are proposed:

1) Plaintiff represents that neither he (nor his spouse) ordered a "TB" and glucose tolerance test nor scheduled same for October 28, 2019. Plaintiff received two "appointment" reminders by electronic mail for such a date and repeatedly requested Quest's assistance by website communication, electronic mail, telephone, and letter in identifying who, if any, of Plaintiff's licensed medical prescribers ordered such tests--or whether such activity had somehow occurred in error. Plaintiff did not receive a substantive response until the instant action was filed.

2) Plaintiff had scheduled an appointment in Sept. 2019 for tests ordered by his physician in connection with his annual physical examination. Plaintiff's physician later stated that he had not ordered the additional two tests although his physician had sent a urinalysis test order by facsimile to Quest's Red Bank facility.

3) Quest represents that its computer system allows individuals to schedule appointments and designate laboratory tests for the subject appointment by entering the patient's name, birthdate, and e-mail address but does not otherwise require that the individual authenticate him/herself.

4) Quest represents that it does not record the ISP address of the individual who made the appointments and reportedly selected the laboratory tests during the relevant time period. Quest represents that the October 28, 2019 appointment and the associated tests were scheduled via the Internet on _____ but that it cannot ascertain the ISP address from which that electronic activity originated. Plaintiff and counsel have offered to provide Quest with access to all of their Internet-accessible devices for search thereof.

5) Quest represents that its system does not spontaneously generate subsequent laboratory tests in response to results obtained from prior tests.

6) Quest commits to providing the above explanation to any and all other patients who inquire regarding putative appointments and laboratory tests.

7) Quest will reimburse Plaintiff for his filing fee.

8) Neither Quest nor Plaintiff will be bound by confidentiality and may speak truthfully regarding the genesis, progression, and resolution of the lawsuit and the underlying facts, theories, allegations, and defenses. Significantly, all Parties and their in-house and outside counsel may of course remain free to make any and all truthful statements to ethics authorities.

9) Quest commits to researching why Plaintiff has been billed for certain charges despite his Medicare coverage and "Medigap" supplemental policy that typically cover all charges--including co-pays--of tests conducted in connection with his annual Medicare authorized physical examination. In the event the charge is properly not covered by any such coverage, Plaintiff will pay the charge within ten days and Quest will not report any purported non-payment thereof and will not engage in any collection activity.

Thank you, -Stephen

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

ADMITTED IN CA, NY, NJ, & MA (ret.)

EXHIBIT B

From: Stephen Simoni LAW OFFICES <stephensimoniaw@gmail.com>
Date: Fri, Jan 22, 2021 at 4:39 PM
Subject: FOR SETTLEMENT PURPOSES ONLY: Quest Cases
To: Michael T. Hensley <MHensley@bressler.com>

FOR SETTLEMENT PURPOSES ONLY: Quest Cases

Mr. Hensley,

I believe our phone call today was productive (and not merely for the [REDACTED] cases) and at least may help narrow any factors preventing settlement for the Quest cases that many might view as appropriate for settlement. I present here a summary of my impressions of our call and hope this may be useful if you outline to Quest what each Plaintiff's respective position is.

[REDACTED]

Mr. Sacchi: I believe the case remains strong given that good-faith requests for, and complaints about, PHI access never warrant retaliation by, *inter alia*, making false accusations of criminal activity against the patient. Nothing excuses that and Mr. Sacchi pursues the case at least in part for vindication of the simple fact that he did nothing wrong. Sounds like he might want an apology (for starters), but also seeks the PHI in his designated record set, resolution of the outstanding invoice, and a payment given the extensive work and time expended to date. Perhaps Quest mgt (and in-house counsel) feel foolish for having authorized a criminal complaint (and thereby wasting law enforcement's time), but a route to resolution may involve Quest owning that fact and moving on versus continuing with a scorched-earth litigation strategy in a herculean effort to avoid acknowledging it may have been--at the very least--"ill-advised" to authorize a criminal complaint and something that Quest actually wants in retrospect to disavow and preclude recurrence thereof. Mr. Sacchi, of course, is human while Quest is a corporation and Mr. Sacchi's reputation is something for which he is prepared to litigate because his reputation, as it is for all people, is priceless.

Please let me know your thoughts. Thank you.

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

StephenSimoniLAW@Gmail.com

ADMITTED IN CA, NY, NJ, & MA (ret.)



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.)

March 14, 2022

VIA eCourts

Hon. Linda Grasso Jones, J.S.C.
Superior Court of New Jersey
for Monmouth County
71 Monument Street
Freehold, NJ 07728

Dear Judge Jones:

MR. SACCHI REQUESTS ORAL ARGUMENT

**RE: *John Sacchi v. Quest Diagnostics Inc.*, No. MON-L-01503-20
Letter Brief In Support of Mr. Sacchi's Motion to Disqualify
Attorneys Michael T. Hensley and Michael E. Prevoznik From
Representing Quest Diagnostics Incorporated In This Action**

I represent Plaintiff John Sacchi ("**Mr. Sacchi**") in the above-referenced action and respectfully submit this Letter Brief in support of Mr. Sacchi's Motion to Disqualify Attorneys Michael T. Hensley and Michael E. Prevoznik (the "**Attorneys**") from representing Defendant Quest Diagnostics Incorporated ("**Quest**") in this action.

**Quest Attorneys Michael T. Hensley and Michael E. Prevoznik Conspired to
Weaponize the N.J. Attorney General's Division of Criminal Justice By Making
False Statements in Their Unethical Attempt to Spark a Criminal Investigation
Against Plaintiff John Sacchi in Order To Extinguish This Pending Civil Action**

As detailed herein, the New Jersey Rules of Professional Conduct mandate Attorneys Hensley's and Prevoznik's disqualification in this action due to their prohibited "personal interest" in preventing the Court from finding that their unethical criminal complaint to the N.J. Attorney General constituted Quest's actionable retaliation against Mr. Sacchi that spawned the instant litigation. See N.J. RPC 1.7(a)(2). It was in January 2020 that Quest Attorneys Michael T. Hensley and Michael E. Prevoznik

Hon. Linda Grasso Jones, J.S.C.

March 14, 2022

admittedly conspired to weaponize the N.J. Attorney General's Division of Criminal Justice by making false statements in their unethical attempt to spark a criminal investigation against Plaintiff John Sacchi and thereby extinguish a pending civil action.

RELEVANT FACTS

A. Plaintiff John Sacchi Spent Months Attempting to Obtain His Own Medical Records From Quest Prior to Ultimately Filing A Lawsuit

As assiduously detailed in the First Amended Complaint, Patient John Sacchi ("**Mr. Sacchi**" or "**Patient**"), a 71-year-old stroke victim, filed a lawsuit only after several months of being repeatedly rebuffed by Quest in Mr. Sacchi's attempt to ascertain whether specified laboratory tests had been ordered for him. Mr. Sacchi had made multiple and repeated inquiries to Quest by electronic mail, telephone, overnight courier, and Quest's Web portal with the assistance of his spouse and health care proxy to exercise the statutory right to review his Protected Health Information ("**PHI**") in the "designated record set" that Quest maintains in Mr. Sacchi's effort to ascertain whether the specified laboratory tests of glucose tolerance testing and a tuberculosis test had in fact been ordered for him as had been indicated in several Quest communications. First Amend. Cmplt., Sept. 2, 2020 ("**FAC**") ¶ 16. Again, Mr. Sacchi filed an action only *after* receiving *no response* from Quest to these countless requests made over several months *for his own medical information*.

B. Once the Lawsuit Was Filed, the Quest Attorneys Still Refused to Provide Mr. Sacchi's Medical Records and Instead Simply Made a Baseless and Unethical Complaint to Criminal Law Enforcement Authorities Against Mr. Sacchi

Upon receipt of the civil lawsuit that simply requested access to the purported contents of Mr. Sacchi's medical records concerning the glucose tolerance testing and tuberculosis test that had apparently been ordered for Mr. Sacchi, Quest Attorneys Michael T. Hensley and Michael E. Prevoznik¹ still made no effort to provide Mr. Sacchi's medical records nor contact opposing counsel, but instead proceeded *only* to file a criminal complaint with the New Jersey Attorney General's Division of Criminal Justice in which the attorneys made false statements and baselessly accused Plaintiff John Sacchi of criminal activity. Quest Memorandum of Attorneys Michael T. Hensley and Ross A. Fox, Jan. 28, 2020 ("**Quest Memorandum of Attorneys**").

¹As indicated by Mr. Hensley's representation therein, Quest General Counsel Michael E. Prevoznik presumably authorized and/or ratified Mr. Hensley's criminal submission on Quest's behalf. Mr. Prevoznik also had personally received Mr. Sacchi's pre-litigation requests for his medical records and never responded thereto.

Hon. Linda Grasso Jones, J.S.C.

March 14, 2022

As detailed in the First Amended Complaint, the Attorneys did so because they anticipated that their memorandum would extinguish the civil action such that Quest would not have to respond thereto. FAC ¶ 77.

