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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

QUEST DIAGNOSTICS)	CIVIL ACTION NO.
INCORPORATED,)	
)	
Plaintiff,)	COMPLAINT FOR
vs.)	INJUNCTIVE RELIEF
)	AND DAMAGES;
JOSEPH MERCOLA, an Individual)	JURY DEMAND
)	
Defendant.)	
)	

Plaintiff Quest Diagnostics Incorporated, a Delaware corporation with its principal place of business at 3 Giralda Farms, Madison, New Jersey, by its attorneys K&L Gates LLP, for its Complaint alleges the following against Defendant Joseph Mercola, an individual with a principal place of business located at 3200 West Higgins Road, Hoffman Estates, Illinois 60169.

I. NATURE OF THE ACTION

1. This action arises out of Defendant's willful unfair competition in violation of federal and state law as well as his patently false, misleading, and defamatory statements that have been published and widely disseminated over the Internet. Defendant's statements are so false and malicious that there is no reasonable explanation for them other than Defendant intentionally sought to inflict harm upon Plaintiff with malice aforethought. Therefore, Plaintiff seeks: (i) preliminary and then permanent injunctive relief to restrain Defendant from his continued and numerous violations of federal and state law; (ii) corrective disclosures or other reparations to rectify the harm caused by Defendant; (iii) damages to compensate Plaintiff for harm inflicted upon its business interests as well as punitive damages to punish Defendant's willful and malicious actions; (iv) disgorgement of Defendant's profits; (v) attorneys' fees and costs; and (vi) any additional relief provided for by law or at equity.

II. THE PARTIES

2. Plaintiff Quest Diagnostics Incorporated ("Plaintiff" or "Quest Diagnostics") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 3 Giralda Farms, Madison, New Jersey.

3. On information and belief, Defendant Joseph Mercola (“Mercola”) is an individual who owns and operates a business by the name of “Natural Health Center” located at 3200 West Higgins Road, Hoffman Estates, IL 60169, and who is a citizen of the State of Illinois. On information and belief, Mercola operates or otherwise controls the content of the following commercial websites: <http://www.mercola.com> and <http://www.drmercola.info>.

III. JURISDICTION AND VENUE

4. This Court has jurisdiction of the federal claim alleged herein pursuant to 28 U.S.C. § 1331. This Court has jurisdiction over the state law claims alleged herein pursuant to 28 U.S.C. § 1367, as Plaintiff and Defendant are citizens of different states and the amount in controversy exceeds the \$75,000 statutory threshold. This Court also has supplemental jurisdiction over the state law claims alleged herein pursuant to 28 U.S.C. § 1332.

5. This Court has personal jurisdiction over Defendant because Defendant purposefully directs his activities and conduct at Quest Diagnostics, a New Jersey-based corporation, making false information available on the Internet with the intent to inflict great damage and harm to Quest Diagnostics.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because Quest Diagnostics has its principal place of business in this district and

a substantial part of the events or omissions giving rise to the claims in this action occurred in this District.

IV. FACTS COMMON TO ALL CAUSES OF ACTION

7. Quest Diagnostics is a leader in providing diagnostic testing, information, and services to a variety of hospitals, medical laboratories, and patients throughout this country and in several foreign countries. Quest Diagnostics' comprehensive testing capabilities include, for example, routine blood tests as well as more sophisticated gene-based testing, drug abuse testing, and non-hospital-based anatomic pathology testing. Quest Diagnostics' test results help physicians and other healthcare providers diagnose their patients, identify people at risk for certain diseases, and aid pharmaceutical companies in the commercial development of their products. Quest Diagnostics also offers a newsletter and live "Industry Web Seminars" for companies related to drug testing and health and wellness. True and correct copies of printouts from Quest Diagnostics' website are set forth in Attachment A.

8. The Defendant owns and operates a medical clinic called the "Natural Health Center" where he provides various medical services and products to patients. The Defendant advertises his clinic in various media including on <http://naturalhealthcenter.mercola.com>. The Defendant also owns, operates, or controls a variety of other Internet websites that purportedly report on occurrences

or other stories occurring within the medical profession and community. The Defendant also engages in an array of commercial product and service promotion and related advertising on these websites. Two of the sites owned, operated, or controlled by Defendant are the following: <http://www.mercola.com> and <http://www.drmercola.info>. Mercola.com boasts that it is rated the “#1 natural health website” and that it is “one of the world's most visited of all health websites in any health category.” True and correct copies of printouts from mercola.com are set forth in Attachment B.

