

EXHIBIT A

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 COUNTY OF LOS ANGELES

12 INTRIVO DIAGNOSTICS, INC., a Delaware
 corporation,
 13
 Plaintiff,
 14
 vs.
 15 ACCESS BIO, INC., a New Jersey corporation;
 16 AREUM BIO LLC, a Delaware limited liability
 company; IVY PHARMA, INC., a New Jersey
 17 corporation; and DOES 1 through 10, inclusive,
 18
 Defendants.

Case No. 22STCV09935

COMPLAINT FOR:

- (1) BREACH OF CONTRACT;**
- (2) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;**
- (3) PROMISORRY FRAUD;**
- (4) INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**
- (5) UNLAWFUL BUSINESS PRACTICES**
- (6) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

DEMAND FOR JURY TRIAL

1 Plaintiff Intrivo Diagnostics, Inc. (“Intrivo”), for its complaint against Defendants Access
2 Bio, Inc. (“Access Bio”), Areum Bio LLC (“Areum”), IVY Pharma, Inc. (“IVY Pharma”), and Does
3 1 through 10, inclusive, alleges as follows:

4 INTRODUCTION

5 1. Plaintiff Intrivo has been at the forefront of the efforts to develop and deploy rapid,
6 accurate, and easy-to-use COVID-19 tests. Early in the pandemic, Intrivo partnered with Defendant
7 Access Bio, then a struggling diagnostics company on the verge of bankruptcy, to develop and
8 distribute rapid tests for COVID-19. Intrivo invested tens of millions of dollars in support of its
9 partnership with Access Bio, including to create leading COVID-19 tests, secure FDA Emergency
10 Use Authorizations (“EUAs”) for the tests, and to build out a world-class distribution network so that
11 the tests could be quickly and efficiently delivered to those who need them most. For its part, Access
12 Bio agreed to manufacture and sell the tests *exclusively* to Intrivo at a pre-negotiated price so that
13 Intrivo could distribute the tests to help save lives.

14 2. The parties formalized their relationship in a series of contracts beginning in May
15 2020. These contracts afforded Intrivo *exclusive* distribution rights in the United States for all
16 COVID-19 antigen tests, including both the point-of-care (“POC”) test, to be administered by
17 healthcare professionals, and the over-the-counter (“OTC”) self-test. Unbeknownst to Intrivo at the
18 time, Access Bio never intended to adhere to the contracts with Intrivo. Instead, despite Intrivo’s
19 substantial investments to rescue Access Bio from imminent collapse, Access Bio shamelessly and
20 repeatedly breached the contracts virtually from the start.

21 3. Beginning no later than October 2020, Access Bio undertook to circumvent Intrivo’s
22 exclusive U.S. distribution rights for the POC tests, which were marketed and sold under the
23 “CareStart” brand. At Access Bio’s behest, Intrivo entered into a subdistribution agreement with
24 Defendant Areum pursuant to which Areum would purchase the CareStart POC tests from, and split
25 its profits with, Intrivo. But Areum never adhered to the subdistribution agreement; it instead
26 purchased tests directly from Access Bio and failed to make any payments to Intrivo after January
27 2021. On information and belief, Areum purchased millions of CareStart POC tests directly from
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1 Access Bio for distribution throughout the U.S., notwithstanding its knowledge of Intrivo's exclusive
2 distribution rights in the territory.

3 4. In the fall of 2021, after the FDA granted an EUA for the OTC test, Intrivo and Access
4 Bio executed a new contract by which Access Bio committed to manufacture and deliver to Intrivo
5 no fewer than 53.6 million OTC tests under Intrivo's "On/Go" brand by the end of December 2021,
6 and to thereafter make at least 65% of its antigen test production capacity available to Intrivo for the
7 four-year term of that agreement. With a guaranteed supply of at least 53.6 million On/Go tests in
8 the fourth quarter of 2021, Intrivo was well positioned to meet the unprecedented demand for
9 COVID-19 tests when the Delta and Omicron variants drove case rates to previously unthinkable
10 levels. The contract afforded Access Bio the right to sell OTC tests for its own account under the
11 CareStart brand, but *only* once Intrivo's minimum guarantees had been fulfilled.