The Attorneys specifically advised the New Jersey Attorney General that they were not simply reporting purported criminal activity, but that they also wanted to personally "assist/cooperate with the Attorney General's office in any way possible" and they explained to the Division of Criminal Justice that Quest had "authorized" them to submit the memorandum in their unethical and collusive stratagem designed to prompt a criminal prosecution against the opposing party in a pending civil action—71-year-old stroke victim John Sacchi. Quest Memorandum of Attorneys, at 2. FAC ¶ 61(a).

Because the Attorneys' criminal referral was clearly baseless, the Division of Criminal Justice immediately wrote on January 30, 2020—just 2 days after the date of the Quest Memorandum of Attorneys—that no criminal activity was indicated. But it was only *after* the Attorneys learned that the Division of Criminal Justice had so quickly rejected and exposed their criminal accusation as baseless and unethical that the Attorneys *for the first time contacted opposing counsel* as Msrs. Hensley and Prevoznik then realized they had failed to extinguish the action notwithstanding their baseless, bad-faith, and unethical criminal statement.

LEGAL ARGUMENT

POINTS

I. The Quest Attorneys Prefer to Continue Improperly Burdening this Court By Pressing A Meritless Defense In Order To Avoid A Judicial Finding of The Undeniable: *They Conspired and Made a Criminal Complaint About Plaintiff In An Unethical Attempt To Extinguish This Pending Civil Action*

The Quest Attorneys, Michael T. Hensley and Michael E. Prevoznik, prefer to improperly burden this Court by pressing a meritless defense in order to delay a judicial finding of the undeniable: Together, the Quest Attorneys colluded and made a *criminal* complaint that included false statements against plaintiff John Sacchi in this ongoing civil action in their unethical attempt to extinguish the lawsuit in clear violation of the New Jersey Rule of Professional Conduct that specifically forbids attorneys from "***presenting . . . criminal charges to obtain an improper advantage in a civil matter.***" N.J. RPC 3.4(g) (emphasis added). See, e.g., *In re Barrett*, 88 N.J. 450, 454 (1982) (agreeing with the Disciplinary "Committee conclu[sion] that the *[attorney's] filing of the criminal complaint was obviously done for the purpose of effecting a settlement of the civil suit* and that the letter of May 3, 1974 constituted a threat to present criminal charges to obtain an improper advantage in a civil matter in violation of" ethical prohibitions (emphasis added)); *In re Kasper-Ansermet*, 132 F.R.D. 622, 626 (D.N.J. 1990) ("[I]t would be unethical for a

Hon. Linda Grasso Jones, J.S.C.

March 14, 2022

member of the bar of this court to threaten criminal action to gain an advantage in a civil negotiation, and the lawyer would be subject to appropriate discipline."), aff'd, 132 F.R.D. 622, 623, 1990 U.S. Dist. LEXIS 18580, **1-2 (D.N.J. Mar. 23, 1990) (adopting Magistrate's Opinion and Order).²

II. N.J. Rule of Professional Conduct 1.7 Mandates that Attorneys Michael T. Hensley and Michael E. Prevoznik Be Disqualified from Representing Quest Because "It May Be Difficult Or Impossible For Them To Give [Quest] Detached Advice"

Where Attorneys Hensley and Prevoznik admittedly counseled Quest to create a baseless criminal prosecution against a 71-year-old stroke victim in a pending civil action—rather than to simply pick up the telephone and contact Mr. Sacchi's lawyer to discuss any purported concerns and arrange for provision of Mr. Sacchi's overdue medical records—Attorneys Hensley and Prevoznik cannot now serve as Quest's counsel to address the lawsuit that the actionable retaliation they personally orchestrated gave rise to.

The New Jersey Rules of Professional Conduct mandate Attorneys Hensley's and Prevoznik's disqualification here due to their prohibited "personal interest" in preventing the Court from finding that their unethical criminal complaint to the N.J. Attorney General constituted Quest's actionable retaliation against Mr. Sacchi that spawned the subject litigation. See N.J. RPC 1.7(a)(2).³

As RPC 1.7(a)(2) cautions, Attorneys Hensley's and Prevoznik's "personal interest" in evading individual culpability for their unethical conduct poses a "significant risk that the[ir] representation of [Quest] will be materially limited." In fact, Quest already has suffered considerably after Attorneys Hensley and Prevoznik apparently counseled Quest to reject the extremely favorable settlement offer made by Mr. Sacchi as discussed *infra* Point III in Mr. Sacchi's effort to obtain his medical records as quickly as possible.

²To the extent that attorneys in New Jersey are required to "inform the appropriate professional authority" when they "know[] that another lawyer has committed a violation of the Rules of Professional Conduct," N.J. RPC 8.3(a), the undersigned understands that the Attorney General's Division of Criminal Justice itself has already sent to the Office of Attorney Ethics of the Supreme Court of New Jersey the baseless, wasteful, and unethical memorandum that included knowingly false statements and was presented to criminal authorities by attorneys Michael T. Hensley and Ross A. Fox, presumably approved and/or ratified by Quest General Counsel Michael E. Prevoznik, and ***obviously designed to extinguish the instant action so that Quest would not have to respond to the Complaint.*** The undersigned has since spoken with and provided documents to ethics authorities.

³This motion is made only after Mr. Hensley's failure to cease his representation of Quest despite Mr. Sacchi's repeated requests and notification that he would proceed to file same.

Hon. Linda Grasso Jones, J.S.C.

March 14, 2022

The American Bar Association explains further in the commentary to Rule 1.7(a)(2) why disqualification is mandated in such circumstances:

[I]f the probity of a lawyer's own conduct in a transaction is in serious question, *it may be difficult or impossible for him to give a client detached advice.*

2016 ABA Model Rules of Professional Conduct 1.7 cmt. 10 (emphasis added).
Accord DC RPC 1.7(a)(4) cmt. 11.

For the same reason, this “non-consentable conflict” created by the lawyer’s “personal interest” in the client’s litigation or transaction similarly prohibits a lawyer from representing the buyer or seller in a real estate transaction if the lawyer also will receive a percentage of the sales price as a commission for dual service as the real estate broker to the transaction. As the New York State Ethics Commission explained,

[T]he *personal interest* of a lawyer-real estate broker in the brokerage fee that will be generated by a closing of a real estate transaction so conflicts with the lawyer's responsibility to provide independent legal judgment with respect to that transaction as to preclude the dual roles and to make the *conflict non-consentable* by the client.

N.Y. State Ethics Opinion 933 P7 (2012) (emphases added).

III. The Attorneys Rejected A Settlement Offer Extremely Favorable to Quest In Their Effort to Somehow Retroactively Justify Their Earlier Unethical Complaint to the New Jersey Attorney General's Division of Criminal Justice That Had Baselessly Accused Mr. Sacchi of Purported "Fraud" in Their Bad-Faith Effort to Extinguish Consumer's Action

Mr. Sacchi’s simple request for access to his own medical records, which was made repeatedly by *pre-litigation* electronic mail messages, Quest website inquiry form, telephone call, and overnight courier, has still never been afforded by Quest. Quest repeatedly refused to respond, perhaps due at first to mere malfeasance of customer service representatives, which necessitated the instant litigation by a conscientious consumer and elderly stroke survivor (with a litigator for a spouse) determined to vindicate his right to obtain his medical records and that could easily have been resolved by Quest's simply complying with the HIPAA Privacy Rule and parallel mandates of state law by timely providing Mr. Sacchi’s medical records.

Indeed, Mr. Sacchi had made a settlement offer in March of 2020 that simply sought provision of the PHI (which would resolve the central issue by definitively indicating whether the glucose tolerance and tuberculosis tests had—or had not—

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been ordered for him and, if so, by which prescriber(s)), a commitment by Quest to assist other consumers with similar requests, and **mere payment of Consumer's court filing fee** as follows in his settlement proposal:

FOR SETTLEMENT PURPOSES ONLY:

Mr. Hensley

Michael,

Thank you for your call. I understand Quest is engaged with coronavirus issues (and as I noted, I am personally with a 70-yr-old spouse and a 94-yr-old mother (in Calif.) trying to enter a facility). Of course, an extension is granted. Pursuant to our discussion, a proposed settlement would encompass, *inter alia*, the points below. Plaintiff reserves the right to make further additions and revisions. Kindly advise whether this is acceptable to Quest or whether any modifications are proposed:

- 1) Plaintiff represents that neither he (nor his spouse) ordered a "TB" and glucose tolerance test nor scheduled same for October 28, 2019. Plaintiff received two "appointment" reminders by electronic mail for such a date and repeatedly requested Quest's assistance by website communication, electronic mail, telephone, and letter in identifying who, if any, of Plaintiff's licensed medical prescribers ordered such tests--or whether such activity had somehow occurred in error. Plaintiff did not receive a substantive response until the instant action was filed.
- 2) Plaintiff had scheduled an appointment in Sept. 2019 for tests ordered by his physician in connection with his annual physical examination. Plaintiff's physician later stated that he had not ordered the additional two tests although his physician had sent a urinalysis test order by facsimile to Quest's Red Bank facility.
- 3) Quest represents that its computer system allows individuals to schedule appointments and designate laboratory tests for the subject appointment by entering the patient's name, birthdate, and e-mail address but does not otherwise require that the individual authenticate him/herself.
- 4) Quest represents that it does not record the ISP address of the individual who made the appointments and reportedly selected the laboratory tests during the relevant time period. Quest represents that the October 28, 2019 appointment and the associated tests were scheduled via the Internet on _____ but that it cannot ascertain the ISP address from which that electronic activity originated. Plaintiff and counsel have offered to provide Quest with access to all of their Internet-accessible devices for search thereof.
- 5) Quest represents that its system does not spontaneously generate subsequent laboratory tests in response to results obtained from prior tests.
- 6) Quest commits to providing the above explanation to any and all other patients who inquire regarding putative appointments and laboratory tests.