9. The “whois” information for mercola.com lists the “Registrant” as “Mercola” with an address of 3200 West Higgins Road, Hoffman Estates, IL 60169—the same address for Mercola’s Natural Health Center. A true and correct copy of the “whois” report for mercola.com is set forth in Attachment C. The “whois” information for drmercola.info lists the Registrant as “Domains by Proxy”, a company that provides private domain registration services so that web site registrants do not have to identify their true identity to the world writ large. There is no doubt, though, that Mercola operates and controls this blog as his picture is prominently featured on the home page and it states that it contains his “views and opinions.” True and correct copies of printouts from drmercola.info are set forth in Attachment D.

10. Defendant offers a variety of commercial products and services to members of the general public and the medical community through his various websites. As part of Mercola's advertising and promotional campaigns, he will frequently report on supposed "stories" that takes place in the medical industry to raise demand for and awareness of his products and services. One of Mercola's most recent advertising and promotional campaigns involves the publishing of egregiously false and misleading statements of purported "fact" about Quest Diagnostics while attempting to push the product of a company that competes with Quest Diagnostics. His false and misleading statements are also made in conjunction with, or in proximity to, Mercola's advertisements and promotion of his own products and services.

11. For example, Mercola is affiliated with, sponsored by, or he otherwise endorses a company called "LabCorp", which offers testing products and services that compete with those of Quest Diagnostics. On May 22, 2009, Mercola published a story on his blog entitled "The Correct Vitamin D Test is Crucial in Optimizing Your Vitamin D Levels." In that story, Mercola makes numerous false and misleading statements about Quest Diagnostics and then encourages the readers to use the products and services of LabCorp. A true and correct copy of that story is set forth in Attachment E. The maliciously false and intentionally misleading statements about Quest Diagnostics include the following:

- Controversial laboratory and healthcare services provider Quest Diagnostics has again made national headlines after pleading guilty to one felony count for the failure of test kits it developed and marketed to measure parathyroid hormone (PTH), which were found to be inaccurate and unreliable.
- Quest Diagnostics was ordered to pay \$262 million plus interest because the faulty PTH tests caused some dialysis patients to undergo unnecessary surgery to remove their parathyroid, while others were given unnecessary treatment that can cause a "painful, deadly disease."
- But Quest's PTH test isn't their only faulty diagnostic tool; their vitamin D test is also problematic.

After making these and other willfully and intentionally false and misleading statements of purported fact, Mercola tells his readers "if you're thinking of using a vitamin D test, ignore the ones that say 'Quest'" because LabCorp's tests have "shown the most accurate results."

12. On May 12, 2009, Mercola published another blatantly and intentionally false and misleading story about Quest Diagnostics on mercola.com entitled "Quest Diagnostics Pays \$302 Million Fine." A true and correct copy of that story is set forth in Attachment F. The maliciously false and intentionally misleading statements about Quest Diagnostics in this story include the following:

- For the second time this year, Quest Diagnostics has generated national headlines after it publicly acknowledged another major failure in one of its subsidiary's laboratory testing programs.
- In this latest case, the failure of test kits it developed and sold through its now-defunct Nichols Institute Diagnostics (NID) business division was at the heart of the company's plea of guilty to

one felony count and its agreement to pay a total of \$302 million to settle charges related to this matter.

- Third, Dark Daily, believes this is the first time that a public laboratory company in the United States has pled guilty to a criminal charge based on having produced a laboratory test kit that produced inaccurate and unreliable laboratory test results.

These false and misleading statements about Quest Diagnostics are being made in conjunction with, or in close proximity to, Mercola's advertisements and promotion of his own products and services.

13. According to the "web traffic" counter on the mercola.com site, this latest story about Quest Diagnostics has received "25,034 views" by visitors to mercola.com. Many people that viewed the story responded to it by "posting" comments on mercola.com. As many of the posts demonstrate, Quest Diagnostics is being significantly harmed by the false allegations in the story and these allegations have the tendency to deceive consumers about the nature and quality of Quest Diagnostics' goods and services. For example, one post claims, "This is more scary then [sic] previously thought." Another post declares, "[t]his worries me as I just had bloodwork done by Quest Diagnostics & I do have an MD that is also alternative medicine. I had Vitamin D levels done & also the PTH(parathyroid hormone) done. I wonder if I have to have them redone at another lab but don't know how to follow-up. I guess I will check with my Dr." Still another post reads,

“i have had my blood tests done thru my family doctor for years with Quest. I am shocked and surprised. Does this mean all blood tests they do are innaccurate ???”

