

CAUSE NO. _____

STATE OF TEXAS,
Plaintiff,

v.

CLINICA HISPANA LA PORTE, and
LUIS ALBERTO CUAN a/k/a LUIS
ALBERTO CUAN LIO, individually, and
d/b/a CLINICA HISPANA LA PORTE,
Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY,

____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR EX PARTE
TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND
PERMANENT INJUNCTION**

COMES NOW THE STATE OF TEXAS, hereinafter referred to as Plaintiff, acting by and through Attorney General of Texas, KEN PAXTON, complaining of Defendants CLINICA HISPANA LA PORTE, and LUIS ALBERTO CUAN a/k/a LUIS ALBERTO CUAN LIO, individually and d/b/a CLINICA HISPANA LA PORTE, for offering and selling antibody (or serology) tests as diagnostic tests for COVID-19 and for failing to protect the sensitive personal information of patients. Plaintiff requests temporary and permanent injunctive relief and for cause of action would respectfully show:

I. DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to Texas Rule of Civil Procedure 190.3.
2. This case is not subject to the restrictions of expedited discovery under Texas Rule of Civil Procedure 169 because the relief sought by the State includes non-monetary injunctive relief.
3. In addition to the claim for non-monetary injunctive relief, the State seeks monetary relief in excess of \$100,000, including civil penalties, attorney's fees and costs.

II. NATURE OF THIS SUIT

4. The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection Division against Defendants for violations of the Texas Deceptive Trade Practices—Consumer Protection Act, Tex. Bus. & Com. Code §§ 17.41–17.63 (“DTPA”). The DTPA grants authority to the Attorney General to seek a temporary restraining order, injunctive relief, restitution for harmed consumers, and civil penalties for violations of its provisions. DTPA § 17.47.

5. In addition, the Attorney General brings this lawsuit in the name of the State of Texas through his Consumer Protection Division under the authority granted him by § 521.151 of the Texas Identity Theft Enforcement and Protection Act Tex. Bus. & Com. Code §§ 521.001–521.152 (“ITEPA”), upon the grounds that Defendants failed to implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the business in the regular course of business, and failed to destroy or arrange for the destruction of customer records containing sensitive personal information within the business’s custody or control that are not to be retained by the business. ITEPA § 521.052(a), (b).

III. DEFENDANTS

6. Defendant Clinica Hispana La Porte is a business located in Harris County at 9606 Spencer Hwy, Suite D, La Porte, Texas 77571. Defendant Clinica Hispana La Porte owns and operates a medical clinic in Harris County at 9606 Spencer Hwy, Suite D, La Porte, Texas 77571. Defendant Clinica Hispana La Porte may be served with process at 9606 Spencer Hwy, Suite D, La Porte, Texas 77571, or wherever it may be found.

7. Defendant Luis Alberto Cuan, also known as Luis Alberto Cuan Lio, is an individual doing business as Clinica Hispana La Porte. Defendant Luis Alberto Cuan regularly conducts business at his place of business in Harris County, Texas at 9606 Spencer Hwy, Suite D, La Porte, Texas 77571, and may be served with process by serving him at that address.

IV. JURISDICTION

8. This Court has jurisdiction over this action pursuant to DTPA § 17.47(b) and ITEPA § 521.151(b).

V. VENUE

9. Venue of this suit lies in Harris County, Texas, under the DTPA § 17.47(b), for the following reasons:

- (a) Transactions forming the basis of this suit occurred in Harris County, Texas.
- (b) Defendants have done business in Harris County, Texas.
- (c) Defendants' principal place of business is in Harris County, Texas.

10. Venue of this suit lies in Harris County, Texas, under ITEPA § 521.151(c) for the following reason:

- (a) The violations took place in Harris County, Texas.

VI. PUBLIC INTEREST AND NOTICE

11. Plaintiff, the State of Texas, has reason to believe that Defendants are engaging in, have engaged in, or are about to engage in the unlawful acts or practices set forth below, that Defendants have, by means of these unlawful acts and practices, caused damage to and/or acquired money or property from persons, and that Defendants have adversely affected the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. Therefore, the

Consumer Protection Division of the Office of the Attorney General of the State of Texas believes, and is of the opinion, that these proceedings are in the public interest. *See* DTPA § 17.47(a).

12. In this time of the COVID-19 public health emergency, and the related economic effects of that emergency, Defendants' conduct places consumers' health at risk by delivering unreliable and misleading test results and defrauds consumers of money they cannot spare. Defendants also put at risk the disclosure of the sensitive personal information of consumers by failing to implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the business in the regular course of business and by failing to destroy or arrange for the destruction of customer records containing this sensitive personal information when disposing of patient records.

13. Pre-suit notice is not required under DTPA § 17.47(a) because, in the opinion of the Consumer Protection Division, there is good cause to believe that Defendants would evade service of process if prior contact were made, Defendants would destroy relevant records if prior contact were made, and/or that such an emergency exists that immediate and irreparable injury, loss, or damage would occur as a result of such delay in obtaining a temporary restraining order, including danger to public health.

VII. TRADE AND COMMERCE

14. Defendants have, at all times described below, engaged in conduct which constitutes "trade" and "commerce," as those terms are defined in section 17.45(6) of the DTPA.

