

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

X

SABINE SCHUMACHER, LINDA CUNNINGHAM,
ADAM LEVINE, JACOB WILDFONG, and NAOMI
BOICO, individually and on behalf of all others
similarly situated,

Plaintiffs,

- vs -

CARE CUBE, LLC, D/B/A CARECUBE LLC D/B/A
CARECUBE, NIRANJAN K. MITTAL, NIRANJAN
K. MITTAL, PHYSICIAN, PLLC, and
JOHN DOES 1–10,

Defendants.

X

**VERIFIED AMENDED
CLASS ACTION COMPLAINT**

Index No.: 505015/2022

JURY TRIAL DEMANDED

Plaintiffs Sabine Schumacher, Linda Cunningham, Adam Levine, Jacob Wildfong, and Naomi Boico (“Plaintiffs”), by their attorneys, Wittels McInturff Palikovic, as and for their class action complaint, allege, with personal knowledge as to their own actions, and upon information and belief as to those of others, as follows:

NATURE OF THE ACTION

1. Defendants Care Cube, LLC, CareCube LLC, CareCube, Niranjn K. Mittal, Physician, PLLC, Niranjn K. Mittal, M.D., and John Does 1–10 (collectively “Defendants” or “CareCube”) are exploiting the global pandemic caused by the SARS-CoV-2 coronavirus (“COVID-19”) by unlawfully overcharging New Yorkers for COVID-19 tests. CareCube’s brazen profiteering has enabled the upstart medical provider to expand from a single location in Brooklyn three years ago to twenty locations throughout the city, but this growth has come at the expense of tens of thousands of New York consumers who have collectively been defrauded into

paying millions of dollars for COVID-19 tests. This action seeks to put an end to CareCube's false and deceptive practices and redress the damage they have caused.

2. CareCube's COVID-19 testing scam works as follows: (a) CareCube falsely advertises—and takes advantage of the fact that customers reasonably believe—that COVID-19 tests will be covered by insurance, but then (b) surprise charges customers for unnecessary and phony doctor consultations or “office visits” that it falsely claims took place alongside or, in some cases, instead of the COVID-19 test the customer actually obtained, and/or (c) extracts an upfront testing fee from insured customers by falsely claiming the fee will be reimbursed once their health insurers cover the charge, and then fails to reimburse the customers either because CareCube pockets the reimbursement or never obtains it. Through these tactics CareCube exploits the current widespread and urgent need for COVID-19 testing—whether for work, school, travel, or even peace of mind during an extremely stressful time—by knowingly subjecting New Yorkers to excessive and even completely bogus charges. CareCube has made millions of dollars in revenue from its COVID-19 scam.

3. CareCube's practices violate both the consumer protection laws of New York (N.Y. GEN. BUS. LAW §§ 349 and 350), and the common law of New York. Only through a class action can CareCube's customers remedy CareCube's ongoing wrongdoing. Because the monetary damages suffered by each customer are small compared to the much higher cost a single customer would incur in trying to challenge CareCube's unlawful practices, it makes no financial sense for an individual customer to bring his or her own lawsuit.

4. Thus, Plaintiffs bring this action on behalf of themselves and on behalf of a class of consumers who obtained COVID-19 testing from CareCube from January 1, 2020 to the

present. Plaintiffs seek, *inter alia*, injunctive and declaratory relief, actual damages and refunds, attorneys' fees, and the costs of this suit.

JURISDICTION AND VENUE

5. This Court has personal jurisdiction over Defendants Care Cube, LLC and Niranjn K. Mittal, Physician, PLLC, which are both New York limited liability companies doing business within the State of New York and the County of Kings, pursuant to New York Civil Practice Law and Rules ("CPLR") § 301. Both conduct business throughout Brooklyn, Queens, the Bronx, and Manhattan. Both maintain their principal place of business in Kings County, New York.

6. The Court also has personal jurisdiction pursuant to CPLR § 301 over Defendant Niranjn K. Mittal, who conducts business in Brooklyn and personally works at the main office location of Defendants Care Cube, LLC and Niranjn K. Mittal, Physician, PLLC: 7404 5th Avenue, Brooklyn, NY 11209.

7. The Court also has personal jurisdiction pursuant to CPLR § 301 over Defendants John Does 1–10, who conduct business in Brooklyn, Queens, the Bronx, and/or Manhattan.

8. Venue is proper in the Supreme Court of the State of New York, Kings County, pursuant to CPLR § 503 because Defendants Care Cube, LLC and Niranjn K. Mittal, Physician, PLLC are both citizens of Kings County, New York and because a substantial part of the events or omissions giving rise to the claims occurred in Brooklyn.