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7) Quest will reimburse Plaintiff for his filing fee.

8) Neither Quest nor Plaintiff will be bound by confidentiality and may speak truthfully regarding the genesis, progression, and resolution of the lawsuit and the underlying facts, theories, allegations, and defenses. Significantly, all Parties and their in-house and outside counsel may of course remain free to make any and all truthful statements to ethics authorities.

9) Quest commits to researching why Plaintiff has been billed for certain charges despite his Medicare coverage and "Medigap" supplemental policy that typically cover all charges—including co-pays--of tests conducted in connection with his annual Medicare authorized physical examination. In the event the charge is properly not covered by any such coverage, Plaintiff will pay the charge within ten days and Quest will not report any purported non-payment thereof and will not engage in any collection activity.

Thank you, -Stephen

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

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ADMITTED IN CA, NY, NJ, & MA (ret.)

Electronic-mail message from S. Simoni to M. Hensley, Mar. 17, 2020. Certification of Stephen J. Simoni, Mar. 14, 2022 ("**Simoni Certif.**") Exh. A.

Incredibly, the Quest Attorneys rejected the settlement offer. The reason for the inexplicable rejection of this settlement offer that was extremely favorable to Quest only became apparent to the undersigned in the following month of April 2020. I learned only then that the Quest Attorneys—rather than advise Quest to provide the **statutorily required** PHI after Mr. Sacchi had filed the initial action in January of 2020—had instead made false statements to the New Jersey Attorney General's Division of Criminal Justice in their bad-faith effort to manufacture a bogus criminal case against Mr. Sacchi in the above-referenced Memorandum of Quest Attorneys.

Even worse, as noted earlier, the Quest Attorneys never even contacted the undersigned to discuss any purported concerns prior to wasting the time of criminal law enforcement authorities. Apparently, the Quest Attorneys wrongly advised Quest that the lawsuit was somehow criminally fraudulent because the pre-litigation electronic mail messages, telephone call, and overnight courier letter demanding the PHI originated from the undersigned's law office account. It is absolutely true that I am Mr. Sacchi's spouse, attorney, and health care proxy and

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properly assisted him, an elderly stroke victim, in repeatedly attempting to obtain the PHI prior to commencing litigation. But that of course does not in any way justify the completely baseless and false complaint Mssrs. Hensley and Prevoznik made to the New Jersey Attorney General's Division of Criminal Justice and Quest's continuing failure to provide Mr. Sacchi access to his own medical records.

IV. The Quest Attorneys Continue to Litigate This Defenseless Case Because Resolving the Action Would By Necessity Implicitly Acknowledge Their Improper Activity of Counseling Quest to Wrongfully Deny Mr. Sacchi Access to His Medical Records *Since 2019* and Instead Make Baseless and False Statements In Their Unethical Effort to Criminally Prosecute Him

The Quest Attorneys continue to litigate this defenseless case by pursuing, *inter alia*, the entirely frivolous and likely sanctionable argument made in their unsuccessful motion to dismiss that contended "no contractual relationship" exists between a diagnostic laboratory and a patient who pays the lab to process his blood samples.

The Quest Attorneys also have filed a futile application for leave to appeal the denial of Quest's motion to dismiss with the Appellate Division and made the demonstrably false and disrespectful statements therein that the Superior Court (i) issued the Order "without meaningful explanation" and, alternatively, (ii) "failed to conduct any analysis" or "engaged in a perfunctory analysis" of the motion. (NJ eCourts Appellate, No. AM-000367-21 (Db8).) Quest then once again falsely stated here in its motion to stay before Your Honor that the Superior Court "did not articulate [the] reasons for denying Quest's Motion." Quest Brief, Mar. 2, 2022, at 2.

A. Quest Still Has Not Provided Mr. Sacchi's Medical Records

Incredibly, the Quest Attorneys, meanwhile, continue to wrongfully block release of Mr. Sacchi's *own medical records*. Although Your Honor definitively held that "Sacchi is entitled to obtain discovery from Quest," Order of Hon. L. Grasso Jones, Mar. 4, 2022, at 2 (Trans ID: LCV2022923795 265), and Mr. Sacchi subsequently provided Quest a HIPAA authorization in accordance with Your Honor's Order, the Quest Attorneys now falsely claim, *inter alia*, that Quest first must receive Mr. Sacchi's social security number and a copy of his power of attorney to release the records when, in fact, the records must be provided without requiring the disclosure of such sensitive and confidential information. Earlier today, in fact, the Quest Attorneys reiterated these bogus requirements in its Letter Reply Brief filed in its motion to stay. Quest Letter Brief, Mar. 14, 2022, at 3 n.2 (Trans ID: LCV20221056713).

This issue, significantly, is of particular concern given that ***the same Quest Attorneys in this action previously publicly disclosed the social security number of a different patient*** in a public court filing of a different action. Sheridan v. Quest, Dock. No. CAM-L-03586-20.

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The Quest Attorneys' baseless and repeated assertion that the disclosures are "required by HIPAA to disclose Mr. Sacchi's medical records" is patently false, 45 CFR 164.508(c)(1), and only the most recent manifestation of the Quest Attorneys' ongoing desperate effort to stymie vindication of Mr. Sacchi's absolute rights under HIPAA and parallel provisions of state common law in order to evade responsibility for their unethical and bad-faith criminal complaint to the New Jersey Attorney General that mandates their immediate disqualification from representing Quest herein.

As explained simply to Quest last year in another effort to end the litigation,

[G]ood-faith requests for, and complaints about, [protected health information ("PHI")] access ***never warrant retaliation by, inter alia, making false accusations of criminal activity against the patient.*** Nothing excuses that and Mr. Sacchi [still] . . . ***seeks the PHI in his designated record set,*** resolution of the outstanding invoice, and a payment given the extensive work and time expended to date. Perhaps Quest mgm't (and in-house counsel) feel foolish for having authorized a criminal complaint (and thereby wasting law enforcement's time), but ***a route to resolution may involve Quest owning that fact and moving on versus continuing with a scorched-earth litigation strategy in a herculean effort to avoid acknowledging it may have been— at the very least—"ill-advised" to authorize a criminal complaint and something that Quest actually wants in retrospect to disavow and preclude recurrence thereof.*** Mr. Sacchi, of course, is human while Quest is a corporation and Mr. Sacchi's reputation is something for which he is prepared to litigate because his reputation, as it is for all people, is priceless.

Electronic-mail message from S. Simoni to M. Hensley, Jan. 22, 2021 (emphases added). Simoni Certif. Exh. B.

V. The Quest Attorneys Have Caused Quest To Inexplicably Oppose the Explicit Mandates of HIPAA In Direct Contravention of the U.S. Dept. of Health and Human Services' National Educational Campaign

Mr. Sacchi's request for PHI, as mandated by HIPAA and parallel provisions of state law, accords with the edict of the U.S. Department of Health and Human Services, which educates consumers about their rights under HIPAA and urges patients nationwide to exercise those rights to maintain and improve their health as Mr. Sacchi has been attempting to do here since October of 2019:

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Access to you health information is your right. ***Having access to your health records is a powerful tool in staying healthy.*** With access to your health information you can make better decisions with you doctor, better track your progress and do more to be healthy. The Health Insurance Portability and Accountability Act, or HIPAA, for short, gives you the important right to see and get copies of your health information. . . . ***Check to make sure your health information is correct and complete . . . [and] ask to change any wrong information in your file or add information to your file if you think something is missing or incomplete. . . . [Even if the provider] believes the [PHI] is correct, you still have the right to have your disagreement noted in your file. . . .*** Know your rights. Take control. Get better care. . . . INFORMATION IS POWERFUL MEDICINE. Access to your health information is your right. Get it. Check it. Use it.

"Health Information Privacy," U.S. Dep't Health & Human Svcs. website (www.hhs.gov) (emphases in original).

CONCLUSION

As detailed above, Quest's frantic effort to litigate a defenseless case appears motivated by its attorneys Michael T. Hensley's and Michael E. Prevoznik's disqualifying and shared "personal interest" in evading the eventual judgment that will formally expose them for having individually made a shameful, bogus, and unethical ***criminal*** complaint against 71-year-old stroke victim Mr. Sacchi rather than simply provide him *his own medical information*.