VIII. ACTS OF AGENTS

15. Whenever in this petition it is alleged that Defendants did any act, it is meant that the named Defendants performed or participated in the act, or the named Defendants' officers, successors in

interest, agents, partners, trustees or employees performed or participated in the act on behalf of and under the authority of one or more of the Defendants.

IX. APPLICABLE LAW

16. False, misleading or deceptive acts or practices in trade or commerce are unlawful and are actionable by the Consumer Protection Division. DTPA § 17.46 (a). The acts or practices listed in § 17.46(b) of the DTPA, the “laundry list,” are *per se* false, misleading or deceptive, and include: (b)(2) causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services; (b)(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have; (b)(9) advertising goods or services with intent not to sell them as advertised; and (b)(24) failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

17. Section 17.47 of the DTPA authorizes the Consumer Protection Division to bring an action for temporary restraining order, temporary injunction or permanent injunction whenever it has reason to believe that any person is engaged in, has engaged in, or is about to engage in any act or practice declared unlawful by the DTPA.

18. Additionally, under the ITEPA, “[a] business shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the business in the regular course of business.” ITEPA § 521.052(a). Further, “a business shall destroy or arrange for the destruction of customer records containing sensitive personal information within the business's custody or control that are not to be retained by the business by: (1) shredding; (2) erasing; or (3)

otherwise modifying the sensitive personal information in the records to make the information unreadable or indecipherable through any means.” ITEPA § 521.052(b).

19. Section 521.151(b) of the ITEPA authorizes the Attorney General to bring an action in the name of the State for a temporary restraining order, temporary injunction or permanent injunction whenever it has reason to believe that any person is engaged in, has engaged in, or is about to engage in, conduct that violates the ITEPA.

X. NATURE OF DEFENDANT’S OPERATIONS

20. Defendants:

(a) Misrepresent that they offer, sell, and administer a diagnostic test for Coronavirus Disease 2019 (“COVID-19”), the disease caused by the SARS-CoV-2 virus;

(b) Misrepresent that the antibody test that Defendants offer, sell, and administer is a diagnostic test for COVID-19;

(c) Misrepresent the results of the Defendants’ antibody testing to consumers by failing to disclose to consumers the meaning of the results of their COVID-19 antibody testing, *e.g.*, that a negative result of an antibody test for COVID-19 *does not* mean negative for SARS-CoV-2, or COVID-19;

(d) Fail to implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by Defendants in the regular course of business; and

(e) Fail to destroy or arrange for the destruction of patient records containing sensitive personal information within Defendants’ custody or control by dumping said records into an open dumpster behind their business in readable and/or decipherable form.

XI. EXHIBITS

21. Plaintiff relies on the following exhibits in support of its petition and applications for Temporary Restraining Order, and Temporary and Permanent Injunction.

Exhibit 1: The March 13, 2020 Proclamation by Governor Greg Abbott declaring a statewide disaster because of COVID-19.

Exhibit 2: Affidavit of John Doe, a consumer who went to Clinica Hispana La Porte to get tested for COVID-19.

Exhibit 2A: Clinica Hispana Form with Test Results for John Doe, stating John Doe was negative for COVID-19, July 7, 2020.

Exhibit 2B: John Doe's COVID-19 Diagnostic Test Results, delivered on July 22, 2020, showing John Doe tested positive for COVID-19 on July 4, 2020.

Exhibit 2C: John Doe's picture of Clinica Hispana La Porte's COVID-19 test sign, July 7, 2020.

Exhibit 3: Affidavit of Missy Lord, an office manager with the Office of the Attorney General, providing detail of her observations of Defendants' activities.

Exhibit 3A: Photograph of the exterior of Clinica Hispana La Porte, July 23, 2020.

Exhibit 3B: Photograph of the black Infiniti SUV with Clinica Hispana La Porte's COVID-19 test sign, July 23, 2020.

Exhibit 3C: Texas Medical Board's June 27, 2019 press release announcing Agreed Cease and Desist Order between the Texas Medical Board and Luis Alberto Cuan, M.A., entered into on June 14, 2019.

Exhibit 3D: Assumed Name Certificate for Clinica Hispana Wallisville, listing Luis Alberto Cuan Lio as owner, January 8, 2016.

Exhibit 3E: Screenshots of the text messages received by Missy Lord on July 23, 2020, from Clinica Hispana La Porte.

Exhibit 3F: Photographs of Clinica Hispana La Porte Clinic Staff arriving, July 24, 2020.

Exhibit 3G: Photographs of black Infiniti SUV arriving, with man and woman hanging up the COVID-19 test sign, July 24, 2020.

Exhibit 3H: Photograph of dumpster behind Clinica Hispana La Porte, July 28, 2020.

Exhibit 3I: Photographs of dumpster and boxes addressed to “Luis Alberto Cuan” at 9606 Spencer Hwy, Suite D, behind Clinica Hispana La Porte, July 28, 2020.

Exhibit 3J: Photograph of the black Infinite SUV with Clinica Hispana La Porte’s COVID-19 test sign, July 29, 2020.

Exhibit 3K: Photographs of the Mustang and dumpster behind Clinica Hispana La Porte, July 29, 2020.

Exhibit 3L: Photographs of the dumpster and trash bags behind Clinica Hispana La Porte, July 31, 2020.

Exhibit 3M: Copies of patient COVID-19 test results, patient sign-in sheets, and patient questionnaires found in dumpster behind Clinica Hispana La Porte, July 31, 2020.