12 5. Once again, Access Bio did not abide by its commitments to Intrivo. The Q4 2021
13 delivery deadlines were essential terms in the contract, among the most contentious and important
14 terms in negotiations given the cyclical nature of consumer demand and the expectation that major
15 pharmaceutical and diagnostics companies would enter the market in subsequent months. Access Bio
16 acknowledged that time was of the essence, which was the whole point of minimum guarantees. Yet,
17 by the end of December 2021, Access Bio had delivered only about 21.6 million of the promised
18 53.6 million On/Go tests—a shortfall of approximately 32 million tests. Rather than devoting
19 necessary resources and raw materials to meet the minimum guarantees, Access Bio deliberately
20 throttled the supply of On/Go tests so that it could manufacture more of the competing CareStart
21 OTC tests from which Access Bio reaped a far greater profit.

22 6. Access Bio's breaches devastated Intrivo's ability to meet customer demand for the
23 On/Go tests. Between October 6, 2021, and January 15, 2022, Intrivo received purchase orders for
24 approximately 100 million tests, valued at nearly \$660 million, from government, retail, and
25 enterprise customers. Yet, because Access Bio did not deliver the tests it promised, the vast majority
26 of Intrivo's customer orders were long delayed and ultimately cancelled. Worse yet, in a calculated
27 move that Access Bio had undoubtedly planned from the start, Access Bio then swooped in to poach
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1 those same customers, selling them CareStart OTC tests in lieu of the On/Go tests that Intrivo was
2 unable to deliver on account of Access Bio's breaches.

3 7. Throughout the fourth quarter of 2021, Access Bio purposefully misled Intrivo and
4 made pretextual excuses about the cause of the delayed shipments. In truth, Access Bio had diverted
5 the lion's share of its resources not to satisfying Intrivo's minimum guarantees, but instead to
6 manufacturing CareStart OTC tests that Access Bio could distribute in concert with Areum for a
7 substantially larger profit than it could have achieved on the sales it had committed to make to Intrivo.
8 On information and belief, Access Bio and Areum sold tens of millions of CareStart OTC tests in the
9 fourth quarter of 2021 and continuing into early 2022, in willful disregard of its obligations to Intrivo
10 and causing Intrivo hundreds of millions of dollars in lost profits, along with catastrophic damage to
11 its reputation and future business prospects.

12 8. In early January 2022, Intrivo confronted Access Bio and demanded that it adhere to
13 its commitments. Access Bio's response was nothing short of stunning. Rather than agree to cure its
14 delivery shortfall in time for Intrivo to mitigate the extraordinary damages from the delivery delays,
15 Access Bio told Intrivo that it would stop delivering tests *altogether* unless Intrivo agreed by 5:00
16 p.m. the next day to waive its entitlement to the past-due tests, release Access Bio of all liability, and
17 make a series of other material concessions. Intrivo refused to capitulate and, even in the face of
18 Intrivo's assertion of its legal rights, withheld most of the shortfall until late February—by which
19 time Access Bio had poached Intrivo's customers, the Omicron wave had largely subsided, and
20 demand had completely dried out—leaving Intrivo with no choice but to refuse delivery or suffer
21 heavy losses.

22 9. Intrivo brings this action to seek redress for Access Bio's and Areum's willful and
23 bad faith breach of contract and the false promises and other tortious acts by which they and their
24 chief executives have inflicted damages upon Intrivo that exceed \$1,000,000,000 in the aggregate.

25 PARTIES

26 10. Plaintiff Intrivo Diagnostics, Inc. is a Delaware corporation with its corporate offices
27 in Culver City, California.

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