PARTIES

9. **Plaintiffs Sabine Schumacher and Linda Cunningham** are domestic partners, residing together in the Bronx, New York. Plaintiffs Schumacher and Cunningham were

customers of CareCube in June 2021 and, as a result of Defendants' deceptive conduct, they incurred excessive charges for COVID-19 real-time polymerase chain reaction ("PCR") testing.

10. **Plaintiff Adam Levine** resides in Brooklyn, New York. Plaintiff Levine's children visited CareCube multiple times during 2021 to receive COVID tests, but Defendants deceptively double-charged for those COVID tests by charging both Plaintiff Levine as well as his insurance company for the COVID tests.

11. **Plaintiffs Jacob Wildfong and Naomi Boico** currently reside in New York, New York and were customers of CareCube in February 2021. As a result of Defendants' deceptive conduct, they were improperly charged for their PCR tests.

12. **Defendant Care Cube, LLC** is a New York limited liability company. Upon information and belief, Care Cube, LLC maintains twelve offices in Brooklyn, five offices in Queens, one office in the Bronx, and two offices in Manhattan, with its principal place of business located at 7404 5th Avenue, Brooklyn, NY 11209. The service of process name and address listed for Care Cube, LLC with the New York Department of State is THE LLC, 7404 5th Avenue, Brooklyn, 11209. According to documents it filed in a recently-settled action in the Eastern District of New York, *Fischler v. Care Cube, LLC d/b/a CareCube*, No. 1:21 Civ. 05549, which concerns claims regarding the accessibility of its website, <https://carecube.clinic/>, Care Cube, LLC's assumed or "doing business as" name (hereinafter "DBA name") is CareCube. See Exhibit A, Sittenreich Notice of Appearance, ECF No. 7, *Fischler v. Care Cube, LLC d/b/a CareCube*, No. 1:21 Civ. 05549 (E.D.N.Y.). On its website, <https://carecube.clinic/>, Care Cube, LLC advertises two types of COVID-19 testing: (1) "Rapid Testing," with results in as little as 30 minutes, and (2) "PCR Swab Testing," with results in 8–12 hours.

13. **Defendant CareCube LLC** is the DBA name for Defendants Care Cube, LLC, Niranjn K. Mittal, and Niranjn K. Mittal, Physician PLLC. It appears on letterhead and certain mail and email invoices sent to customers who obtained a COVID-19 test at a CareCube location, and lists the same address (7404 5th Avenue, Brooklyn, 11209), telephone number (718-439-5111), website domain (carecube.clinic) as Defendant Care Cube, LLC. Likewise, the invoices instruct customers to make checks payable to “CareCube LLC” and mail them to 7404 5th Avenue, Brooklyn, 11209.

14. **Defendant Carecube**, alternatively styled “CareCube,” “carecube,” or “Care Cube” is the DBA name for Defendants Care Cube, LLC, Niranjn K. Mittal, and Niranjn K. Mittal, Physician PLLC. It appears as the signatory and sender name in emails sent to customers who obtained COVID-19 tests, including Plaintiff Levine. It also appears as the sender name in invoices sent to such customers, including Plaintiff Levine, wherein its address (7404 5th Avenue, Brooklyn, 11209), telephone number (718-439-5111), and website domain (carecube.clinic) are the same as those of Defendant Care Cube, LLC. The same name, address, phone number and website also appear on lab results provided to customers who obtained a COVID-19 test, including Plaintiffs Schumacher and Cunningham, *see* Exhibits B–C, as well as claim reimbursement forms provided to customers, including Plaintiff Levine, as shown in the excerpted portion below:



15. **Defendant Niranjan K. Mittal, Physician, PLLC** is a New York professional service limited liability company. Filings with the New York Department of State list both “CARECUBE” and “CARE CUBE” as assumed names for Niranjan K. Mittal, Physician, PLLC.¹ The service of process name and address listed for Niranjan K. Mittal, Physician, PLLC with the New York Department of State is the same as that listed for Defendant Care Cube, LLC, namely THE LLC, 7404 5th Avenue, Brooklyn, 11209. It is listed on the header of the statement detailing a fictitious medical consultation provided to Plaintiff Boico after her COVID-19 test, along with the same address (7404 5th Avenue, Brooklyn, NY, 11209) and telephone number (718-439-5111) as Care Cube, LLC. Niranjan K. Mittal, Physician, PLLC, along with the same address, is also associated with the CLIA lab number (33D2211133) listed on lab results provided to customers who obtained COVID-19 testing through CareCube, including those provided to Plaintiffs Schumacher and Cunningham, *see* Exhibits B–C (showing CLIA lab number 33D2211133).