Exhibit 3N: Photographs of discarded COVID-19 test kits found in dumpster behind Clinica Hispana La Porte, July 31, 2020.

Exhibit 3O: Scan of driver’s license found in dumpster behind Clinica Hispana La Porte, July 31, 2020.

Exhibit 3P: Discarded vial of blood found in dumpster behind Clinica Hispana La Porte, July 31, 2020.

Exhibit 3Q: Patient sign-in sheet taped to the front of Clinica Hispana La Porte, July 31, 2020.

Exhibit 4: Affidavit of Michael O’Leary, an investigator with the Office of the Attorney General, providing details on his investigation into Defendants’ activities.

Exhibit 4A: Screen shot of Clinica Hispana La Porte’s January 28, 2020 Facebook post about new management, capture July 28, 2020.

Exhibit 4B: Screen shot of Clinica Hispana La Porte’s June 18, 2020 Facebook post advertising “Covid-19 tests” including picture, captured July 28, 2020.

Exhibit 4C: Screen shot of Clinica Hispana La Porte’s Instagram follower list, captured July 28, 2020.

Exhibit 4D: Screen shot of FDA COVID-19 Frequently Asked Question, “Is there a test for COVID-19?” captured July 30, 2020.

Exhibit 4E: Screen shot of FDA COVID-19 Frequently Asked Question, “What is the difference between the types of tests available for SARS-CoV-2?” captured July 30, 2020.

Exhibit 4F: Screen shot of FDA COVID-19 Frequently Asked Question, “What is an

emergency use authorization and how is it being used to respond to COVID-19?” captured July 30, 2020.

Exhibit 4G: Screen shot of FDA COVID-19 Frequently Asked Question, “Are antibody, or serology, tests used to diagnose SARS-CoV-2 infection?” captured July 30, 2020.

Exhibit 4H: Screen shot of FDA COVID-19 Frequently Asked Question, “If antibody tests are not used for diagnosis or exclusion of COVID-19 infection, what is their purpose?” captured July 30, 2020.

Exhibit 4I: Screen shot of FDA’s emergency use authorization list displaying “Healgen COVID-19 IgG/IgM Rapid Test Cassette” captured July 30, 2020.

Exhibit 4J: Copy of FDA’s emergency use authorization for Healgen’s “COVID-19 IgG/IgM Rapid Test Cassette,” printed July 31, 2020.

Exhibit 4K: Copy of “Information for Healthcare Providers” for Healgen’s “COVID-19 IgG/IgM Rapid Test Cassette,” printed July 30, 2020.

Exhibit 4L: Copy of “Information for Recipients” for Healgen’s “COVID-19 IgG/IgM Rapid Test Cassette,” printed July 30, 2020.

Exhibit 4M: Copy of “Instruction for Use” for Healgen’s “COVID-19 IgG/IgM Rapid Test Cassette,” printed July 30, 2020.

Exhibit 4N: Screen shot of Healgen LLC’s website page displaying information about their “COVID-19 IgG/IgM Rapid Test Cassette,” captured July 30, 2020.

Exhibit 4O: Screen shot of Clinica Hispana La Porte’s website, captured July 28, 2020.

Exhibit 5: Certified Copy of the Agreed Cease and Desist Order between the Texas Medical Board and Luis Alberto Cuan, M.A., entered into on June 14, 2019.

XII. FACTUAL ALLEGATIONS

A. The COVID-19 State of Emergency and COVID-19 Testing.

22. On March 13, 2020 at 11:20 a.m., pursuant to Texas Government Code section 481.014, Texas Governor Greg Abbott issued a statewide disaster proclamation relating to COVID-19, a disease caused by SARS-CoV-2, a contagious respiratory coronavirus. *See* Ex. 1, March 13, 2020 Proclamation by Governor Greg Abbott. The statewide disaster remains in effect at this time.

23. As part of the efforts to combat COVID-19, federal, state, and local officials are working to provide regulatory advice, guidance, and technical assistance to advance the development of medical technologies used to detect and treat COVID-19 infections. For its part, the U.S. Health and Human Services Commission determined on February 4, 2020 that there is a public health emergency involving COVID-19, and subsequently issued declarations justifying the FDA’s use of emergency use authorizations, or EUAs, for medical products to prevent, treat, and diagnose COVID-19. An EUA can be used to “provide more timely access to critical medical products that may help during the emergency when there are no adequate, approved, and available alternative options.” *See* Ex. 4F, FDA’s “COVID-19 FAQs.” EUAs allow the FDA to authorize emergency use of medical products in a much faster manner, but authorization through an EUA is only in effect for the duration of the related emergency. *Id.*

24. The FDA has authorized two different types of tests for use during the COVID-19 emergency: diagnostic tests and antibody tests. While there are currently no tests for COVID-19 approved or cleared through the ordinary FDA process, the agency has issued over 100 EUAs for such tests. *See* Ex. 4D, FDA’s “Is there a test for COVID-19?”

25. Diagnostic tests can show whether a patient has an active coronavirus infection and should take steps to quarantine themselves. There are currently two types of diagnostic tests. Molecular (RT-PCR) tests detect a virus’ genetic material, while antigen tests detect specific proteins on the surface of the virus. Samples are typically collected with a nasal or throat swab, or saliva collected by spitting in a tube. *See* Ex. 4E, FDA’s “What is the difference between the types of tests available for SARS-CoV-2?”

