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FN LOGISTICS, LLC.
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 FN LOGISTICS, LLC

12 Plaintiff,

13 vs.

14 THE COMPLIANCE FIRM LLC
d/b/a/ COMPLIANT CARE
15 STAFFING; and DOES 1 through 10,

16 Defendants.
17

Case No. 2:21-cv-3312

**COMPLAINT AGAINST THE
COMPLIANCE FIRM FOR
(1) RESCISSION,
(2) CONVERSION,
(3) DECLARATORY RELIEF,
(4) BREACH OF FIDUCIARY DUTY,
(5) VIOLATION OF UNFAIR
COMPETITION LAW;
(6) INTENTIONAL
MISREPRESENTATION;
(7) NEGLIGENT
MISREPRESENTATION;
(8) PROFESSIONAL NEGLIGENCE;
(9) BREACH OF CONTRACT; AND
(10) BREACH OF IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALING**

Jury Trial Requested

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24 Plaintiff FN LOGISTICS, LLC., alleges as follows:

25 **INTRODUCTION**

26 1. This lawsuit is being filed because The Compliance Firm LLC, d/b/a
27 Compliant Care Staffing (the “Compliance Firm”), charged FN Logistics, LLC
28 (“FNL”) over \$600,000 to provide Covid-19 testing services that resulted in just 40

1 individuals being tested and now refuses to take any responsibility for its
2 misrepresentations and gross mismanagement.

3 2. FNL is not a healthcare services provider. It operates a warehouse in
4 Santa Fe Springs, California from which it distributes clothing sold by the retail
5 company Fashion Nova.

6 3. Compliance Firm, however, represents itself to be an expert healthcare
7 consulting company that specializes in mHealth, health informatics, medical
8 engineering, and the laboratory and life sciences. Compliance Firm advertises that,
9 among other healthcare services, it staffs medical providers at Covid-19 testing
10 clinics, and provides clients with affordable and efficient onsite Covid-19 testing.

11 4. In November 2020, and in response to the ongoing public health
12 emergency and Covid-19 pandemic, FNL sought to offer Covid-19 testing services
13 for its warehouse employees to safeguard the health and wellbeing of all personnel
14 working at the warehouse. Compliance Firm convinced FNL that it was legally
15 authorized and qualified to offer these testing services. As it turned out, Compliance
16 Firm was not only unqualified and unauthorized to provide Covid-19 testing at FNL's
17 facility, as requested, Compliance Firm instead used this situation as a business
18 opportunity to charge FNL for a variety of expenses and services that were
19 unnecessary and contrary to the parties' understanding.

20 5. Instead of providing FNL with a turnkey solution to help respond
21 quickly to the public health emergency, or arranging to contract with another
22 authorized test kit distributor or logistics provider that could immediately offer
23 Covid-19 testing services to FNL's employees, Compliance Firm went through the
24 expensive, cumbersome, and unreasonably time-consuming process of "building" a
25 Covid-19 testing infrastructure from scratch that would enable Compliance Firm to
26 be a CLIA-certified laboratory and acquire the testing kits from manufacturers.
27 Compliance Firm passed the entire cost of this unnecessary process off to FNL, even
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1 though Compliance Firm planned to be the owner and sole operator of the testing lab
2 and services.

3 6. Compliance Firm also misled FNL into paying \$398,893.96, which the
4 Compliance Firm used to purchase thousands of *Carestart* COVID-19 Antigen
5 devices (“CSA Tests”) from the manufacturer, and then arranged for delivery to FNL
6 premises. Compliance Firm knew, but did not tell FNL, that neither party was
7 authorized to lawfully possess, warehouse, store, sell, broker, distribute, or provide
8 logistics services for the CSA Tests which are regulated by California pharmacy law
9 as a “dangerous device” because they cannot be used or administered without a
10 prescription.

11 7. After many weeks of mismanagement and delays, and *just* two days of
12 inefficient and incredibly expensive testing services – which included a verbal
13 termination from Compliance Firm’s manager that was “taken back” – FNL was
14 forced to terminate the parties’ relationship on January 6, 2021.