14. This is not the first time Mercola has made false and misleading statements about Quest Diagnostics. Earlier this year in January, Mercola published a false story on Mercola.com about Quest Diagnostics entitled “New York Times Exposes Vitamin D Testing Fraud.” A true and correct copy of that story is set forth in Attachment G. Mercola also posted a video on mercola.com containing similar falsehoods. This story (and video) were riddled with numerous statements of “fact” that were outrageously false, misleading, vexatious, and clearly made with the intent to inflict significant harm on Quest Diagnostics. These statements were also clearly made in the context of Mercola proposing a commercial transaction as his readers were, once again, instructed to purchase a product or service offered by LabCorp instead of those offered by Quest Diagnostics.

15. The false (and commercially-motivated) statements made in this story and video include such outrageously false claims such as:

- New York Times Exposes Vitamin D Testing Fraud
- Quest Diagnostics admitted publicly that, for 18 months in 2007 and 2009, it had systemic failures in its vitamin D testing.
- The bad news is that Quest has a flawed vitamin D test and methodology.

- There is a strong likelihood that your test is inappropriately high and you are getting falsely reassured you are at the optimal levels.
- Additionally, the charge for the LabCorp. test should be less than half of that of the Quest test.

16. After Quest Diagnostics demanded that Mercola take down this false and misleading story, he did so and agreed that he would “refrain from making false and misleading statements regarding Quest Diagnostics, Inc.” Within a few months, Mercola breached this obligation and began making the egregiously false and misleading claims as detailed herein.

17. Mercola’s false and misleading statements about Quest Diagnostics are not an aberration. Quite the contrary, Mercola has a checkered history of making improper statements for the apparent purpose of commercial exploitation and pecuniary gain. For example, on February 16, 2005, the FDA sent Mercola a letter indicating that it found several of the product claims made on mercola.com violated the Federal Food, Drug, and Cosmetic Act (“the FDCA”) because the FDA had not found that his products were safe and effective to treat the medical conditions set forth on mercola.com. A true and correct copy of that letter is set forth in Attachment H. On September 21, 2006, the FDA issued a “Warning Letter” to Mercola for additional violations of the FDCA for certain product labels and various “therapeutic claims” made by Mercola on mercola.com. A true and correct copy of that letter is set forth in Attachment I.

V. CAUSES OF ACTION

COUNT I

**UNFAIR COMPETITION
UNDER SECTION 43(a) OF THE LANHAM ACT, 15 U.S.C. § 1125(a)**

18. Quest Diagnostics repeats and realleges paragraphs 1 through 17.

19. As set forth in detail above, Defendant, in connection with the goods and services of Quest Diagnostics, has used in commerce false and misleading descriptions of fact and false and misleading representations of fact (the “False and Misleading Statements”).

20. Defendant used the False and Misleading Statements in commercial advertising or promotion.

21. The False and Misleading Statements misrepresent the nature, characteristics and qualities of Quest Diagnostics’ products, services and commercial activities.

22. The False and Misleading Statements are material and have the capacity to deceive the relevant consuming population as to the nature and quality of Quest Diagnostics’ products and services. Indeed, there is already evidence that consumers have actually been deceived by the False and Misleading Statements.

23. Defendant made the False and Misleading Statements maliciously and with the intent to commercially advantage Defendant while at the same time injuring Quest Diagnostics.

24. Quest Diagnostics is and will continue to be damaged by the willfully false, reckless, and malicious False and Misleading Statements made and disseminated by Defendant for his own pecuniary gain and commercial advantage.

25. Defendant's conduct constitutes willful and malicious unfair competition in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

COUNT II

UNFAIR COMPETITION UNDER NEW JERSEY STATUTES § 56:4-1

26. Quest Diagnostics repeats and realleges paragraphs 1 through 25.

27. As set forth above, Defendant has made a series of False and Misleading Statements about Quest Diagnostics' products and services. These False and Misleading Statements are being made maliciously with the intent to commercially advantage Defendant while at the same time injuring Quest Diagnostics. These False and Misleading statements are material and have the capacity to deceive the relevant consuming population as to the nature and quality of Quest Diagnostics' goods and services. Quest Diagnostics is and will continue to be damaged by the willfully false, reckless, and malicious False and Misleading

Statements made and disseminated by Defendant. The amount of damage will be established at trial but it is at least \$75,000.