26. Antibody (serology) tests, on the other hand, look for antibodies that are made by the human immune system in response to a threat, such as a specific virus. These antibodies help the

body to fight infections and can take several days or weeks to develop following an infection. Samples are typically blood from a finger stick or blood draw. *Id.*

27. The key distinction between the two test types is the type of information they provide. A diagnostic test can determine whether an individual currently has a COVID-19 infection. An antibody test should not be used to diagnose a current COVID-19 infection because a person can have an active COVID-19 infection, but not yet have an immune response detectable by an antibody test.

B. Clinica Hispania La Porte and Luis Alberto Cuan advertise to the public that Clinica Hispania La Porte offers “COVID-19 Tests.”

28. Clinica Hispania La Porte (“Clinica Hispania”) is located at 9606 Spencer Hwy, Ste. D, La Porte, Texas, in a small strip mall. *See* Ex. 3, Affidavit of Missy Lord, ¶ 6. Clinica Hispania La Porte’s website states that it “is a general medical center and our main desire is to offer quality comprehensive medical care, we offer a bilingual service that helps break the language barriers helping many Hispanic families. We attend all types of diseases to meet the needs of our patients.” *See* Ex. 4O, screen shot of Clinica Hispania La Porte’s publicly facing website, captured July 28, 2020. The windows of the clinic advertise multiple conditions that the clinic treats. *See* Ex. 3A, Photograph of the exterior of Clinica Hispania La Porte, July 23, 2020.

29. On or about June 18, 2020, Clinica Hispania La Porte began advertising COVID-19 testing services on Google and Facebook, stating “Covid-19 Test Ahora...solo toma 10 min... no dude en contactamos, no cita previa Llama ya !!!!!!!,” (translated from Spanish to English: “Covid-19 test Now... only takes 10 min... do not hesitate to contact us, no appointment Call now!!!!!!!”) (see next page):



Ex. 4B, screen shot of Clinica La Hispana’s June 18, 2020 Facebook post.

30. Clinica Hispana La Porte also advertises the clinic’s COVID-19 testing services with a sign hung from a black Infiniti SUV in the parking lot in front of the Clinica Hispana La Porte. This sign reads “COVID-19 Test Result in 15 Minutes!!! Resultados en 15 Minutos!!!”:



See Ex. 3B, Clinica Hispana's COVID-19 test sign, July 23, 2020; see also Ex. 2C, Clinica Hispana's COVID-19 test sign, July 7, 2020; Ex. 3G, Clinica Hispana's COVID-19 test sign, July 24, 2020; Ex. 3J, Clinica Hispana's COVID-19 test sign, July 29, 2020. This sign is highly visible to persons driving along Spencer Highway.

31. The Infiniti SUV, according to its license plate, is registered to Defendant Luis Alberto

Cuan, also known as Luis Alberto Cuan Lio, who has gone to great lengths to cover his involvement with the Clinica Hispania La Porte. Clinica Hispania La Porte has no assumed name records or corporate filings with Harris County or the Texas Secretary of State. However, as documented in Exhibits 2C, 3B, 3G, and 3J, the black Infiniti SUV is regularly parked out in front of Clinica Hispania with the sign advertising COVID-19 Tests. On one occasion, a man and woman wearing grey scrubs were observed driving the black Infiniti SUV into the parking lot at clinic's 10 a.m. opening time, exiting the SUV, hanging up the COVID-19 test sign on the SUV, and walking into the clinic. *See* Ex. 3, ¶ 8.d; Ex. 3G, Photographs of black Infiniti SUV arriving and hanging up the COVID-19 test sign, July 24, 2020. Additionally, the dumpster behind the Clinica Hispania building contains multiple boxes bearing the names of medical supply companies addressed to "Luis Alberto Cuan" at the Clinical Hispania La Porte location: 9606 Spencer Hwy, Ste. D, La Porte, Texas. *See* Ex. 3, ¶ 10.b; Ex. 3I, Photographs of dumpster and boxes behind Clinica Hispania, July 28, 2020. A blue Mustang registered to Luis Alberto Cuan has also been seen parked behind the clinic. *See* Ex. 3, ¶ 11; Ex. 3K, Photographs of the Mustang and dumpster behind Clinica Hispania, July 29, 2020. Further, Clinica Hispania La Porte's public Instagram page has only six followers—one of the six is a user named "albertocuanlio." *See* Ex. 4C, screen shot of Clinica Hispania La Porte's Instagram page followers.

32. This is not the first time Defendant Luis Alberto Cuan has operated a medical clinic. Luis Alberto Cuan, from 2016 to 2019, owned and operated Clinica Hispania Wallisville, located at 14570 Wallisville Road, Ste. #1, Houston, Texas 77049. *See* Ex. 3, ¶ 6.d; Ex. 3C, Texas Medical Board's June 27, 2019 press release, at p. 15; Ex. 3D, Assumed Name Certificate for Clinica Hispania Wallisville, Jan. 8, 2016; Ex. 5, Certified Copy of TMB Agreed Cease and Desist Order, June 14, 2019, at pp. 1–2. Defendant Luis Alberto Cuan is not licensed as a physician in Texas—

a matter that came to the attention of the Texas Medical Board in 2018 after a patient with a severe cold visited the Clinica Hispana Wallisville and received an antibiotic injection from Luis Alberto Cuan. *See* Ex. 3C at p. 15; Ex. 5 at p. 2. The patient subsequently went to the emergency room when his condition did not improve. *Id.* Luis Alberto Cuan entered into an Agreed Cease and Desist Order with the Texas Medical Board which “prohibited [him] from acting as, or holding himself out to be, a licensed physician in the State of Texas” and ordered him to “cease and desist any practice of medicine in the State of Texas . . . [as well as] from identifying himself as a doctor.” *See* Ex. 3C at p. 15; Ex. 5 at p. 3. This Agreed Cease and Desist Order was entered into on June 14, 2019. *See* Ex. 3C at p. 15; Ex. 5 at p. 6.