15 8. Still, over the next two plus months, and despite numerous requests,
16 Compliance Firm refused to arrange to pick up unused CSA Tests that remained on
17 FNL’s premises. FNL was forced to contact that State Pharmacy Board and the
18 manufacturer of the CSA Tests to determine what should be done. Ultimately, FNL
19 returned the CSA Tests to the manufacturer so they could be used prior to their
20 expiration date of April 2021.

21 9. Compliance Firm represented itself as an expert in setting up and
22 running Covid-19 testing services to help FNL respond to the pandemic. Compliance
23 Firm proved itself to be competent only in finding ways to charge FNL for
24 unnecessary work and services. Compliance Firm misled FNL about its
25 qualifications, the cost of testing services, and the time needed to initiate testing
26 services for FNL’s employees. At no point did Compliance Firm – the self-
27 proclaimed expert healthcare consultant – advise FNL that a turn-key Covid-19
28 testing option could be obtained from any number of qualified sources. Compliance

1 Firm instead used its alleged expertise to mislead FNL into funding Compliance
2 Firm's creation of an entirely new testing infrastructure, from the ground up.

3 10. Compliance Firm should be required to return all moneys to FNL –
4 including the money that Compliance Firm said was necessary to purchase the
5 antigen test kits which FNL was not authorized to possess, warehouse, store, sell,
6 broker, distribute, or administer.

7 **PARTIES**

8 11. Plaintiff FNL is a Delaware limited liability company with its
9 headquarters located in Vernon, California. FNL converted from a corporation to a
10 limited liability company in December 2020.

11 12. Defendant The Compliance Firm, d/b/a Compliant Care Staffing, is a
12 Nevada limited liability company with headquarters in Los Angeles, California.

13 **JURISDICTION AND VENUE**

14 13. FNL's headquarters are in Vernon, California, and its relevant
15 warehouse is located at 12588 Florence Avenue, Santa Fe Springs, California.

16 14. Compliance Firm is located at 1055 West 7th Street, Los Angeles,
17 California.

18 15. Upon information and belief, the only member of Compliance Firm is
19 Brittany Stillwell, an individual who resides in Nevada.

20 16. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332 because
21 all parties are citizens of different states.

22 17. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because a
23 substantial part the events giving rise to the claims occurred in Los Angeles County,
24 which is in this judicial district.

25 **FACTS**

26 18. In June 2020, the parties entered into a Staffing Agreement under which
27 Compliance Firm staffed Occupational Health Nurses to provide services at FNL's
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1 warehouse. FNL paid Compliance Firm directly for the work the Occupational
2 Health Nurses performed at FNL's facility.

3 19. In August 2020, the parties entered into a Recruiting Agreement under
4 which Compliance Firm was to present candidates to FNL for possible employment.

5 20. In August 2020, the parties also agreed to expand the scope of the
6 Staffing Agreement, and Compliance Firm began to staff various workers for FNL's
7 facility, including, but not limited to Yard Goat Drivers, Cherry Pickers and
8 Maintenance Tech workers. FNL paid Compliance Firm directly for the hours the
9 staffed individuals worked at FNL's facility.

10 21. In mid to late November 2020, FNL discussed with Compliance Firm
11 its desire to have its employees able to elect to be tested for Covid-19 on its premises.

12 22. On November 23, 2020, FNL requested Compliance Firm's assistance
13 in obtaining "mail in covid19 diagnostic testing" which FNL thought could be
14 administered by George Villareal, the Occupational Health Nurse that Compliance
15 Firm staffed to work at FNL's facility.

16 23. Compliance Firm replied immediately that it could obtain mail in Covid
17 tests. Compliance Firm also suggested other types of Covid-19 tests, and provided
18 general price estimates.

19 24. Over the next 24 hours, Compliance Firm continued to provide FNL
20 with detailed information about the various Covid-19 testing solutions that it could
21 provide as well as information about the steps necessary to set up a test administration
22 site at FNL's facility.

23 25. On November 24, 2020, at 12:05 PM, Compliance Firm recommended
24 "CareStart nasal swab" as the best option. Compliance Firm noted that the "kits are
25 \$30/each, but [Compliance Firm was] only being charged \$28.00." Compliance Firm
26 cautioned FNL that in order to get the tests by December 4, it would have to place
27 the order by 2:00 PM on November 25, 2020 (the next day).