¹ Entity Assumed Named History for “Niranjan K. Mittal, Physician,” N.Y. DEP’T OF STATE, DIV. OF CORPS., <https://apps.dos.ny.gov/publicInquiry/#search> (type “Niranjan K. Mittal, Physician” in “EntityName” field, check all boxes in “Entity list” field, click “Search the Database” button, select returned result with ID # 2453101, and then click “Assumed Named History” tab).

16. **Defendant Niranjan K. Mittal, M.D.** is the principal and owner of Niranjan K. Mittal, Physician, PLLC. *See* Exhibit D. Defendant Mittal is listed as a co-signatory on the statement detailing a fictitious medical consultation provided to Plaintiff Boico after her COVID-19 test. Defendant Mittal also appears as the “Provider” in the insurance claim provided to Plaintiff Boico’s insurance, as shown herein:

Service Date	Patient	Provider	Billed	Patient Responsibility	My Payments
02/26/2021	Naomi	Niranjan K. Mittal	\$200.00	\$0.00	\$0.00

● Claim processed on 03/09/2021 [Download EOB \[PDF\]](#) 03/09/2021 [View Details](#)

Likewise, Defendant Mittal falsely appears as the “Service Provider” who provided “Medical Care” to Plaintiff Wildfong in connection with his COVID-19 test. *See* Exhibit E. Defendant Mittal operates out of and has previously been personally served on at least two occasions at the same address as Care Cube, LLC, namely 7404 5th Avenue, Brooklyn, NY 11209. *See* Exhibits F–G. According to press reports, he controls the operations of all CareCube sites, including its billing practices.²

17. **Defendants John Does 1 to 10** are CareCube management, employees, contractors, and investors who perpetrated the unlawful acts described herein and who will be identified and added as Defendants if discovery warrants doing so. Defendants John Does 1 to 10 directed, developed, substantially assisted in, or otherwise knew about CareCube’s misleading and deceptive practices and resulting complaints from consumers. Upon information and belief,

² Kevin T. Dugan, *The Dark Side of COVID Testing*, N.Y. MAG. INTELLIGENCER (updated Jan. 6, 2022), <https://nymag.com/intelligencer/2022/01/carecube-covid-testing-scam-accusations.html> (last visited Mar. 30, 2022).

Defendants John Does 1 to 10 acted with the goal and effect of exposing consumers to the deceptive and unlawful conduct challenged in this action.

18. Upon information and belief, all defendants named in this Complaint are controlled and operated by Niranjan K. Mittal, who exercises complete dominance over the corporate defendants, carries out the operations of the CareCube enterprise, and supervises, directs, and approves the conduct of John Does 1–10. Upon information and belief, Defendant Mittal oversaw and perpetrated the conduct challenged in this lawsuit individually and with the additional named Defendants operating as a single, unincorporated entity called “CareCube.” All Defendants are based out of the same Brooklyn address, 7404 5th Avenue, Brooklyn, NY 11209, use the same phone number and website, and have operated together and in concert to perpetrate the COVID-19 scheme detailed in this Complaint.

BACKGROUND

I. Healthcare Fraud and COVID-19 Scams

19. Medical fraud, and in particular COVID-19 testing scams, are rampant in America today. The National Health Care Anti-Fraud Association estimates that annual healthcare fraud accounts for 3–10% of total health care expenditures.³ In 2018, health care expenditures were approximately \$3.6 trillion, meaning a conservative estimate of the amount of medical fraud totaled **\$108 billion**.

³ *The Challenge of Health Care Fraud*, NAT’L HEALTH CARE ANTI-FRAUD ASS’N, <https://www.nhcaa.org/tools-insights/about-health-care-fraud/the-challenge-of-health-care-fraud/> (last visited Feb. 16, 2022).

20. Frauds related to COVID-19 are widespread and intensifying. The United States Food and Drug Administration,⁴ the United States Department of Health and Human Services Office of Inspector General,⁵ and the New York Department of Financial Services⁶ are among the many governmental bodies that have repeatedly cautioned the public about COVID-19 scams by issuing fraud alerts and seeking to dispel misinformation about coronavirus treatments and testing.

21. The United States Department of Justice (“DOJ”) has investigated COVID-19 scams. For example, on May 26, 2021, the DOJ announced criminal charges against 14 individuals for alleged participation in health care fraud schemes that took advantage of the COVID-19 pandemic.⁷

22. Media outlets have also reported specifically about COVID-19 scams that involve consumers being charged for fake doctor consultations in connection with supposedly free COVID-19 testing, and consumers hit with surprise medical bills following purportedly free testing.