C. Defendants’ COVID-19 tests are antibody tests, not diagnostic tests, a critical fact not disclosed in Defendants’ representations to Texas consumers.

33. On July 7, 2020, a Texas consumer, John Doe,¹ went to the Clinica Hispana La Porte for COVID-19 testing. *See* Ex. 2, Affidavit of John Doe. John Doe had been experiencing COVID-19 symptoms. *Id.* at ¶ 2. John Doe had received a nasal swab diagnostic test at a different clinic on July 4, 2020, but he was told that it would take 14 days for those results. *Id.* John Doe was put on a 14-day quarantine. *Id.*

34. A family member had seen the “COVID-19 Test Results in 15 Minutes!!!” sign outside Clinica Hispana. *Id.* at ¶ 3. As detailed in John Doe’s affidavit, John Doe went to Clinica Hispana on July 7, 2020; when he arrived, he saw the sign on the black SUV in front of the building. *Id.* Upon entry, John Doe paid \$80 in cash for the test; Clinica Hispana accepted payment in cash. *Id.* at ¶ 4. A young man at the reception desk gave him a form to fill out, and after John Doe filled

¹ In order to protect this consumer’s health information, the State will refer to the consumer as “John Doe” in this Petition and accompanying exhibits. This Petition is accompanied with a Motion for Entry of a HIPAA Complaint Protective Order. Under HIPAA, a covered entity may not use or disclose protected health information except as permitted or required. *See* 45 CFR § 164.502(a). HIPAA permits disclosure of protected health information in the course of a judicial proceeding in response to a court order by covered entities, such as the Texas Health and Human Services Commission and Defendants, who offer medical services to the public. *See* 45 CFR § 164.512(e)(1)

out the form, the man at reception told John Doe to wait outside. *Id.* After forty-five minutes, John Doe received a phone call and went inside. *Id.* at ¶ 6. John Doe was led to a small room behind reception, where an older man took a finger prick blood sample. *Id.* The man attached the blood sample to a cartridge and a small cassette. *Id.* John Doe was told to go outside, and that he would know his results in fifteen minutes. *Id.* After about fifteen minutes, John Doe got another call and went back inside the reception area. *Id.* at ¶ 7. The receptionist held up the cassette and said, “You’re negative for COVID-19.” *Id.* The receptionist handed the form back. *Id.* The bottom of the form had one space for negative, one for IgM, one for IgG (antibodies indicating an immune response to a COVID-19 infection, and a resolved COVID-19 infection, respectively), and one for positive; John Doe’s form was marked “negative.” *Id.* A true and correct copy of the form John Doe received is attached to John Doe’s affidavit at Exhibit A.

35. After returning home, John Doe reviewed the form, and read the back—he saw that he had not been tested for an active COVID-19 infection. *Id.* at ¶ 7. He had received an antibody test. *Id.* The form identified the test as the “Healgen COVID-19 IgG/IgM Rapid Test Cassette.” *Id.* Per John Doe: “At no time did anyone at Clinica Hispana inform me that the COVID-19 test they were doing was an antibody test. They generally described the finger prick test as a COVID-19 test.” *Id.*

36. The FDA has issued an EUA for Healgen’s COVID-19 IgG/IgM Rapid Test Cassette (Whole Blood/Serum/Plasma) device manufactured by Healgen Scientific LLC (“the Healgen Test”) for use *only* as a serological, or antibody test. *See* Ex. 4J, copy of FDA’s EUA for the Healgen Test. Further, it has been authorized for use *only* in laboratories certified under the Clinical Laboratory Improvement Amendments of 1988 (“CLIA”), 42 U.S.C. 263a, to perform moderate or high complexity tests. *Id.* Healgen itself warns that its test is *not* to be used with a

finger prick blood specimen and *not* to be used to diagnose active infections. *See* Ex. 4N, screen shot of Healgen’s publicly-facing website, and *see* Ex. 4K, the Healgen Test’s “Information for Providers.”

37. On July 23, 2020, John Doe received the result of his July 4 nasal swab test. *Id.* at ¶ 9. The result was positive. *Id.*; *see also* Ex. 2B, John Doe’s Diagnostic COVID-19 test result.

38. John Doe had an active COVID-19 infection when he was tested by Clinica Hispana, at which time he was told, “You’re negative for COVID-19.” *Id.* at ¶ 9. In other words, Clinical Hispana told John Doe he was negative for COVID-19, when he was, in fact, positive—the “false negative” result specifically warned about for antibody tests. John Doe’s situation illustrates the danger of using antibody tests, such as the Healgen test, as diagnostic tests for an active COVID-19 infection.