28. Defendant's conduct constitutes willful unfair competition in violation of New Jersey Statutes § 56:4-1.

COUNT III

COMMON LAW UNFAIR COMPETITION

29. Quest Diagnostics repeats and realleges paragraphs 1 through 28.

30. Defendant's conduct constitutes unfair competition in violation of the common law of the State of New Jersey.

COUNT IV

DEFAMATION

31. Quest Diagnostics repeats and realleges paragraphs 1 through 30.

32. Defendant improperly and without privilege or justification engaged in a commercial speech campaign in which he intentionally, maliciously, and recklessly made numerous False and Misleading Statements, including purported statements of "fact" that Quest Diagnostics: (a) knowingly engaged in behavior it knew was harmful to patients; and (b) pleaded guilty to a felony. Defendant knew these statements were false or intentionally made these false statements with a reckless disregard for the truth.

33. The foregoing conduct has caused serious damage to Quest Diagnostics' business and reputation. Plaintiff is and will continue to be damaged by these willfully false, reckless, and malicious statements made and disseminated by Defendant. The amount of damage will be established at trial but it is at least \$75,000.00.

COUNT V

TRADE LIBEL/COMMERCIAL DISPARAGEMENT

34. Quest Diagnostics repeats and realleges paragraphs 1 through 33.

35. Defendant improperly and without privilege or justification engaged in a print and electronic media campaign in which they intentionally, maliciously, and recklessly made numerous False and Misleading Statements, including purported statements of "fact" that Quest Diagnostics: (a) knowingly engaged in behavior it knew was harmful to patients; and (b) pleaded guilty to a felony. Defendant knew these statements were false or intentionally made these false statements with a reckless disregard for the truth. The foregoing conduct was willful, intentional and calculated to interfere with or cause damage to Quest Diagnostics' business and has led to the loss of existing customers and/or at least has the capacity to do so.

36. The foregoing conduct has caused serious damage to Quest Diagnostics' business and reputation. Plaintiff is and will continue to be damaged

by these willfully false, reckless, and malicious statements made and disseminated by Defendant. The amount of damage will be established at trial but it is at least \$75,000.00.

COUNT VI

BREACH OF CONTRACT

37. Quest Diagnostics repeats and realleges paragraphs 1 through 36.

38. On approximately February 19, 2009, Mercola agreed in writing that in the future he would “refrain from making false and misleading statements regarding Quest Diagnostics, Inc.”

39. Mercola breached this agreement by, among other things, publishing the willfully and intentionally false and malicious articles on mercola.com and drmercola.info that are the subject of the present Complaint.

40. Mercola’s breach has caused serious damage to Quest Diagnostics’ business and reputation. Plaintiff is and will continue to be damaged by these willfully false, reckless, and malicious statements made and disseminated by Defendant. The amount of damage will be established at trial but it is at least \$75,000.00.

COUNT VII

INJUNCTIVE RELIEF

41. Quest Diagnostics repeats and realleges paragraphs 1 through 40.

42. Quest Diagnostics is, and will continue to be, irreparably harmed by the willful and malicious actions of Defendant in disseminating the False and Misleading Statements. Quest Diagnostics is entitled to injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Quest Diagnostics prays for the following relief:

(1) An Order preliminarily and permanently enjoining Defendant and his agents, servants, employees, attorneys and all other persons in active concert or participation with him from making any and all false or misleading statements regarding Quest Diagnostics;

(2) An Order preliminarily and permanently requiring Defendant and his agents, servants, employees, attorneys and all other persons in active concert or participation with him to take down and remove all false and misleading statements regarding Quest Diagnostics from any publication or on-line medium under Defendant's direction, custody or control;

(3) An Order requiring Defendant to post a retraction and other corrective advertising on Defendant's websites for a reasonable period of time in order to help ameliorate the damages already caused by Defendant's dissemination of willfully false and misleading statements of purported fact;

(4) Compensatory damages, including disgorgement of all profits made as a result of their false and misleading statements;

(5) Punitive, exemplary or treble damages for Defendant's willful, malicious and reckless conduct as set forth herein;

(6) Defendant to pay all Quest Diagnostics' attorneys' fees and costs, and pre- and post-judgment interest; and

(7) Such other and further relief as this Court deems just and proper.

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

Pursuant to Local Civil Rule 11.2, the undersigned certifies that the matter in controversy is not the subject of any action pending in any Court or of a pending arbitration proceeding nor is any action or arbitration proceeding contemplated nor are other parties required to be joined in this action.

QUEST DIAGNOSTICS
INCORPORATED

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Dated: May 28, 2009