⁴ *Beware of Fraudulent Coronavirus Tests, Vaccines and Treatments*, U.S. FOOD & DRUG ADMIN., <https://www.fda.gov/consumers/consumer-updates/beware-fraudulent-coronavirus-tests-vaccines-and-treatments> (last visited Mar. 30, 2022).

⁵ *Fraud Alert: COVID-19 Scams*, U.S. DEP’T OF HEALTH AND HUMAN SERVS. OFF. OF INSPECTOR GEN. (Feb. 2, 2022), <https://oig.hhs.gov/fraud/consumer-alerts/fraud-alert-covid-19-scams/> (last visited Mar. 30, 2022).

⁶ *Coronavirus-related Scams*, N.Y. STATE DEP’T OF FIN. SERVICES, <https://www.dfs.ny.gov/consumers/coronavirus/scams> (last visited Mar. 30, 2022).

⁷ *DOJ Announces Coordinated Law Enforcement Action to Combat Health Care Fraud Related to COVID-19*, U.S. DEP’T OF JUST. (May 26, 2021), <https://www.justice.gov/opa/pr/doj-announces-coordinated-law-enforcement-action-combat-health-care-fraud-related-covid-19> (last visited Mar. 30, 2022).

23. A Forbes article from June 2021 describes a similar scam as CareCube's, where a company charged consumers for bogus doctor consultations in connection with COVID-19 tests. The article notes that "healthcare fraud often involves complicit healthcare professionals **submitting fraudulent bills to insurers.**"⁸ The author details his personal experience with the type of scam perpetuated by CareCube: he was billed \$600, consisting of \$150 for his COVID-19 test, and \$450 for a "physician's 'consultation'" that never happened. The author's insurer paid \$150 for the COVID-19 test but left him on the hook for the remaining \$450.⁹

24. Similarly, Consumer Reports, a nonprofit consumer watchdog group, reports that consumers "are getting hit with surprise medical bills for COVID-19 testing that can be hundreds or thousands of dollars" and details the ways in which healthcare providers impose sneaky or fraudulent charges for tests that are supposed to be free.¹⁰

II. State and Federal Investigations Into CareCube's Illegal Practices

25. In August 2021, CBS New York ran a story that CareCube was being investigated in connection with claims that it was charging customers for COVID-19 tests that should have been free of charge.¹¹ As part of the story, CBS interviewed then-New York City Council Member Brad Lander, who had alerted the New York Attorney General about CareCube's scam

⁸ George Calhoun, *Covid-19 Testing 'Free With Insurance' – A New Form Of Health Care Fraud*, FORBES (June 3, 2021, 1:56 pm), <https://www.forbes.com/sites/georgecalhoun/2021/06/03/covid-19-testing-free-with-insurance-a-new-form-of-health-care-fraud/?sh=7f34762241ea> (last visited Mar. 30, 2022) (emphasis in original).

⁹ *Id.*

¹⁰ *How 'Free' Coronavirus Testing Has Become the New Surprise Medical Bill*, CONSUMER REPORTS (July 27, 2020), <https://www.consumerreports.org/coronavirus/how-free-coronavirus-testing-has-become-new-surprise-medical-bill-a5416417595/> (last visited Mar. 30, 2022).

¹¹ Cory James, *New York Clinic CareCube Accused of Adding Bogus Charges To Patients' Bill After Receiving COVID Test*, CBSNEWYORK (Aug. 31, 2021, 11:27 PM), <https://newyork.cbslocal.com/2021/08/31/CareCube-covid-test-charge/> (last visited Mar. 30, 2022).

and demanded an investigation of the company after his office received “dozens of calls from people alleging ‘deceptive and fraudulent practices of CareCube.’”¹²

26. On January 6, 2022, New York Attorney General Letitia James announced that her office was investigating CareCube over reports that the company was wrongfully billing New Yorkers for COVID-19 tests in its 20 locations.¹³ Noting that “CareCube and all COVID-19 test providers have a responsibility to be accurate and transparent in their billing process,” Attorney General James encouraged New Yorkers to contact her office if they felt they had been overcharged by CareCube.¹⁴

27. In an article published immediately following Attorney General James’ announcement, New York Magazine reported that CareCube had also been the subject of U.S. Department of Justice scrutiny.¹⁵

28. Attorney General James and multiple New York state legislators have since held a press conference in front of a Brooklyn CareCube office to discuss the rise of COVID-19-related consumer fraud and the need to pass the COVID-19 Fraud Accountability Act.¹⁶ In a pointed