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1 26. On November 24, 2020, Compliance Firm issued an invoice to FNL for
2 12,800 CSA Tests. The invoice was dated November 24, 2020 and included a Due
3 Date of November 24, 2020. The charged amount included \$5,886.72 for “Late fee”,
4 which was applied (or was to be applied) on November 25, 2020 (the next day). With
5 tax, and this Late fee, the total charge was \$398,893.96.

6 27. The CSA Tests are *in vitro* diagnostic test kits that received Emergency
7 Use Authorization (EUA) on October 8, 2020 from the Food and Drug
8 Administration (FDA). The EUA only allows the test to be administered by a CLIA-
9 approved laboratory; the packaging for the devices indicates that it is “Rx Use only.”
10 See [CareStart COVID-19 MDx RT-PCR - Instructions for Use \(fda.gov\)](#).

11 28. The CSA Tests are considered “dangerous devices” and are also
12 regulated by California pharmacy law. See Cal. Health & Saf. Code §§ 4022, 4160-
13 4169.1. Compliance Firm did not, and does not, have the necessary approvals from
14 the California Board of Pharmacy to handle the CSA Tests that it purchased from the
15 manufacturer, charged to FNL, stored at FNL’s facility, and then refused to pick up.

16 29. On November 25, 2020, Compliance Firm advised FNL that it already
17 had a lab director, which was required, and that Compliance Firm was “finalizing the
18 agreement for the medical director”, which was also required. In the same
19 communication, Compliance Firm included a table of its action items and associated
20 due dates that would have the Covid-19 testing site operational by December 11,
21 2020.

22 30. In the same November 25, 2020 communication, Compliance Firm
23 asked if FNL had a secure location where Compliance Firm could store some of the
24 hundreds of thousands of tests it was procuring for its “North American clients.”
25 Compliance Firm also asked if FNL was interested in “lending its supply chain to
26 distribute tests” and said this “could be mutually beneficial for both parties
27 financially[.]”
28

1 31. Compliance Firm agreed to provide Covid-19 testing services at FNL’s
2 facility. The parties did not reduce their oral discussions, or their email exchanges,
3 into a written, signed written agreement.

4 32. On December 9, 2020, Compliance Firm sent FNL a detailed, four-page
5 email, which purported to “provide a high level overview of the COVID testing
6 process in hopes of being able to delegate tasks so that we can stay on track to begin
7 testing on 12/27/2020.”

8 33. Compliance Firm stated in the December 9, 2020 email that the “lab is
9 wholly owned by The Compliance Firm (CCS’s parent company) but has been
10 created and located at [FNL’s warehouse] for the sole purpose of providing rapid
11 onsite COVID testing to FN Logistics, FNL and its vendors[.]”

12 34. In this December 9, 2020 email, Compliance Firm also notified FNL
13 that the Lab Director would be Dr. Joanna Xie, MD, and the Lab Supervisor/Lead
14 Scientist would be Dr. Matt Cruzen, PhD. Compliance Firm attached resumes for
15 both doctors to the email.

16 35. On December 21, 2020, Compliance Firm sent an email to FNL
17 notifying it, among other things, that a Dr. Hinton, MD, had agreed to serve as
18 medical director.

19 36. Finally, after numerous delays and scheduling adjustments by
20 Compliance Firm, the onsite testing facility lab began operation on January 4, 2021.
21 However, after just two days of testing, January 4 and January 5, it was clear that
22 Compliance Firm could not effectively or efficiently operate the testing site. Among
23 other things, Compliance Firm’s manager and responsible representative failed to
24 arrive at the testing location, then terminated the relationship before she “took []
25 back” the termination. This erratic behavior and inefficient testing, among other
26 things, forced FNL to terminate the relationship and scramble to locate an alternative
27 consultant that could provide an efficient and effective means of testing FNL’s
28 employees.