39. Defendants’ roadside sign advertisement is clearly successful at attracting consumers looking for COVID-19 testing. When John Doe visited Clinica Hispana on July 7, 2020, he observed that the clinic’s parking lot was “packed,” with persons parking across the street. *Id.* at ¶ 5. At some point, Clinica Hispana posted a sign-in sheet for persons who arrived before clinic hours to reserve spots. *See* Ex. 3, ¶ 12.c; Ex. 3Q, Patient sign-in sheet, July 31, 2020. With the increases in community spread of COVID-19 in Texas, there is a high risk that there are more Texas consumers in John Doe’s position—persons with active COVID-19 infections who received negative test results for COVID-19 from Clinica Hispana La Porte, who were promised “15 minute” results during a time diagnostic test results were delayed by weeks.

40. Not only did Defendants misrepresent and omit vital information to John Doe during his visit to Clinical Hispania, their Facebook and Google advertisements do not disclose that the “COVID-19 test” is, in fact, an antibody test. Further, consumers who call the clinic’s phone

number receive a text message, in Spanish and English, that states:

“Thank you for calling Clinica Hispana La Porte. We are located at 9606 Spencer Hwy, suit D , la Porte Tx 77571 and we are currently helping other patients. **We are conducting the rapid tests for COVID-19**, you do not need an appointment, the test has a cost of \$ 80 and we do not accept medical insurance, **we check your blood for the presence of the current virus and also if you have had it**. If you have any questions or need more information, please send us a message to this phone number. Thank you very much for your patience, we hope to see you soon.”

See Ex. 3, ¶ 7; Ex. 3E, Screenshots of the text messages received by Missy Lord on July 23, 2020, from Clinica Hispana (emphasis added). While an antibody test may possibly tell a consumer “if you have had it,” antibody tests are *not* to be used to detect the “presence of the current virus” because it takes approximately seven to ten days after becoming infected for antibodies to develop.

41. As of the date of the filing of this Petition, Defendants continue to advertise and offer their “COVID-19” tests, putting individuals and the public at risk of false negatives and false positives.

D. Defendants are violating the Texas Deceptive Trade Practices Act.

42. By offering, selling, and administering COVID-19 antibody serological tests as diagnostic tests, Defendants Clinica Hispana La Porte and Luis Alberto Cuan continue to place individuals and the public at risk of both “false positives” and “false negatives,” at a time when the public is taking extraordinary steps, at great personal, societal and economic costs, to avoid spreading this dangerous virus. Defendants use the promise of “15-minute results” to attract consumers desperate for information to protect themselves and their families, but fail to inform consumers of the limitations of Clinica Hispana La Porte’s COVID-19 test results. Worse, Defendants’ promise to “check your blood for the current virus” leaves consumers with the false impression that Defendants’ test is able to diagnose active COVID-19 infections.

43. Further, Clinica Hispana La Porte and Luis Alberto Cuan are not authorized to perform the antibody tests they are performing. On information and belief, Defendants have no affiliation with a CLIA-certified lab of any kind. According to records with the Texas Workforce Commission,

Clinica Hispana does not appear to employ any licensed medical providers at the clinic. Defendants are taking advantage of Texas consumers, placing individual and the general public health at risk for economic gain. An injunction is required to prevent additional harm.

E. Defendants also are violating the Texas Identity Theft Enforcement and Protection Act by dumping patient records behind the clinic.

44. Defendants, as alleged above, are in the business of offering, selling, and administering COVID-19 antibody tests to consumers. As a part of their business, Defendants collect sensitive personal information about consumers, such as the identifying information about individuals relating to (i) the physical or mental health or condition of the individual and/or (ii) the provision of health care to the individual. *See* ITEPA § 521.002(B)(i)–(ii). Defendants fail to implement reasonable procedures to protect this information; in fact, when disposing of documents with this sensitive personal and protected health information, Defendants have placed the documents in an open dumpster behind Clinica Hispana without shredding, erasing, or otherwise making said sensitive personal and protected health information unreadable or indecipherable.

45. On July 31, 2020, an employee of the Attorney General’s Office, Missy Lord, went to the dumpster behind Clinica Hispania. As shown in Exhibits 3H, 3I, 3K, and 3L, the dumpster is located directly behind the strip mall. There is a wooden fence around the dumpster, but the fence is open and unlocked. Any member of the public is able to walk up to this dumpster. *See* Ex. 3, ¶ 12.a; Ex. 3L, Photographs of the dumpster and trash bags behind Clinica Hispana, July 31, 2020. Ms. Lord examined the contents of two of the trash bags, and found the following:

- COVID-19 test results for patients, patient sign-in sheets, and completed patient questionnaires. These documents had *patient names, addresses, dates of birth, and phone numbers and protected health information*. *See* Ex. 3, ¶ 12.b; Ex. 3M, Copies of various patient documents.

- Discarded COVID-19 test kits and testing materials. *See* Ex. 3, ¶ 12.b; Ex. 3N, Photographs of discarded test kits and testing materials.
- A scanned copy of a driver's license. *See* Ex. 3, ¶ 12.b; Ex. 3O, Scan of driver's license.
- A vial of blood. *See* Ex. 3, ¶ 12.b; Ex. 3P, Photograph of vial of blood.

In addition to failing to implement any procedures to prevent the dumping of these patient records, Defendants also have, on at least on occasion, posted a sign-in sheet for persons who arrived before clinic hours to reserve spots on the front windows of the clinic, exposing the names, phone numbers, and dates of birth to anyone walking by. *See* Ex. 3, ¶ 12.c; Ex. 3Q, Patient sign-in sheet, July 31, 2020. This sign-in sheet exposes the names of those seeking COVID-19 tests, information that relates to the provision of health care to those individuals, to the public.