For this reason, N.J. Rule of Professional Conduct 1.7 mandates that attorneys Michael T. Hensley and Michael E. Prevoznik be disqualified from representing Quest in this action as their joint desire to avoid the inevitable finding that their unethical criminal complaint was improper now deprives Quest of unbiased legal counsel regarding this litigation that would have otherwise ended years ago.

Continued litigation will be driven by Attorneys Hensley's and Prevoznik's continued stewardship of the action and will only work to the detriment of the Court, Quest, and Mr. Sacchi, who—to this day of March 14, 2022—**still remains without access to his own medical records that were first requested in 2019.**

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Thank you for the Court's consideration.

Respectfully submitted,

s/Stephen J. Simoni
Stephen J. Simoni

cc: All Counsel (Via eCourts)

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.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MONMOUTH COUNTY
DOCKET NO.: MON-L-1503-20

Civil Action

**DEFENDANT QUEST DIAGNOSTICS INCORPORATED’S BRIEF IN OPPOSITION
TO PLAINTIFF JOHN SACCHI’S MOTION TO DISQUALIFY (OR RELIEVE)
ATTORNEYS MICHAEL T. HENSLEY AND MICHAEL E. PREVOZNIK FROM
REPRESENTING QUEST DIAGNOSTICS INCORPORATED IN THIS ACTION**

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INTRODUCTION AND STATEMENT OF FACTS

Plaintiff's motion seeks to disqualify Quest Diagnostics Incorporated's ("Quest") litigation counsel, Michael T. Hensley, Esq., and its corporate General Counsel, Michael E. Prevoznik, Esq., from representing Quest in this matter. The alleged basis for disqualification is Quest's referral of Plaintiff and his attorney to the Office of the Attorney General based on the good faith belief that Plaintiff had manufactured the facts underlying this lawsuit in order to improperly leverage a settlement from Quest. The conduct of Quest's attorneys was fully consistent with the requirements of the Rules of Professional Conduct and in no way violated RPCs 3.4(g) and 1.7.

Plaintiff's motion – based on claims he first raised more than a year ago – is nothing more than an attempt to distract from Quest's successful motion for leave to appeal the denial of its motion to dismiss Plaintiff's Amended Complaint with prejudice. Indeed, as this matter is now pending before the Appellate Division, this Court lacks jurisdiction to hear Plaintiff's motion. Even if this Court still had jurisdiction over this matter, Plaintiff's motion is without merit.

By way of brief background and as set forth in detail in Quest's motion to dismiss that is the subject of the pending interlocutory appeal, Plaintiff seeks to pursue various claims stemming from an appointment reminder that was e-mailed to Plaintiff for a blood draw appointment for tuberculosis and glucose tolerance level testing. He received notice of a blood draw appointment that he claims he was not aware had been scheduled and maintains that neither he nor his proxy scheduled it. He did not attend the appointment, but instead called Quest the next day to ask the identity of the healthcare provider who allegedly scheduled the appointment. Quest's appointment scheduling system is designed for patient use and the only information available showed that Plaintiff himself or his husband – who is also Plaintiff's attorney in this matter – made the appointment. Plaintiff then threatened Quest with the filing of a class action.

In letters and e-mails dated November 2, 2020, December 19, 2020, and December 24, 2020, Plaintiff first raised the allegations of misconduct that are the basis of Plaintiff's current application to disqualify Mr. Hensley and Mr. Prevoznik. See Affidavit of Diana C. Manning dated March 24, 2022 ("Manning Aff'd"), Exhs. A, B, and C. As part of these communications, Plaintiff demanded that Bressler, Amery & Ross, P.C. "substitute a more experienced attorney" for Mr. Hensley. See Manning Aff'd, Exh. B. These allegations were immediately refuted and Plaintiff took no further action. See Manning Aff'd, Exh. D. As Plaintiff was informed:

Moreover, your statement that you intend to seek the disqualification of BAR attorney, Michael T. Hensley, Esq., as counsel for Quest Diagnostics Inc. and your demand that BAR "substitute a more experienced attorney" in the Quest litigations reveals the true purpose and intent of your communications. In short, you seek to deprive BAR's client of its choice of counsel in an attempt to "leverage" plaintiffs' position in these litigations. You are clearly attempting to project on to Mr. Hensley your own conduct.

See Manning Aff'd, Exh. D.

On April 14, 2021, Quest filed a motion to dismiss Plaintiff's Amended Complaint, which was denied by the Hon. Kerry E. Higgins, J.S.C. on February 2, 2022. See Manning Aff'd, Exhs. E and F. Quest then filed a motion for leave to appeal with the Appellate Division on February 22, 2022. Its motion was granted on March 15, 2022. See Manning Aff'd, Exh. G. Given that Plaintiff only filed his motion to disqualify after the motion for leave to appeal was filed and his obvious intent is to "leverage" Plaintiff's settlement position through his prior demand that Quest "substitute a more experienced attorney," the inappropriate nature of the present application is evident.

The alleged basis for Plaintiff's disqualification motion is Quest's referral of Plaintiff's actions to the New Jersey Office of the Attorney General.¹ As a threshold matter, the matter to which Plaintiff refers was not a "Criminal Complaint." It was the provision of information establishing that Plaintiff had knowingly levied false allegations in order to threaten, and ultimately file, a class action against Quest to leverage a monetary settlement from Quest. Quest's investigation of Plaintiff's claims revealed that the contact information utilized to schedule the blood draw appointment at issue was Plaintiff's counsel's business contact information and Plaintiff (or his husband/attorney) used his counsel's phone number and e-mail address in connection with the scheduling of the appointment. Thus, the investigation led Quest to conclude that Plaintiff and/or his counsel made an appointment with Quest and then used Plaintiff's counsel's phone to call Quest to claim that he had no idea who made the appointment, threaten a class action lawsuit, and demand a multi-million dollar settlement.

Accordingly, Quest reported to the Attorney General's office its reasonable belief that Plaintiff based his claims on knowingly false allegations in order to inappropriately leverage a settlement from Quest. Quest simply asked the authorities to investigate and inform whether criminal activity occurred. This does not run afoul of the Rules of Professional Conduct, but is, in fact, consistent with all attorneys' obligations in this regard. Indeed, Plaintiff and his counsel have still failed to identify any false information that was conveyed to the Attorney General's Office.

Notwithstanding that Plaintiff first raised these arguments more than a year ago, it was only after Quest filed its motion for leave to appeal – a motion that was granted by the Appellate Division – that Plaintiff filed the instant motion to disqualify. As set forth in detail herein,

¹ It is notable that Plaintiff has not submitted any actual evidence related to the referral, and instead relies entirely on the rhetorical allegations of his brief and Amended Complaint.

Plaintiff's motion is barred as a procedural matter for lack of jurisdiction and, in any event, is meritless.

LEGAL ARGUMENT

POINT I

THE COURT LACKS JURISDICTION TO HEAR PLAINTIFF'S MOTION.

On March 15, 2022, the Appellate Division granted Quest's motion for leave to appeal the Order denying its motion to dismiss Plaintiff's Amended Complaint. The entry of this Order operates to divest the trial court of jurisdiction. R. 2:9-1(a). Accordingly, Plaintiff's motion should not be considered.

Rule 2:9-1(a) provides in pertinent part:

Except as otherwise provided by R. 2:9-3, 2:9-4 (bail), 2:9-5 (stay pending appeal), 2:9-7, 2:9-13(f) and 3:21-10(d), the supervision and control of the proceedings on appeal or certification shall be in the appellate court from the time the appeal is taken or the notice of petition for certification filed...

R. 2:9-1(a). Rule 2:5-1 provides that in the event a motion for leave to appeal is granted, the entry of the order granting the motion for leave is the legal equivalent of the filing of a Notice of Appeal for purposes of R. 2:9-1:

An order of the appellate court granting an interlocutory appeal or, on an appeal by an indigent, waiving the payment of filing fees and the deposit for costs shall serve as the notice of appeal if no notice of appeal has been filed, and, except as otherwise provided by R. 2:7-1, the date of the order shall be deemed to be the date of the filing of the notice of appeal for purposes of these rules....**Upon the entry of such order the appeal shall be deemed pending**, and the appellant, or the clerk of the appellate court if the appellant appears pro se, shall forthwith so notify all parties or their attorneys;

See R. 2:5-1(f)(emphasis added).

"The ordinary effect of the filing of a notice of appeal is to deprive the trial court of jurisdiction to act further in the matter unless directed to do so by an appellate court, or jurisdiction is otherwise reserved by statute or court rule." Manalapan Realty, L.P. v. Twp. Comm. of the

Twp. of Manalapan, 140 N.J. 366, 376 (1995)(citing Rolnick v. Rolnick, 262 N.J. Super. 343, 365-66 (App. Div. 1993). This principle is well-settled. See State v. Kosch, 458 N.J. Super. 344, 349-50 (App. Div. 2019)(noting that trial court was without jurisdiction to enter an order entered three months after a Notice of Appeal had been filed); Kiernan v. Kiernan, 355 N.J. Super. 89 (App. Div. 2002)(affirming trial court's refusal to consider motion for reconsideration filed after filing of Notice of Appeal). As aptly described by the Appellate Division:

We are also troubled by the fact that the trial judge continued to engage in proceedings regarding this discovery issue after the County filed its notice of appeal on March 17, 2014. At that moment, the trial court was deprived of jurisdiction – with the limited exception of retaining the power to enforce its orders – absent our leave...This is so even when a notice of appeal is filed precipitously; until an appeal is dismissed or until this court authorizes a limited remand during the pendency of the appeal, the trial judge remain powerless to grant additional relief...In other words, it is for the appellate court, not the trial court, to determine whether an appeal has been properly lodged and, until receiving direction from the appellate court, the trial court must stay its hand.