1 37. FNL is not in the business of providing medical care or laboratory
2 services, and has no experience or authorization to do so. FNL is responsible for the
3 distribution of clothing sold by Fashion Nova. At all relevant times, FNL reasonably
4 relied upon Compliance Firm's professed expertise in providing healthcare
5 consulting and services, including onsite testing for Covid-19.

6 38. Compliance Firm reinforced FNL's reasonable reliance by, among other
7 things, identifying the purported licensure requirements and medical staffing
8 requirements; procuring the CLIA licensure necessary to open a testing laboratory;
9 recommending and procuring the CSA Tests; providing summaries of action items
10 and steps necessary to having an operational testing site; and locating and retaining
11 the lab director, lab supervisor, medical director, and other purportedly necessary
12 personnel.

13 39. At no time did Compliance Firm rely upon FNL for any expertise related
14 to the creation of operation of the Covid-19 testing facility. Nor would any such
15 reliance be reasonable. Compliance Firm was the purported healthcare consulting
16 and staffing expert, who charged FNL tens of thousands of dollars for consulting
17 services.

18 40. It was Compliance Firm's recommendation that it build a testing lab
19 from scratch at FNL's warehouse instead of contracting with an established, licensed
20 and operational Covid-19 testing company. This was an expensive, time-consuming,
21 and wholly unnecessary process, and without notifying FNL in advance, Compliance
22 Firm attempted to pass the entire cost of this process on to FNL. Ultimately,
23 Compliance Firm charged FNL \$213,773.62 for this unnecessary process. This
24 included charges for consultants, monitors, directors, supervisors, and virtual
25 observers. Compliance Firm even charged FNL \$1600 for iPads that would,
26 ostensibly, be used by virtual observers. In partial satisfaction of these charges, and
27 without agreement or approval, Compliance Firm unilaterally withdrew \$63,951.57
28 from deposit funds that FNL had previously placed with Compliance Firm to pay for

1 agreed-upon services; Plaintiff also paid \$40,047.58 on December 29, 2020 to satisfy
2 another invoice connected to the Covid-19 testing.

3 41. Despite Compliance Firm’s time-consuming and expensive
4 expenditures for creating a testing lab, and unbeknownst to FNL, Compliance Firm
5 did not have the California pharmacy licensure necessary to possess, warehouse,
6 store, sell, broker, distribute, or provide logistics services for, the CSA Tests.

7 42. Compliance Firm did procure a waiver under the Clinical Laboratory
8 Improvement Amendments of 1988 (CLIA), which was required to administer
9 Covid-19 testing, and which also gave the manufacturer of CSA Tests the impression
10 Compliance Firm could purchase, store or distribute the test kits. But Compliance
11 Firm was not authorized under California law to possess, warehouse, store, sell,
12 broker, distribute, or provide logistics services for these devices.

13 43. Compliance Firm also concealed from FNL – an entity that has no
14 experience providing medical services and has no licenses or authority to do so – that
15 it was illegal for Compliance Firm to sell Covid-19 test kits directly to FNL, which
16 is not an authorized laboratory under the EUA. It was likewise illegal for FNL to
17 possess, store, warehouse or distribute the Covid-19 tests that Compliance Firm
18 arranged to purchase and transport to the FNL facility.

19 44. Compliance Firm also misled FNL about the costs that would be
20 charged to FNL for creating the testing infrastructure – which Compliance Firm
21 would own by itself – and for providing its laboratory services.

22 45. Based on invoices sent after FNL terminated the agreement, Compliance
23 Firm had charged FNL \$213,773.62 just to “set up” the lab (i.e., before it
24 administered even a single test at FNL’s facility), in addition to the \$398,893.96
25 Compliance Firm charged FNL for purchasing the CSA Tests (which FNL is not
26 permitted under California law to even possess, let alone administer).

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CAUSES OF ACTION

First Cause of Action

Rescission – Unilateral Mistake - Sale of Covid-19 Testing Kits

46. FNL restates and incorporates the allegations from the above paragraphs as if they were stated in full herein.

47. On November 24, 2020, Compliance Firm purported to sell 12,800 CSA Tests to FNL, for the total cost of \$398,893.96.

48. The CSA Tests are considered “dangerous devices” under California law.

49. It is unlawful in California to possess, warehouse, store, sell, broker, distribute, or provide logistics services for, “dangerous devices” such as the CSA Tests without a license from the California State Board of Pharmacy (“Board”).

