

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

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QUEST DIAGNOSTICS INCORPORATED.,

Plaintiff,

COMPLAINT

Civil Action No. _____

-against-

THE COURTYARDS LLC,

Defendant.

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Plaintiff QUEST DIAGNOSTICS INCORPORATED ("Plaintiff" or "Quest"), through its attorneys, The Glennon Law Firm, P.C., asserts the following upon information and belief, except for those allegations pertaining to Plaintiff, which is on personal knowledge, for its complaint against Defendant THE COURTYARDS LLC ("Defendant") as follows:

NATURE OF THIS ACTION

1. Nursing homes have been the epicenter of the COVID-19 pandemic in the United States. It has been widely reported "that nearly 1 in 10 people who lived in nursing homes in the United States had died of the virus." See Jay Caspian Kang, *The Forgotten Nursing-Home Tragedy*, N.Y. Times, dated November 4, 2021: <https://www.nytimes.com/2021/11/04/opinion/nursing-home-deaths.html>. During the first months of the pandemic, the United States faced severe shortages and delays in diagnostic testing. See, e.g., *Despite Early Warnings, U.S. Took Months To Expand Swab Production For COVID-19 Test*, National Public Radio, last visited dated May 12, 2020: <https://www.npr.org/2020/05/12/853930147/despite-early-warnings-u-s-took-months-to-expand-swab-production-for-covid-19-te>.

2. On May 10, 2020, former Governor Andrew Cuomo issued an executive order mandating that all nursing homes and adult care facilities in the state must test their staff two times per week. *See* Executive Order 202.30, dated May 10, 2020, <https://www.governor.ny.gov/sites/default/files/atoms/files/EO202.30.pdf> (the “Executive Order”). The Executive Order directed that nursing homes and other adult care facilities “shall cooperate fully with Department of Health and local health department staff to facilitate such testing.”

3. In furtherance of the directives in the Executive Order, the Department of Health entered into a written contract with Plaintiff to provide COVID-19 testing to nursing home personnel. *See* COVID-19 Laboratory Testing Services Agreement, dated May 18, 2020 (the “DOH Contract”). Under the terms of the DOH Contract, Plaintiff agreed to provide 7,500 COVID-19 tests per day to all personnel¹ of nursing homes and adult care facilities, adult homes, enriched housing programs and assisted living facilities (“Facilities”) in New York starting in June 2020. *See id.* Plaintiff agreed to charge no more than \$100 per test and that it would establish mechanisms for payment, which may have included invoicing the nursing home facilities directly for the testing services on an account bill basis.

4. On or about September 3, 2020, Plaintiff sent to Defendant an agreement presenting terms for whereby the Defendant would engage the Plaintiff to provide COVID-19 testing to Defendant’s employees (the “Agreement”), pursuant to New York’s Executive Order. The Agreement was opened and reviewed by Defendant on or about

¹ Personnel included all employees, contracted staff, medical staff, operators, and administrators of Facilities, all of whom were required to be tested twice per week under the Executive Order.

September 3, 2020. This Agreement also provided that Plaintiff would charge no more than \$100 per test.

5. In accordance with the DOH Contract and the Agreement with Defendant, Plaintiff provided more than a thousand COVID-19 PCR tests for personnel and staff at Defendant's Facility. Defendant accepted Quest's testing services, provided specimens to Quest for testing and received from Quest the test results for Defendant's personnel and staff. After rendering testing services, Quest sent invoices to the Defendant on a monthly basis, which charged \$100 per test—the rate set by the DOH Contract and the Agreement. Defendant did not object to the accuracy of the sums owed as stated in the invoices or the \$100 per test rate while Quest was providing services to Defendant. To date, Defendant has refused to pay these invoices without a reasonable or proper justification. Accordingly, Defendant is liable to Quest for breach of contract, account stated, collection and litigation expenses (including among other things, attorneys' fees and costs), unjust enrichment, quantum meruit, in an amount no less than \$200,000.00, plus statutory pre-judgment interest in the amount of 9 percent (9%) per annum.

THE PARTIES AND JURISDICTION

6. The Plaintiff is incorporated under the laws of Delaware, and has a principal place of business in Secaucus, New Jersey. Accordingly, Plaintiff is a citizen of Delaware and New Jersey for the purposes of diversity jurisdiction.

7. Upon information and belief, Defendant, The Courtyards LLC, is a non-profit organization incorporated under the laws of New York State with a principal place of business at 5285 South Park Avenue, Hamburg, New York 14075-1520, which is a

long-term senior housing facility. Accordingly, Defendant is a citizen of New York for the purposes of diversity jurisdiction.

8. This Court has diversity jurisdiction over the claims asserted in this Action pursuant to 28 U.S.C. § 1332, as there is complete diversity of citizenship between the parties and the amount in controversy exceeds, exclusive of interests and costs, the sum of seventy-five thousand dollars (\$75,000.00).

9. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b)(2), as a substantial part of the events or omissions giving rise to Plaintiff's claims occurred within this judicial district.

STATEMENT OF FACTS

10. Quest offers access to diagnostic testing services for a wide variety of conditions, including cancer, cardiovascular disease, infectious disease, neurological disorders, and COVID-19.

11. From the outset of the COVID-19 pandemic in or about early 2020, New York experienced a surge in COVID-19 cases and mortalities compared to other states at that time. The COVID-19 pandemic was particularly acute in nursing home and long-term care facilities in New York.

12. To address the mounting crisis posed by COVID-19, former Governor Cuomo issued Executive Order 202.30, which provided in relevant part:

“the operator or administrator of all nursing homes and all adult care facilities, including all adult homes, enriched housing programs and assisted living residences to test or make arrangements for the testing of all personnel, including all employees, contract staff, medical staff, operators and administrators, for COVID-19, twice per week, pursuant to a plan developed by the facility administrator and filed with the Department of Health

the operator and administrator shall cooperate fully with Department of Health and local health department staff to facilitate such testing.”

“The Commissioner of Health is authorized to suspend or revoke the operating certificate of any nursing home or adult care facility if it is determined that such facility has not complied with this Executive Order”

“Any nursing home or adult care facility which does not comply with this Executive Order shall be subject to a penalty for non-compliance of \$2,000 per violation per day, . . . and any subsequent violation shall be punishable . . . with a penalty of \$10,000 per violation per day.”

“Any personnel of a nursing home or adult care facility who refuse to be tested for COVID-19 pursuant to a plan submitted to the Department of Health shall be considered to have outdated or incomplete health assessments and shall therefore be prohibited from providing services to such nursing home or adult care facility until such testing is performed.” *See* Executive Order 202.30.

13. Hence, the Executive Order placed obligations on Facilities to test staff for COVID-19 twice per week. The Executive Order also called for the imposition of sanctions for the failure to comply with the directive, including fines of up to \$10,000 and the suspension of personnel who refused to test.

**QUEST’S CONTRACT WITH NEW YORK STATE
TO PROVIDE COVID-19 TESTS**

14. In furtherance of the Executive Order, Quest entered into a written agreement with the DOH, dated May 18, 2020, to provide COVID-19 PCR tests and related services to certain Facilities in New York State (the “DOH Contract”). A true and correct copy of the DOH Contract is attached hereto as **Exhibit A**. Among other things, Quest agreed to provide such Facilities:

“testing for the detection of COVID-19 using a COVID-19 molecular test that has Emergency Use Authorization

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