State v. Ross, 441 N.J. Super. 120, 125 (App. Div. 2015)(internal citations omitted).

Here, Plaintiff's counsel first raised the allegations that form the basis of his motion to disqualify in late 2020. See Manning Aff'd, Exhs. A, B, and C. These allegations were refuted at that time. See Manning Aff'd, Exh. D. Thereafter, Quest filed its motion to dismiss Plaintiff's Amended Complaint on April 14, 2021, which was denied on February 2, 2022. Only after Quest filed a motion for leave to appeal the denial of its motion to dismiss did Plaintiff file this motion to disqualify. Now that the Appellate Division has granted Quest's motion for leave to appeal, this Court is without jurisdiction to hear Plaintiff's application.

The circumstances here are analogous to those considered by the Appellate Division in State v. A.L., 440 N.J. Super. 400 (App. Div. 2015). There, the defendant filed an appeal from a criminal conviction and applied for indigent status and the appointment of a public defender to

represent him in the appeal. The State, having never objected to the defendant's indigent status at any point in the trial court proceedings, filed an application in the trial court challenging the defendant's indigent status and the right to the appointment of a public defender while the appeal was pending. The Court rejected the State's clear effort to "seriously disrupt the appeal and impermissibly infringe upon the defendant's right to counsel." Id. at 410.

While recognizing that "Rule 2:9-1(a) clearly provides that "the supervision and control of the proceedings on appeal...shall be in the appellate court from the time the appeal is taken," the Court stated:

Thus, when the State filed its motion to terminate the OPD's services over a year later, the trial court lacked the jurisdiction necessary to consider that motion. The facts of this case highlight the propriety of the result compelled by Rule 2:9-1(a). At the time the State filed its motion, the OPD had been representing defendant for thirteen months and was about to file its lengthy appellate brief on her behalf. Under these circumstances, the judge's order clearly had the capacity to interfere with the progress of the pending appeal by diverting the OPD from the task of completing the brief in order to address the State's motion, and by possibly requiring defendant to start her appeal all over again with a new attorney. Simply stated, a proceeding aimed at disqualifying an attorney from representing a party in an appeal, should be commenced in this court not in the trial court.

Id. at 419.

Here, the Appellate Division is vested with the exclusive jurisdiction to hear Plaintiff's application to disqualify Quest's counsel and, accordingly, Plaintiff's application must be denied.

POINT II

THERE IS NO BASIS FOR DISQUALIFICATION UNDER RPC 3.4(G).

Disqualification of counsel is a harsh and discretionary remedy which must be used sparingly. Cavallaro v. Jamco Property Management, 334 N.J. Super. 557, 572 (App. Div. 2000). “Disqualification motions are often made for tactical reasons, but . . . even when made in the best of faith, such motions inevitably cause delay in the underlying proceedings.” Dewey v. R.J. Reynolds Tobacco Co., 109 N.J. 201, 218 (1988). A motion for disqualification requires a court to balance competing interests, weighing the “need to maintain the highest standards of the profession” against “a client’s right freely to choose his counsel.” Id. Because motions to disqualify can have such drastic consequences, courts disfavor such motions and grant them only “when absolutely necessary.” Rohm & Haas Co. v. Am. Cyanamid Co. 187 F. Supp. 2d 221, 226 (D.N.J. 2001). A party seeking disqualification must meet a heavy burden of proof before a court will disqualify an attorney or law firm. Id. at 226-27. New Jersey courts engage in a “painstaking analysis of the facts” when addressing motions for disqualification. Dewey, 109 N.J. at 205.

Here, Plaintiff seeks to disqualify both Quest’s litigation counsel and its corporate General Counsel based on Quest’s referral of Plaintiff’s actions to the New Jersey Office of the Attorney General and Plaintiff’s assumptions about privileged communications between Quest and its counsel. Plaintiff claims that Quest’s counsel “conspired and made a criminal complaint about plaintiff in an unethical attempt to extinguish this pending civil action” in violation of RPC 3.4(g). Pb. at 3. With respect to Quest’s General Counsel, Plaintiff’s motion does not even reference any facts evidencing Mr. Prevoznik’s alleged involvement in the representation of Quest. While Plaintiff has never and will never be able to substantiate his allegation of a conspiracy – one that Plaintiff’s counsel explicitly raised in a November 2, 2020 submission to the Federal District Court

before the matter was remanded² – his motion for disqualification nevertheless fails because Plaintiff cannot establish that Quest’s counsel violated RPC 3.4(g) or that the proper remedy for such a violation would be disqualification.³

A. Plaintiff Fails To Establish That Quest’s Counsel Violated RPC 3.4(g).

Plaintiff has not, and cannot, show that Quest’s counsel violated RPC 3.4(g). According to Plaintiff,

Together, the Quest Attorneys colluded and made a *criminal* complaint that included false statements against plaintiff John Sacchi in this ongoing civil action in their unethical attempt to extinguish the lawsuit in clear violation of the New Jersey Rule of Professional Conduct that specifically forbids attorneys from “*presenting . . . criminal charges to obtain an improper advantage in a civil matter.*”

Pb. at 3 (emphasis in original).

RPC 3.4(g), upon which Plaintiff relies, provides that a lawyer shall not “present, participate in presenting, or threaten to present criminal charges to obtain an improper advantage in a civil matter.” Contrary to Plaintiff’s assertions, RPC 3.4(g) does not create a blanket prohibition against attorneys reporting criminal activity involving other parties in litigation. Rather, RPC 3.4(g) prohibits conduct that is calculated towards improperly obtaining an advantage in a civil matter. Indeed, at all times, it has been Plaintiff and his counsel that have improperly sought to leverage a settlement by pursuing a litigation that is based on knowingly false allegations.

² See Manning Aff’d, Exh. A.

³ The “conspiracy” theory on which Plaintiff’s arguments are based is a legal nullity, as lawyers cannot conspire with a client within the context of an attorney-client relationship. A.V. v. Ashrafi, 2016 N.J. Super. Unpub. LEXIS 2381, *16 (App. Div. October 26, 2016)(“An attorney representing a client cannot “conspire” within the attorney-client relationship.”)(citing Doherty v. American Motors Corp., 728 F.2d 334, 339-40 (6th Cir. 1984) (holding that a company cannot conspire with its in-house or outside counsel)) accord Heffernan v. Hunter, 189 F.3d 405, 413 (3d Cir. 1999); Gen Refractories Co. v. Fireman’s Fund Ins. Co., 337 F.3d 297, 313-14 (3d Cir. 2003); see also Evans v. Chichester School District, 533 F. Supp.2d 523, 529 (E.D. Pa. 2008) (“When an attorney’s alleged conspiratorial conduct occurs within the scope of representation, the conduct cannot be characterized as an actionable conspiracy.”).

Here, Quest investigated Plaintiff's claims. That investigation led to the reasonable belief that Plaintiff manufactured his claims in an attempt to inappropriately leverage a settlement from Quest. Specifically, notwithstanding Plaintiff's claim that the appointment reminder he received from Quest's patient scheduling system was unsolicited, it was clear to Quest that the appointment was made by either Plaintiff or his husband/attorney, who then contacted Quest to falsely disclaim knowledge of the appointment, threaten a class action lawsuit, and demand a multi-million dollar settlement. Based on these facts, Quest had a good faith belief that the central allegations against Quest were knowingly false in order to extract a settlement from Quest through the ruse of the "fake appointment" scheme.

With respect to Mr. Prevoznik (Quest's in-house General Counsel), the claims are even more fanciful. Plaintiff does not even cite to any evidence of Mr. Prevoznik's involvement in the matter beyond his admitted speculation in stating that "Quest General Counsel Michael E. Prevoznik presumably authorized and/or ratified Mr. Hensley's criminal submission on Quest's behalf," and the allegation that "Mr. Prevoznik also had personally received Mr. Sacchi's pre-litigation requests for his medical records and never responded thereto." Pb at 2, n. 1. The "conspiracy" concocted by Plaintiff is based on nothing more than unsubstantiated assumptions and conjecture that are not legally sustainable. See Ashrafi, 2016 N.J. Super. Unpub. LEXIS 2381 at *16 (discussing the legal impossibility of a "conspiracy" between an attorney and client in the context of an attorney-client relationship).