50. Compliance Firm does not have a license or approval from the Board.

51. FNL does not have a license or approval from the Board.

52. FNL did not know that a license from the Board was required to possess, warehouse, store, sell, broker, distribute, or provide logistics services for, the CSA Tests.

53. Compliance Firm knew or should have known that a license from the Board was required to possess, warehouse, store, sell, broker, distribute, or provide logistics services for, the CSA Tests.

54. The parties’ agreement or Compliance Firm to the CSA Tests to FNL was unlawful.

55. FNL would not have entered into the agreement to purchase the CSA Tests from Compliance Firm had it known the contract was unlawful.

56. The parties’ agreement for Compliance Firm to sell CSA Tests to FNL should be rescinded – and all money FNL paid to Compliance Firm for the CSA Tests should be returned to FNL – pursuant to California Civil Code section 1689(b)(1).

1 **Second Cause of Action**

2 **Rescission – Unlawful Contract - Sale of Covid-19 Testing Kits**

3 57. FNL restates and incorporates the allegations from the above paragraphs
4 as if they were stated in full herein.

5 58. The parties’ agreement to make the CSA Tests available to FNL was
6 unlawful because the parties did not have the requisite approvals to from the Board.

7 59. The parties are not equally at fault for entering into the unlawful contract
8 as Compliance Firm was the self-proclaimed expert healthcare consultant that
9 arranged for acquisition of the CSA Tests from the manufacturer.

10 60. The parties’ agreement for Compliance Firm to sell CSA Tests to FNL
11 should be rescinded – and all money FNL paid to Compliance Firm for the CSA Tests
12 should be returned to FNL – pursuant to California Civil Code section 1689(b)(5)
13 and (b)(6).

14 **Third Cause of Action**

15 **Rescission – Consideration Failed – Creating Covid-19 Testing Lab**

16 61. FNL restates and incorporates the allegations from the above paragraphs
17 as if they were stated in full herein.

18 62. In response to FNL’s request for on-site Covid-19 testing services,
19 Compliance Firm recommended that it build a Covid-19 testing lab infrastructure
20 from scratch instead of contracting with an established and licensed testing company
21 that could begin testing almost immediately.

22 63. Compliance Firm would own this brand new testing lab, which FNL was
23 not qualified or authorized to operated. FNL did not agree to pay the costs of
24 Compliance Firm creating its brand new Covid-19 testing lab.

25 64. Compliance Firm charged FNL \$213,773.62, at least, for building the
26 lab from scratch. FNL, however, is not authorized to administer, possess, store,
27 warehouse, or distribute Covid-19 testing kits.
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1 Compliance Firm incurred to build its Covid-19 testing lab infrastructure. Plaintiff
2 also paid Defendant \$40,057.58 for it what was misleadingly told were necessary
3 charges to provide Covid-19 tests to Plaintiff's workers.

4 74. FNL did not agree to pay Compliance Firm for the cost of building its
5 brand new Covid-19 testing lab and FNL suffered harm as a result of Compliance
6 Firm wrongfully attempting to have FNL subsidize for those costs.

7 75. The specific, identifiable sum of \$104,009.15 was wrongly taken from
8 FNL. Compliance Firm continues to be in possession of this money. The money
9 should be returned.

10 **Sixth Cause of Action**

11 **Request for Declaratory Relief – Costs of Creating Covid-19 Testing Lab**

12 76. FNL restates and incorporates the allegations from the above paragraphs
13 as if they were stated in full herein.

14 77. FNL did not agree to subsidize Compliance Firm's cost of building its
15 brand new Covid-19 testing site, which Compliance Firm would own and which FNL
16 was not qualified or authorized to operate.

17 78. Compliance Firm has issued invoices to FNL totaling \$213,773.62 for
18 costs associated with building its brand new Covid-19 testing lab.

19 79. FNL disputes that it has any obligation to reimburse Compliance Firm
20 for those costs.