46. After misleading consumers into purchasing their COVID-19 tests, Defendants compound their deceptive and unlawful business practices by dumping records containing the sensitive personal and protected health information of these consumers in a dumpster where any member of the public can stumble upon them. Defendants also fail to safeguard personal identifying information of consumers seeking COVID-19 testing by posting sign-in sheets on their windows. By failing to implement procedures to safeguard this information, and by failing to destroy or arrange for the destruction of records containing sensitive personal information within Defendants' custody or control, Defendant put these consumers at risk of identity theft. Defendants also put at risk the disclosure of protected health information, such as testing results for COVID-19, to the world at large. Defendants' failure to implement procedures to safeguard this information and failure to make any arrangement whatsoever for the destruction of the records are yet further violations of Texas law, and Defendants must be enjoined from causing further harm.

XIII. VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

47. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

48. Defendants, as alleged above, are engaging or have engaged in false, misleading, or deceptive acts or practices in the conduct of trade or commerce violation of DTPA § 17.46(a).

49. In addition, the State alleges that Defendants in the course and conduct of trade and commerce are engaging or have engaged in false, misleading, and deceptive acts and practices declared to be unlawful by the DTPA by:

(a) causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services (DTPA § 17.46 (b)(2));

(b) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have (DTPA § 17.46 (b)(5));

(c) advertising goods or services with intent not to sell them as advertised (DTPA § 17.46(b)(9); and

(d) failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed DTPA § 17.46(b)(24).

XIV. VIOLATIONS OF THE IDENTITY THEFT ENFORCEMENT AND PROTECTION ACT

50. The State incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

51. Defendants violate their duty under the ITEPA to protect sensitive personal information by:

(a) Failing to implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the business in the regular course of business (ITEPA § 521.052(a)); and

(b) Failing to destroy or arrange for the destruction of such customer records that they are no longer retaining by shredding, erasing, or otherwise modifying the sensitive personal information in the records to make the information unreadable or indecipherable through any means (ITEPA § 521.052(b)).

XV. INJURY TO CONSUMERS

52. Defendants have, by means of these unlawful acts and practices, obtained money or property from consumers who are entitled to restitution, or in the alternative, have caused actual damages to identifiable persons who are entitled to compensation.

XVI. APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

53. The State alleges that by reason of the foregoing, Defendants should not continue to sell or offer to sell goods or services in violation of the laws of Texas. Unless immediately restrained by this Honorable Court, the Defendants will continue to violate the laws of the State of Texas and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public. The interests of the State of Texas and the public require immediate action to prevent Defendants from continuing false, misleading, and deceptive acts and practices in the offering, selling, and administering of COVID-19 tests. Further, unless injunctive relief is granted, Defendants will continue to mislead the consumers about the purpose and results of the antibody tests they offer, at grave risk to individuals and the public health in general. Finally, unless

immediately enjoined, Defendants will continue collecting monies from consumers by use of false, misleading, or deceptive trade practices. Therefore, pursuant to DTPA § 17.47(a), Plaintiff, the State of Texas, requests relief by way of a Temporary Restraining Order, Temporary Injunction, and Permanent Injunction as set forth in the Prayer. Cessation of unlawful conduct shall not render such court action moot under any circumstances. *Id*

54. Further, unless immediately restrained, Defendants will continue to illegally dump patient records without shredding, erasing, or otherwise modifying the sensitive personal and protected health information in the records to make the information unreadable or indecipherable through any means. The interests of the State of Texas and the public require immediate action to prevent Defendants from continuing to expose customers' sensitive personal information, including protected health information, putting those persons at risk of identity theft and publicly exposing protected health information of individuals. Therefore, pursuant to ITEPA § 521.151(b), Plaintiff, the State of Texas, requests relief by way of a Temporary Restraining Order, Temporary Injunction, and Permanent Injunction as set forth in the Prayer.

55. The Court shall issue such injunctive relief without requiring a bond from the Plaintiff. DTPA § 17.47(b); ITEPA § 521.151(d).

XVII. REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

56. The State requests leave of this Court to conduct depositions of witnesses and parties prior to any scheduled Temporary Injunction Hearing and prior to Defendants' answer date. There are a number of witnesses who may need to be deposed prior to any scheduled injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys, if known. The State also requests that the filing requirements for business records and the associated custodial affidavits be waived for purposes of all temporary

injunction hearings. In addition, the State requests that the Court order Defendants to produce five days prior to the Temporary Injunction Hearing:

- (a) Documents reflecting all orders and deliveries of any diagnostic or antibody COVID-19 test kits produced by any manufacturer;
- (b) Documents evidencing any manufacturers or suppliers that sold Defendants COVID-19 diagnostic or antibody test kits;
- (c) Copies of any documentation provided by Defendants to any seller or manufacturer of any COVID-19 diagnostic or antibody test kits;
- (d) Documents identifying all licensed medical providers who have worked with Clinica Hispana La Porte since March 1, 2020, in any capacity;
- (e) Documents identifying all employees of Clinica Hispana La Porte;
- (f) Documents identifying all COVID-19 tests results provided to consumers who have purchased COVID-19 testing services (of any kind) from Clinica Hispana La Porte;
- (g) Documents reflecting any reporting of any COVID-19 test results (of any type) to state and federal public health authorities;
- (h) Documents reflecting the ownership and/or formation of Clinica Hispana La Porte;
- (i) Documents reflecting any policies and procedures related to the safeguarding of sensitive personal and protected health information, including documents relating to the disposal of documents with sensitive personal and protected health information;
- (j) Documents reflecting any CLIA certifications and/or affiliations with any CLIA-certified labs; and
- (k) Documents identifying any bank accounts in which consumer monies used to pay for COVID-19 tests from Clinica Hispana were deposited.