Plaintiff's bald, unsubstantiated allegations against Quest's counsel cannot form the basis of an ethical violation. Moreover, Plaintiff has made no showing, nor is there any evidence, that Quest sought to leverage its good faith belief in the potential criminal nature of the conduct of Plaintiff and his counsel. Quest has always pursued a rigorous defense of this case on the merits

through its motion to dismiss Plaintiff's Amended Complaint, and thereafter with its successful motion for leave to appeal the denial of the motion. The motion to disqualify – which relies on allegations Plaintiff first raised and failed to pursue more than a year ago – is nothing more than improper retaliation for the filing of Quest's motion for leave to appeal, and is part and parcel of Plaintiff's continuous effort to use knowingly false information in the hope that Quest will capitulate and settle. Accordingly, Plaintiff's motion must be denied.

B. Plaintiff Has Not Cited Any Relevant Authority To Support Disqualification Based On A Violation Of RPC 3.4(g).

Plaintiff's motion must also be denied because even if the basis of the motion was accepted by the Court – a position that Quest and its attorneys vehemently deny – disqualification is not an appropriate remedy. See Wilmington Sav. Fund. Soc'y FSB v. Otieno-Ngoje, 2018 U.S. Dist. LEXIS 102129, at *9 (D.N.J. June 19, 2018)("[T]he Court's own research has not uncovered a New Jersey case where a lawyer was disqualified in an ongoing civil case based on a violation of RPC 3.4(g)"). Indeed, Plaintiff has not cited any relevant authority to support disqualification of counsel under similar circumstances. For example, In re Barrett, 88 N.J. 450 (1982) involved the Court's review of the appropriate quantum of discipline for multiple ethical violations including RPC 3.4(g), but not the disqualification of counsel. Likewise, In re Kasper-Ansermet 132 F.R.D. 622, 626 (D.N.J. 1990) did not involve the disqualification of counsel, but rather the court cautioned the parties that "it would be unethical for a member of the bar of this court to threaten criminal action to gain an advantage in a civil negotiation, and the lawyer would be subject to appropriate discipline."

Here, there is no factual or legal basis for the existence of a violation of RPC 3.4(g) by Quest's counsel, nor is there any authority for a disqualification remedy. Accordingly, Plaintiff's motion must be denied.

POINT III

THERE IS NO CONFLICT OF INTEREST THAT WOULD REQUIRE THE DISQUALIFICATION OF QUEST'S LITIGATION COUNSEL AND ITS CORPORATE GENERAL COUNSEL.

Given the lack of merit in Plaintiff's claimed violation of RPC 3.4(g), the additional arguments that the referral creates an impermissible conflict of interest between Quest and both its litigation counsel and corporate General Counsel must be rejected. The prohibitions of RPC 1.7(a)(2) do not apply and do not provide a basis for disqualification.

RPC 1.7(a)(2) states in relevant part:

[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

*

*

*

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

To succeed on a claim brought under RPC 1.7, an articulable conflict must be shown; mere speculation is insufficient. See Essex County Jail Annex Inmates v. Treffinger, 18 F. Supp. 2d 418, 431-32 (D.N.J. 1998) (a conflict pursuant to RPC 1.7(a)(2) must be supported with something more than a theoretical possibility and cannot be based on speculation or conjecture); see also State v. Davis, 366 N.J. Super. 30, 40-42 (App. Div. 2004) (conflicts based on speculation, conjecture, and hypothesis are non-actionable)). In Treffinger, the court concluded that a lawyer's "fear of losing her job is far too speculative to support a finding of conflict of interest" and observed:

[A] lawyer's self-interest is, in theory, inherent in every case in which he participates, and the "range of possible breaches . . . is virtually limitless." . . . One need not tax the mind too strenuously to conjure up an entire assortment of instances in which an attorney's self-interest may theoretically conflict with the interests of his client. Indeed, a private practice attorney's interest in extending litigation to obtain greater fees is surely at odds with a

client's interest in a swift and relatively inexpensive resolution of his case, to give just one example. . . . The vast majority of these instances, however, do not present the sort of conflict of interest recognized by the law.

Id. at 431-432 (internal citations omitted).

RPC 1.7(a)(2) prohibits a lawyer from undertaking a representation that may be materially limited by the lawyer's own interests, and is typically implicated when the lawyer stands to derive some benefit, in addition to a legal fee, from the matter with respect to which he is advising the client. See N.J. Advisory Comm. On Prof'l Ethics Opinion 353 (Sept. 23, 1976)(stating that a lawyer for a local planning board may not advise the board with respect to a matter in which he or she has a personal, financial, business, or property interest). See also In re Haft, 146 N.J. 489 (1996)(suspending an attorney in part for undertaking a representation that was materially limited by the attorney's own interests).

Here, Plaintiff speculates that RPC 1.7 "mandates that attorneys Michael T. Hensley and Michael E. Prevoznik be disqualified from representing Quest because it may be difficult or impossible for them to give Quest detached advice." Pb. at 4. Plaintiff alleges that there is a significant risk that the representation of Quest will be materially limited by Quest's counsel's "personal interest" in "evading individual culpability for their unethical conduct[.]" Pb. at 4. Indeed, with respect to Mr. Prevoznik, whose role in Plaintiff's allegations is unexplained beyond Plaintiff's allegation that Mr. Prevoznik did not respond to his e-mails requesting his "protected HIPAA information," there is nothing of substance that is alleged or that could form the basis of a conflict of interest between Quest and its corporate General Counsel.

Instead, Plaintiff resorts to *ad hominem* attacks and unsupported allegations to support this claim. Plaintiff blatantly mischaracterizes Quest's referral of Plaintiff's actions to the New Jersey Office of the Attorney General as "retaliation" by Quest's counsel as his sole factual basis to claim

a conflict of interest exists. To the contrary, the record is devoid of evidence to suggest there is a risk, let alone a significant risk, that representation of Quest may be materially limited by any personal interest of Quest's counsel related to the referral to the New Jersey Office of the Attorney General.

Generally, cases that have involved disqualification on this basis required the identification of a clear and identifiable conflict between the client and the personal interests of the attorney. For example, in United States v. Merlino, 349 F.3d 144 (3d Cir. 2003), the defendant's attorney improperly engaged in an effort to persuade a represented witness not to cooperate with the government. 349 F.3d at 151. The Third Circuit held that the attorney's alleged attempt to influence the witness raised the serious potential for conflict because "[a]n attorney who faces criminal or disciplinary charges for his or her actions in a case will not be able to pursue the client's interests free from concern for his or her own." Id. See also Circle Chevrolet v. Giordano, Halleran & Ciesla, 142 N.J. 280, 291-292 (1995)(noting that a lawyer's potential liability to a client for malpractice may cause a conflict of interest under RPC 1.7, necessitating the client's consent to continued representation after the lawyer becomes aware that he or she has made an error); State v. Rivera, 232 N.J. Super. 165, 178-179 (App. Div.), certif. den. 117 N.J. 169 (1989)(disqualifying under RPC 1.7 two defense lawyers who engaged in a scheme to have the defendant marry the chief witness against him, and holding that the lawyers' possible criminal liability would hamper their representation of the defendant); United States v. Lacerda, 929 F. Supp. 2d 349 (D.N.J. 2013)(disqualifying defense counsel who allegedly helped defendant continue the fraud that was the basis of the defendant's indictment because of counsel's personal stake in protecting himself against potential criminal charges and malpractice claims, along with the fact that he was a potential witness which conflicted with his role as an advocate).

Quest's counsel continues to have every incentive to zealously represent Quest and is not in any way materially limited by Plaintiff's mischaracterization of the basis for the criminal referral.⁴ Moreover, Quest's retention of its current counsel and the continued employment of its General Counsel has remained consistent. Its choice of counsel is entitled to substantial deference and should not be disturbed by Plaintiff's retaliatory allegations. As set forth above, the conduct of Quest and its attorneys has been consistently aligned with the best interests of their client and their ethical obligations to the Court and counsel. It is Plaintiff that has acted improperly in pursuing a tenuous claim and in filing the present motion to distract from the filing of Quest's motion for leave to appeal. Accordingly, Plaintiff's motion to disqualify must be denied.

⁴ As stated previously, the communication with the Attorney General's Office was not a "Criminal Complaint" as Plaintiff falsely alleges, but merely the submission of factual information confirming the falsity of Plaintiff's allegations and the attempt to use that false information to demand a multi-million dollar settlement from Quest.

POINT IV

**THE BALANCE OF PLAINTIFF’S ARGUMENTS ARE
WITHOUT MERIT AND ARE UNRELATED TO
PLAINTIFF’S DISQUALIFICATION MOTION.**

Aside from Plaintiff’s baseless arguments addressed above, the balance of Plaintiff’s motion involves argument that his “reasonable” settlement offers should not have been rejected by Quest and are somehow evidence of the ethical violations he claims. He also raises extensive argument on the merits of his claims, which arguments are properly directed to the Appellate Division in connection with the pending appeal.

Plaintiff’s contention that Quest’s rejection of his settlement offers is somehow relevant to his request for disqualification is without merit. Aside from the impropriety of Plaintiff’s presentation of these settlement communications pursuant to N.J.R.E. 408, Quest is not obligated to accept Plaintiff’s unreasonable demands, particularly in light of the baseless nature of Plaintiff’s claims and the manner in which they were presented. With respect to the merits, Quest has challenged the viability of these claims, and those issues are currently before the Appellate Division. They are not relevant to the disqualification motion, nor are they properly before this Court. Accordingly, Plaintiff’s motion must be denied.