21 80. FNL seeks a declaration that Compliance Firm is not entitled to seek
22 reimbursement from FNL for any costs associated with building Compliance Firms'
23 brand new Covid-19 testing lab.

24 **Seventh Cause of Action**

25 **Breach of Fiduciary Duty**

26 81. FNL restates and incorporates the allegations from the above paragraphs
27 as if they were stated in full herein.

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1 82. Compliance Firm had provided healthcare staffing solutions to FNL
2 previously and was aware that FNL had no healthcare experience or expertise.

3 83. FNL reasonably relied upon Compliance Firm to provide expert
4 healthcare consulting and services in connection with the Covid-19 testing lab.

5 84. FNL reasonably relied upon Compliance Firm's integrity to give honest
6 advice and recommendations so that FNL could provide Covid-19 testing to its
7 roughly 10,000 warehouse employees.

8 85. Compliance Firm knowingly undertook the responsibility to act on
9 behalf of and for the benefit of FNL in providing Covid-19 testing services.

10 86. Compliance Firm owed fiduciary duties to FNL in connection with the
11 provision of Covid-19 testing services.

12 87. Compliance Firm acted in its own financial self-interest in building a
13 Covid-19 testing lab, from scratch and which it would own outright, instead of
14 recommending or even offering to FNL the option of contracting with a previously
15 established, fully licensed, Covid-19 testing company that could provide services
16 almost immediately to FNL and without need for any secondary consulting work by
17 Compliance Firm.

18 88. Compliance Firm stood to gain financially from the creation of a Covid-
19 19 testing lab from scratch, including but not limited to the consulting services that
20 Compliance Firm charged FNL in connection with that process.

21 89. Compliance Firm's failure to place FNL's interest ahead of its own was
22 a breach of the fiduciary duties it owed to FNL.

23 90. Compliance Firm also breached its fiduciary duty to advise FNL that
24 neither Compliance Firm or FNL could lawfully administer, warehouse, store, sell,
25 broker, distribute, or provide logistics services for, the CSA Tests.

26 91. FNL suffered harm as a result of these breaches, including damages
27 equal to the amount of money Compliance Firm charged for creating the Covid-19
28 testing lab and for the CSA Tests.

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Eighth Cause of Action

**Violation of the Unfair Competition Law – Business & Professions Code §
17200**

92. FNL restates and incorporates the allegations from the above paragraphs as if they were stated in full herein.

93. Compliance Firm violated California’s Pharmacy Law, Business & Professions Code section 4600 *et seq.* when, among other things, it purchased the CSA Tests for resale to FNL.

94. Compliance Firm fraudulently represented to FNL that FNL could purchase, possess and store the CSA Tests.

95. Compliance Firm took advantage of FNL’s lack of knowledge and expertise to sell FNL CSA Tests that FNL could not lawfully possess, store or administer.

96. Compliance Firm also took advantage of FNL’s lack of knowledge and expertise to mislead FNL about setting up the Covid-19 testing lab, which Compliance Firm unreasonably built from scratch and then attempted to have FNL pay the entire cost of building this lab which Compliance Firm would own and which FNL was not qualified or authorized to operate.

97. Compliance Firm’s unlawful, fraudulent and unfair business acts and practices caused damage to FNL equal to the amount of money that FNL spent on the CSA Tests and the brand-new Covid-19 testing lab, which was fully owned by Compliance Firm.

Ninth Cause of Action

Intentional Misrepresentation

98. FNL restates and incorporates the allegations from the above paragraphs as if they were stated in full herein.

99. Compliance Firm represented to FNL that FNL could purchase, store and possess the CSA Tests. Compliance Firm even suggested that FNL could store

1 tests for other clients of Compliance Firm and possibly get in the business of shipping
2 tests for Compliance Firm.

3 100. Compliance Firm made these representations to convince FNL to buy
4 12,800 CSA Tests from Compliance Firm for a total of \$398,893.96.

5 101. Compliance Firm knew that FNL was not authorized to purchase, store
6 or possess the CSA Tests.

7 102. FNL reasonably relied on Compliance Firm's representation and agreed
8 to buy the CSA Tests from Compliance Firm.