XVIII. CONDITIONS PRECEDENT

57. All conditions precedent to the State's claim for relief have been performed or have occurred.

XIX. TRIAL BY JURY

58. The State demands a jury trial and tenders the appropriate fee with this petition.

XX. PRAYER

59. WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; and prays that a TEMPORARY RESTRAINING ORDER be issued, and after due notice and hearing, a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, their officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendant from engaging, directly or indirectly, in the acts or practices set out above.

60. The State of Texas requests that, after hearing, the Court issue a Temporary Restraining Order, and ORDER that Defendants, their officers, agents, servants, employees, attorneys and any other persons in active concert or participation with them, who receive actual notice of the order by personal service or otherwise, be restrained from engaging in the following acts or practices:

- (a) Offering, selling, administering, and/or providing any medical care related to COVID-19, unless Defendants provide proof of medical licensure with the State of Texas to the State's undersigned attorneys;
- (b) Offering, selling, or administering any COVID-19 tests;
- (c) Offering, selling, or administering antibody COVID-19 tests as diagnostic COVID-19 tests;

(d) Failing to disclose to any consumer the meaning of the results of their COVID-19 testing;

(e) Failing to implement reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure of any sensitive personal and protected health information collected or maintained by the business in the regular course of business;

(f) Concealing, withholding, destroying, mutilating, altering, falsifying, or removing from the jurisdiction of this Court any books, records, documents, invoices, receipts, or other written materials relating to the business of Defendants currently or hereafter in Defendants' possession, custody or control except in response to further orders or subpoenas in this cause; and

(g) Transferring, spending, hypothecating, concealing, encumbering or removing from the jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed, wherever situated, belonging to or owned by, in possession of, or claimed by any of the Defendants, insofar as such property relates to, arises out of or is derived from the business operations of Defendants except in response to further orders by the Court.

61. In addition, the State of Texas requests that the Court ORDERS that Defendants:

(a) Shall immediately secure the dumpster behind Clinica Hispana La Porte and the contents of the dumpster by:

- i. Locking and/or otherwise securing the dumpster so that no unauthorized person has access to the dumpster and its contents, whether such contents are inside the dumpster or in the immediate area around the dumpster;
- ii. Securing the fence around the dumpster that encloses the dumpster so that no unauthorized person has access to the dumpster and its contents; and
- iii. Contacting the company that picks up the contents of the dumpster and placing a hold on pick up until such time as the Court has heard and decided the Temporary Injunction in this matter.

If the dumpster is used by other businesses in this same location, Defendants must immediately not fail to (1) remove and secure any documents or other materials in the dumpster which include sensitive personal or protected health information of individuals, and (2) remove and properly dispose of any medical waste;

(b) Shall, within 24 hours of securing the dumpster and its contents as provided by the Court's Temporary Restraining Order, provide written notice to the State's undersigned attorneys notifying the State as to whether the dumpster and its contents have been secured as required by the Court's Order;

(c) Must not place additional items in and/or around the dumpster until the Court has heard and decided the Temporary Injunction; and

(d) Must not improperly dispose of medical waste materials.

62. In addition, Plaintiff, State of Texas, respectfully prays that this Court:

(a) Award civil penalties in favor of Plaintiff, State of Texas, in the amount not to exceed more than \$10,000 per violation of the DTPA, and \$250,000 in the event the deception impacts anyone over 65 years of age;

- (b) Order Defendants to restore all money or other property acquired by means of unlawful acts or practices, or in the alternative, to compensate identifiable persons for actual damages;
- (c) Award civil penalties in favor of Plaintiff, State of Texas, in the amount of at least \$2,000 but not to exceed \$50,000 per violation of the ITEPA;
- (d) Enter any such additional orders to prevent any additional harm to a victim of identity theft or a further violation of the ITEPA;
- (e) Award Plaintiff reasonable attorney's fees and court costs pursuant to Texas Government Code § 402.006 and ITEPA § 521.151(f).;
- (f) Enter any such additional orders to satisfy any judgment entered against the defendant, including issuing an order to appoint a receiver, sequester assets, correct a public or private record, or prevent the dissipation of a victim's assets;
- (g) Appoint a receiver or sequester Defendants' assets if Defendant has been ordered by this Court to make restitution and Defendant has failed to do so within three (3) months after the order to make restitution has become final and non-appealable;
- (h) Order Defendants to pay Pre-judgment and Post-judgment interest on all awards of restitution, damages or civil penalties, as provided by law; and
- (i) Adjudge that all fines, penalties or forfeitures payable to and for the benefit of the State are not dischargeable under bankruptcy pursuant to 11 U.S.C. section 523(a)(7).

63. Further, Plaintiff, State of Texas, respectfully prays for all other relief to which Plaintiff, State of Texas, may be justly entitled.

Respectfully submitted,

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