CONCLUSION

For all of the foregoing reasons, defendant Quest Diagnostics Incorporated respectfully requests that Plaintiff's motion to disqualify Quest's litigation counsel, Michael T. Hensley, Esq., and its corporate General Counsel, Michael E. Prevoznik, Esq., be denied.

Respectfully submitted,

BRESSLER, AMERY & ROSS, P.C.
Attorneys For Defendant
Quest Diagnostics Incorporated

By: /s/ Diana C. Manning
Diana C. Manning

Dated: March 24, 2022



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March 26, 2022

VIA eCourts

Hon. Linda Grasso Jones, J.S.C.
Superior Court of New Jersey
for Monmouth County
71 Monument Street
Freehold, NJ 07728

Return Date: April 1, 2022

MR. SACCHI REQUESTS ORAL ARGUMENT

Dear Judge Jones:

**RE: *John Sacchi v. Quest Diagnostics Inc.*, No. MON-L-01503-20
Letter Reply Brief In Further Support of Mr. Sacchi's Motion to
Relieve or Disqualify Attorneys Hensley and Prevoznik From
Representing Quest Diagnostics Incorporated In This Action**

I represent Plaintiff John Sacchi ("**Mr. Sacchi**") in the above-referenced action and respectfully submit this Letter Reply Brief in further support of Mr. Sacchi's Motion to Relieve or Disqualify Attorneys Michael T. Hensley and Michael E. Prevoznik ("**Quest Attorneys**") from representing Defendant Quest Diagnostics Incorporated ("**Quest**") in this action and in response to the opposition brief submitted by Quest dated March 24, 2022 (eCourts Trans ID: LCV20221225695) ("**Quest Br.**").

**Quest Attorneys Hensley and Prevoznik Cannot Credibly Deny
That They Attempted to Spark a Criminal Investigation Against
Plaintiff John Sacchi in Order To Extinguish A Pending Civil Action**

The sequence of events giving rise to, and following the filing of, Mr. Sacchi's action demonstrate that the Quest Attorneys deliberately violated Rule 3.4(g) of the New Jersey Rules of Professional Conduct that specifically forbids attorneys from "*presenting . . . criminal charges to obtain an improper advantage in a civil matter.*" Id. (emphasis added) ("**Rule 3.4(g) Violation**").

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As detailed herein, the Quest Attorneys wrongly believed their false allegations of criminal activity to the N.J. Attorney General Division of Criminal Justice's Chief of Detectives William Frederick in the Quest Memorandum of Attorneys Michael T. Hensley and Ross A. Fox, Jan. 28, 2020 ("**Quest Memorandum of Attorneys**") would extinguish Mr. Sacchi's lawsuit such that Quest would not have to respond to the action.

Their unethical strategy was confirmed by the fact that the Quest Attorneys contacted Mr. Sacchi's attorney regarding the lawsuit *only after* and *only because* the N.J. Attorney General properly concluded that no criminal activity was indicated and that no criminal prosecution would therefore be commenced. The Quest Attorneys recognized their unethical activity had failed to extinguish the action and therefore—and only then—contacted Mr. Sacchi's attorney and only to seek an extension of time to respond to the Complaint.

RELEVANT FACTS

Stroke Victim John Sacchi Had Repeatedly Attempted For Months— By E-Mail, Telephone, Overnight Courier, And Quest's Web Portal— To Obtain Copies Of His Own Medical Records From Quest Before Having No Remaining Option But To File A Lawsuit

As comprehensively detailed in the First Amended Complaint dated September 2, 2020 (eCourts Trans ID: LCV20201545476) ("**FAC**") and Mr. Sacchi's Opposition Brief dated May 4, 2021 that resulted in the denial of Quest's Motion to Dismiss in its entirety (eCourts Trans ID: LCV20211130830), Patient John Sacchi ("**Mr. Sacchi**" or "**Patient**"), a 71-year-old stroke victim, filed his lawsuit only after several months of being repeatedly rebuffed by Quest in Mr. Sacchi's attempt to ascertain whether specified laboratory tests had been ordered for him with the assistance of his attorney, healthcare proxy, and spouse as enumerated below. ***In all communications, Patient used the telephone number and electronic-mail address of his attorney as his contact information as clearly indicated on the communications:***

- **1** In September of 2019, Patient scheduled an appointment at Quest and subsequently presented himself at the Quest facility that month along with an 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 that same month. Patient used the telephone number and electronic-mail address of his attorney as his contact information.

- **2** On October 21, 2019, Mr. Sacchi received an electronic-mail message from Quest via his attorney's electronic-mail account that indicated a tuberculosis test and a glucose tolerance test were listed in Quest's records as

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having apparently been ordered for him by a licensed medical prescriber to undergo later that month on October 28, 2020. FAC Exh. A at 1 (Upon clicking the "Change or cancel your appointment button" in Quest's message, another page appeared and indicated the pendency of the tuberculosis test and glucose tolerance test.).

Because Patient was unaware whether one or more of his numerous treating medical prescribers had in fact ordered the two specified lab tests for him to undergo, Patient commenced his multi-year and still ongoing effort to ascertain whether one or more of his treating prescribers had ordered the tests. ***Patient also was concerned that the Quest system may have automatically generated those two tests based on the results of the lab tests that Patient had undergone weeks earlier during his September 2019 appointment.*** FAC ¶ 14 (emphasis added).

That question would be definitively answered by Quest's simple provision of Patient's Protected Health Information ("**PHI**") in his record set at Quest, which encompasses all laboratory tests ordered for Plaintiff and the identity of the medical prescribers who ordered the tests, and which Quest is required to provide pursuant to multiple and parallel provisions of state and federal law including, *inter alia*, the HIPAA Privacy Rule. FAC ¶ 16. (As noted in Mr. Sacchi's Moving Letter Brief, Quest has still not provided those medical records and most recently illegally demanded, *inter alia*, Mr. Sacchi's social security number as a condition thereof.)

• **3** Mr. Sacchi therefore submitted an inquiry on Quest's web portal to ascertain whether such tests had in fact been ordered for him. Mr. Sacchi asked:

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

FAC Exh. A at 3. Patient again used the telephone number and electronic-mail address of his attorney as his contact information.

• **4** Two days later on October 23, 2019, Mr. Sacchi sent an electronic-mail message to Quest that repeated his request for the laboratory test information and included a copy of the message he had received from Quest two days earlier, stating:

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

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FAC Exh. A at 1. Patient once again used the telephone number and electronic-mail address of his attorney as his contact information. And Patient's message was sent *directly from his attorney's electronic-mail account* as shown in Exhibit A to the First Amended Complaint and copied here (yellow electronic highlighting added):

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](#)

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Add this appointment to your calendar with the email attachment.

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

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ADMITTED IN CA, NY, NJ, & MA (ret.)

• **5** Five days later on October 27, 2019, the only response Mr. Sacchi received from Quest was ***another*** electronic-mail message sent again to him at his attorney's electronic-mail account that once again indicated a tuberculosis test and a glucose tolerance test were listed in Quest's records as having apparently been ordered by a licensed medical prescriber for Patient to undergo. FAC ¶ 16 (Upon clicking the "Change or cancel your appointment button" in Quest's message, another page appeared and indicated the pendency of the tuberculosis test and glucose tolerance test.).

• **6** Two days later on October 29, 2019, Mr. Sacchi, again with the assistance of counsel and use of his attorney's cellphone number, telephoned Quest in the continuing effort to determine whether the tuberculosis test and glucose tolerance test had in fact been ordered for him and, if so, by which medical prescriber. Quest refused to assist in ascertaining whether Patient's medical records at Quest indicated that the two laboratory tests were pending in his records. Significantly, while rejecting Patient's request to access his own medical information, Quest speculated that the notification of the two tests "must have" been an error as such errors purportedly 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).

Incredibly, Quest's stated company-wide policy, as confirmed by its Patient Team Representative Ramona Weldon and her supervisor Gita in that recorded telephone call¹ on October 29, 2019, refuses to inform patients of the

¹ As noted throughout the First Amended Complaint, the audiotaped October 29, 2019 telephone conversation plays a key role in the action by evidencing the great lengths that Mr. Sacchi took to obtain his medical information and Quest's continuing refusal to provide same (or even respond) that needlessly precipitated

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information 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. FAC ¶ 21.

• **7** The following day on October 30, 2019, Mr. Sacchi sent a detail of his ongoing effort to Quest via overnight courier and electronic mail and threatened legal action if no provision of his medical information followed. Once again, Patient used the telephone number and electronic-mail address of his attorney as his contact information. And Patient's letter was sent *directly from his attorney's electronic-mail account* and *on his attorney's letterhead stationery* as shown in Exhibit B to the First Amended Complaint.

• **8** After again getting no response from Quest, on January 9, 2020, Mr. Sacchi served Quest with the earlier related lawsuit.

• **9** Quest still provided Mr. Sacchi no response nor the medical information from his records at Quest that would reveal whether the tuberculosis test and glucose tolerance test had in fact been ordered for him and were pending in his Quest records.