9 103. FNL would not have agreed to buy the CSA Tests if it has known it was
10 not authorized to purchase, store or possess them.

11 104. As a result of Compliance Firm's misrepresentation, FNL purchased and
12 was left in possession of CSA Tests that it could not use.

13 105. FNL suffered damages as a result of its reliance on Compliance Firm's
14 misrepresentation equal to the amount money it paid Compliance Firm for the CSA
15 Tests.

16 **Tenth Cause of Action**

17 **Negligent Misrepresentation**

18 106. FNL restates and incorporates the allegations from paragraphs 1-91,
19 above, as if they were stated in full herein.

20 107. Compliance Firm represented to FNL that FNL could purchase, store
21 and possess the CSA Tests.

22 108. Compliance Firm made this representation to convince FNL to buy
23 12,800 CSA Tests from Compliance Firm for a total of \$398,893.96.

24 109. Compliance Firm had no reasonable grounds for believing that FNL
25 could purchase, store or possess the CSA Tests.

26 110. FNL reasonably relied on Compliance Firm's representation and agreed
27 to buy the CSA Tests from Compliance Firm.

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1 111. FNL would not have agreed to buy the CSA Tests if it has known it was
2 not authorized to purchase, store or possess them.

3 112. As a result of Compliance Firm's misrepresentation, FNL purchased and
4 was left in possession of CSA Tests that it could not use.

5 113. FNL suffered damages as a result of its reliance on Compliance Firm's
6 misrepresentation equal to the amount money it paid Compliance Firm for the CSA
7 Tests.

8 **Eleventh Cause of Action**

9 **Professional Negligence**

10 114. FNL restates and incorporates the allegations from the paragraphs 1-96
11 and 106-113, above, as if they were stated in full herein.

12 115. Compliance Firm is a healthcare services consultant and provider that
13 claims to have expertise staffing medical providers at Covid-19 testing sites and
14 providing affordable and efficient onsite Covid-19 testing.

15 116. FNL retained Compliance Firm as its healthcare consultant for purposes
16 of providing on-site Covid-19 testing at its warehouse facility.

17 117. Compliance Firm had a duty to use the skill, prudence and diligence that
18 other members of its profession commonly possess and exercise.

19 118. Compliance Firm had a duty to advise FNL that FNL was not authorized
20 to purchase, possess, store, warehouse, distribute or administer the CSA Tests.

21 119. Compliance Firm had a duty to advise FNL that FNL could contract
22 with established and licensed Covid-19 testing companies that could begin to
23 administer on site tests at FNL's warehouse facility almost immediately.

24 120. Compliance Firm had a duty to advise FNL it was not necessary, or
25 prudent, to pay for Compliance Firm to create a Covid-19 testing lab from scratch,
26 especially as FNL would not be licensed to operate the lab.

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1 121. Compliance Firm’s failure to properly advise and consult FNL caused
2 FNL to spend \$398,893.96 on CSA Tests that it is not authorized to possess, store or
3 distribute, let alone administer to its employees.

4 122. Compliance Firm’s failure to properly advise and consult FNL caused
5 FNL to incur charges of \$213,773.62, at least, for Compliance Firm to create a Covid-
6 19 testing lab from scratch.

7 **Twelfth Cause of Action**

8 **Breach of Oral Contract**

9 123. FNL restates and incorporates the allegations from the above paragraphs
10 as if they were stated in full herein.

11 124. Compliance Firm was hired to provide on-site Covid-19 testing.

12 125. Instead, Compliance Firm unlawfully sold FNL 12,800 Covid-19 testing
13 kits and attempted to have FNL subsidize Compliance Firm’s creation of a brand new
14 Covid-19 testing lab, which Compliance Firm would own and FNL was not qualified
15 or authorized to operate.

16 126. Ultimately, Compliance Firm was unable to effectively or efficiently do
17 the only thing FNL hired it for – to administer on-site Covid-19 tests.

18 127. Compliance Firm’s failure to perform its obligations under the parties’
19 agreement caused damages to FNL of \$502,903.11, which is the total amount that
20 FNL paid to Compliance Firm for the CSA Tests and for Compliance Firm’s creation
21 of its own testing lab.

22 **Thirteenth Cause of Action**

23 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

24 128. FNL restates and incorporates the allegations from the above paragraphs
25 as if they were stated in full herein.

26 129. The parties had a contract under which Compliance Firm would provide
27 Covid-19 testing kits and on-site Covid-19 testing services at FNL’s warehouse
28 facility.

1 130. FNL has performed all of the significant things that are required by the
2 parties' contract, or such performance is excused.

3 131. All conditions required for Compliance Firm's performance have
4 occurred or have been excused.

5 132. Compliance Firm's conduct prevented FNL from receiving the benefits
6 under the contract in that FNL paid \$398,893.96 for CSA Tests that it is not
7 authorized to possess, store or distribute, let alone administer to its employees, and
8 FNL has incurred charges of \$213,773.62 for a Covid-19 testing lab that it cannot
9 use or access and which is fully and completely owned by Compliance Firm.

10 133. Compliance Firm did not act fairly or in good faith.

11 134. FNL suffered damages equal to the amount of money it has paid to
12 Compliance Firm, and or been charged by Compliance Firm, for services that were
13 not provided or were of no value to FNL.

14 **REQUEST FOR JURY TRIAL**

15 135. FNL requests a jury trial on all causes of action for which it has the right
16 to jury.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, FNL's pray for judgment as follows:

19 1. As to the First and Second Cause of Action - Rescission, FNL prays for
20 judgment against Compliance Firm for rescission of the sale of the CSA Tests and
21 monetary damages of \$398,893.96;

22 2. As to the Third Cause of Action – Rescission, FNL prays for judgment
23 against Compliance Firm for rescission of the agreement for Compliance Firm to
24 provide a Covid-19 testing lab and monetary damages of \$104,009.15;

25 3. As to the Fourth Cause of Action – Conversion, FNL prays for judgment
26 against the Compliance Firm for monetary damages in the amount of \$398,893.96;

27 4. As to the Fifth Cause of Action – Conversion, FNL prays for judgment
28 against Compliance Firm for monetary damages in the amount of \$104,009.15;

1 5. As to the Sixth Cause of Action – Declaratory Relief, FNL prays for an
2 order declaring that Compliance Firm is not entitled to seek reimbursement from
3 FNL for any costs associated with Compliance Firm building its brand new Covid-
4 19 testing lab;

5 6. As to the Seventh Cause of Action – Breach of Fiduciary Duty, FNL
6 prays for judgment against the Compliance Firm for monetary damages in the amount
7 of \$502,903.11;

8 7. As to the Eighth Cause of Action – Violation of UCL, FNL prays for
9 judgment against Compliance Firm for monetary damages in the amount of
10 \$502,903.11;

11 8. As to the Ninth Cause of Action – Intentional Misrepresentation, FNL
12 prays for judgment against the Compliance Firm for money damages in the amount
13 of \$398,893.96;

14 9. As to the Tenth Cause of Action – Negligent Misrepresentation, FNL
15 prays for judgment against the Compliance Firm for money damages in the amount
16 of \$398,893.96;

17 10. As to the Eleventh Cause of Action – Professional Negligence, FNL
18 prays for judgment against Compliance Firm for monetary damages in the amount of
19 \$502,903.11;

20 11. As to the Twelfth Cause of Action – Breach of Contract, FNL prays for
21 judgment against Compliance Firm for monetary damages in the amount of
22 \$502,903.11;

23 12. As to the Thirteenth Cause of Action – Breach of Implied Covenant of
24 Good Faith and Fair Dealing, FNL prays for judgment against Compliance Firm for
25 monetary damages in the amount of \$502,903.11;

26 13. For an award of attorneys’ fees;

27 14. For prejudgment interest;

28 ///

1 15. For an award of exemplary and punitive damages in an amount to be
2 proven at trial;

3 16. For costs of suit; and

4 17. For such other relief as the Court may deem proper and just.
5

6 Dated: April 16, 2021

NIXON PEABODY LLP

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8 By: /s/Staci Jennifer Riordan

9 Staci Jennifer Riordan
10 Aaron M. Brian
11 Harsh P. Parikh
12 Attorneys for Plaintiff
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