• **10** On January 28, 2020, rather than simply provide Mr. Sacchi the information in his own medical records—or even contact opposing counsel to discuss the request—Quest made false statements to the New Jersey Attorney General's Division of Criminal Justice in Quest's effort to manufacture a criminal case against Patient. Quest Memorandum of Michael R. Hensley and Ross A. Fox, Jan. 28, 2020.

• **11** Two days later, on January 30, 2020, the Division of Criminal Justice—after reading Quest's memo—immediately wrote that no criminal activity was indicated.

• **12** Four days later, on February 3, 2020, Quest and Mr. Hensley finally contacted Mr. Sacchi, but **only because** *the New Jersey Attorney General's Division of Criminal Justice stated that **no criminal activity was indicated and that no criminal prosecution would therefore be initiated***. The Quest Attorneys realized their effort to extinguish the action with their unethical complaint seeking to spark a criminal prosecution had failed and, therefore, the Quest Attorneys now had to respond to the lawsuit: They then requested an extension to respond to the Complaint, which extension Mr. Sacchi granted while reiterating his request that the

the lawsuit, which was further compounded by Quest then making the bogus criminal accusation against Mr. Sacchi in order to extinguish the ensuing civil action. Patient awaits Quest's production of the audiotope of the call as requested multiple times already.

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Quest Attorneys provide him the requested information concerning the tuberculosis test and glucose tolerance test that were listed in Quest's records as having apparently been ordered for Patient to undergo on October 28, 2020.

• **13** Patient learned of Quest's criminal communications only months later in April of 2020.

• **14** Plaintiff then filed the instant action in May of 2020 and included the newly discovered facts of Quest's baseless, bad-faith, and unethical complaint to criminal authorities while Quest steadfastly refused to even discuss the matter with opposing counsel and *continued to withhold Patient's own medical records*.

LEGAL ARGUMENT

POINT I

The Quest Attorneys Wrongfully Contend They Had a “Good Faith Belief” in Mr. Sacchi’s Purported Criminal Conduct, But The Undisputed Facts Clearly Belie Their Contention; Besides, A Good Faith Belief Does *Not* Excuse A Rule 3.4(g) Violation of Trying to Spark A Criminal Prosecution of an Adversary

Incredibly, the Quest Attorneys contend they committed no Rule 3.4(g) Violation on the grounds they purportedly had a “good faith belief” that Patient had engaged in criminal activity in connection with the lawsuit. Quest Br. at 1. But Rule 3.4(g) Violations are ***not*** excused by any purported “good faith belief.”

And the undisputed facts here, moreover, clearly demonstrate that no reasonable observer—and certainly no qualified attorney—would suspect criminal activity. In the effort to brazenly prod the N.J. Attorney General’s Division of Criminal Justice to criminally prosecute Mr. Sacchi, the Quest Attorneys freely admit that their purported “belief” of criminal activity was based merely on the circumstance that the Quest Attorneys’ so-called “investigation” had discovered: “[T]he contact information utilized to schedule the blood draw appointment at issue was [Patient’s] counsel’s business contact information and [Patient] (or his husband/attorney) used his counsel’s phone number and e-mail address in connection with the scheduling of the appointment.” Quest Br., at 3.

As detailed above and in the First Amended Complaint, however, Patient openly sought to obtain his medical records from Quest while repeatedly using his attorney’s contact information (phone number and e-mail address) and sending messages from his attorney’s e-mail account and on his attorney’s stationery, *which was obvious to Quest throughout the many months Patient continually requested his records*. There was no secret that Patient John Sacchi was requesting his medical

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information and stated he could be contacted at the specified telephone number and e-mail address, which even identified his attorney by name (StephenSimoniLAW@gmail.com), who also is Mr. Sacchi's spouse and healthcare proxy who handles the medical affairs of the 71-yr-old stroke survivor Mr. Sacchi.

Indeed, the one and **only** reason that a lawsuit was even filed was Quest's inexplicable, wrongful, and repeated failure to even respond to Patient—let alone permit him to access his own medical records as required by multiple parallel provisions of federal and state law.

No reasonable person would suspect criminal activity based on such a circumstance. And no ethical and reasonable attorney would even think about wasting law enforcement's time before picking up the telephone to inquire of the adversary's lawyer about any purported concerns.

POINT II

The Quest Attorneys' "Personal Interest" in Avoiding Discipline for Their Blatantly Unethical Conduct Mandates Their Disqualification Due to the Non-Consentable Nature of Their Conflict With Quest's Interests in Obtaining a Quick, Efficient, and Just Resolution of the Instant Action While Complying With Its Indisputable Duty to Provide Patients Medical Records Upon Request

As RPC 1.7(a)(2) cautions, Attorneys Hensley's and Prevoznik's "personal interest" in evading individual culpability for their unethical conduct poses a "significant risk that the[ir] representation of [Quest] will be materially limited." In fact, Quest already has suffered considerably after Attorneys Hensley and Prevoznik apparently counseled Quest to reject the extremely favorable settlement offer made by Mr. Sacchi as discussed in Mr. Sacchi's Opening Letter Brief that required a monetary payment of only Mr. Sacchi's court filing fee. *See* Patient's Opening Letter Brief, Mar. 14, 2022, at 6-7 (eCourts Trans ID: LCV20221059391).

And now the Quest Attorneys' ongoing "personal interest" is wrongfully necessitating involvement of both the Superior Court and the Appellate Division simply because the Quest Attorneys pursue a meritless defense of the action rather than letting Quest acknowledge that it was improper to make a bogus accusation of criminal activity against a Patient and to continue withholding the Patient's own medical records nearly two and one-half years after initially requested.

A. The Cases Cited By Quest's New Attorney Diana Manning, an Attorney Ethics Practitioner, Demonstrate That Disqualification Is Mandatory

The new attorney for Quest who signed its Opposition Brief and submitted an accompanying Certification, Diana Manning, recognizes that the impermissible "personal interest" of Quest Attorneys Hensley and Prevoznik mandates their disqualification as manifested by the cases that Ms. Manning cites *in Quest's own*

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brief and the respective parenthetical descriptions that she accurately provides, which are repeated below:

[C]ases that have involved disqualification on this basis required the identification of a clear and identifiable conflict between the client and the personal interests of the attorney. For example, in United States v. Merlino, 349 F.3d 144 (3d Cir. 2003), the . . . Third Circuit held that the attorney's alleged [conduct] raised the serious potential for conflict because "***[a]n attorney who faces criminal or disciplinary charges for his or her actions in a case will not be able to pursue the client's interests free from concern for his or her own.***" *Id.* See also Circle Chevrolet v. Giordano, Halleran & Ciesla, 142 N.J. 280, 291-92 (1995) (noting that ***a lawyer's potential liability to a client for malpractice may cause a conflict of interest under RPC 1.7 . . . after the lawyer becomes aware that he or she has made an error***); State v. Rivera, 232 N.J. Super. 165, 178-79 (App. Div.), certif den., 117 N.J. 169 (1989) (***disqualifying under RPC 1.7 two defense lawyers . . . and holding that the lawyers' possible criminal liability would hamper their representation of the defendant***); United States v. Lacerda, 929 F. Supp. 2d 349 (D.N.J. 2013) (***disqualifying defense counsel . . . because of counsel's personal stake in protecting himself against potential . . . malpractice claims . . .***).

Quest Br., at 14 (emphases added) (signed by Quest Attorney Diana Manning).

Ms. Manning's signature on the Opposition Brief, and her citation of these New Jersey Supreme Court and Third Circuit cases that call for the mandatory disqualification of Messrs. Hensley and Prevoznik, is telling as Ms. Manning serves as her firm's Managing Principal, sits on the firm's Executive Committee, runs the firm's Professional Liability practice, and recently served on the District XA Ethics Committee for ten years during which tenure she was appointed Chair by the New Jersey Supreme Court from 2017-2019.

CONCLUSION

Quest's ongoing desperate effort to litigate a defenseless case appears motivated by its attorneys Michael T. Hensley's and Michael E. Prevoznik's disqualifying and shared "personal interest" in evading the eventual judgment that will formally expose them for having individually made a shameful, bogus, and unethical ***criminal*** complaint against 71-year-old stroke victim Mr. Sacchi rather than simply provide him *his own medical information*.

For this reason, N.J. Rule of Professional Conduct 1.7 mandates that attorneys Michael T. Hensley and Michael E. Prevoznik be disqualified from representing

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Quest in this action as their joint desire to avoid the inevitable finding that their unethical criminal complaint was improper now deprives Quest of unbiased legal counsel regarding this litigation that would have otherwise ended years ago.

Continued litigation will inevitably be driven by Attorneys Hensley's and Prevoznik's continued stewardship of the action and will only work to the detriment of the Court, Quest, and Mr. Sacchi, who—to this day of March 26, 2022—**still remains without access to his own medical records that were first requested in 2019.**

Thank you for the Court's consideration.

Respectfully submitted,

s/Stephen J. Simoni
Stephen J. Simoni

cc: All Counsel (Via eCourts)