¹² *Id.*

¹³ *CONSUMER ALERT: Attorney General James Launches Investigation Into CareCube for Wrongfully Billing New Yorkers for COVID-19 Tests*, N.Y. ATT’Y GEN. (Jan. 6, 2022), <https://ag.ny.gov/press-release/2022/consumer-alert-attorney-general-james-launches-investigation-carecube-wrongfully> (last visited Mar. 30, 2022); *see also* Katie Honan, *AG Probing CareCube, COVID Testing Company Accused of Excess Billing*, THE CITY (Jan. 6, 2022, 8:08 PM), <https://www.thecity.nyc/coronavirus/2022/1/6/22871301/carecube-covid-test-excess-billing-investigation> (last visited Mar. 30, 2022).

¹⁴ *Id.*

¹⁵ Dugan, *supra* n.2.

¹⁶ *See Senator Myrie, Attorney General Tish James and AM Nily Rozic: “Beware of COVID Fraud,”* N.Y. STATE SEN. ZELNOR MYRIE NEWSROOM (Mar. 4, 2022), <https://www.nysenate.gov/newsroom/press-releases/zelnor-myrie/senator-myrie-attorney-general-tish-james-and-am-nily-rozic> (last visited March 30, 2022).

statement, Attorney General James said: “It’s shameful that fraudsters have taken advantage of the pandemic to hurt New Yorkers.”¹⁷

STATEMENT OF FACTS

III. CareCube’s COVID-19 Testing Scheme

29. As set forth more fully below, CareCube’s testing scheme involves one or more of the following three overlapping elements.

A. CareCube Falsely Contributes To and Takes Advantage of Consumers’ Understanding that COVID-19 Tests Are Covered by Insurance

30. Through a number of misrepresentations and omissions on its website, and in conjunction with the statutory and regulatory framework surrounding COVID-19 testing, CareCube creates a false impression in consumers’ eyes that consumers will not have to pay for COVID-19 testing.

31. First, for much of the relevant period, CareCube’s website falsely advertised that for consumers wondering “Will my insurance cover this [COVID-19 testing]?” the answer was: “Yes! CareCube accepts most insurances for COVID-19 testing as per CDC guidelines.”

32. CareCube made this explicit promise that the test would be covered by most insurance providers until at least January 9, 2021 and potentially as late as April 12, 2021.¹⁸

¹⁷ *Id.*

¹⁸ In an apparent attempt to insulate itself from liability for its deceptive statements, sometime after January 2021, CareCube removed the statement that consumers’ insurance would pay for COVID-19 testing. Discovery is needed to uncover exactly when CareCube changed its website, but the Internet Archive Wayback Machine, which periodically captures and preserves website pages, has captured versions of CareCube’s website that include the false insurance statement as early as August 15, 2020 (the earliest captured version of the website) and as late as January 20, 2021. The next capture is dated April 12, 2021 and accordingly, this representation may have been on CareCube’s website until then. See Internet Archive Wayback Machine, <https://web.archive.org/web/20200815100843/https://CareCube.clinic/> (Aug. 15, 2020) (last visited Feb. 16, 2022); Internet Archive Wayback Machine, <https://web.archive.org/web/20210109232423/https://carecube.clinic/> (Jan. 20, 2021) (last visited Feb. 16, 2022).

33. Even after CareCube removed this misrepresentation, its website continued to deceptively advertise and falsely reassure customers that “your insurance plan must cover diagnostic COVID-19 testing without patient cost sharing whether you are asymptomatic or symptomatic and/or do not have a confirmed exposure,” and whether consumers’ insurance is in-network or out-of-network.

34. CareCube’s website also includes a chat bot that provides responses to prewritten prompts about its services. One prewritten prompt reads: “Is COVID testing free?” The bot’s deceptive response likewise reassures insured customers that they will not have to pay for testing: “Plans and issuers must provide coverage without imposing any cost-sharing requirements (including deductibles, copayments, and coinsurance), prior authorization, or other medical management requirements for COVID-19 diagnostic testing of asymptomatic individuals when the purpose of the testing is for individualized diagnosis or treatment of COVID-19.”

35. CareCube’s website also provides conflicting and vague information regarding the cost of testing. On information and belief, for consumers whose tests are not covered by health insurance, CareCube inflates the cost of COVID-19 tests higher than the price listed on its website.

36. From at least August 15, 2020 through at least October 22, 2020, CareCube’s website stated that for consumers without insurance, “[f]or swab/antigen testing, out of network costs are \$125 for specimen processing and consultation. For antibody testing, out of network costs are \$75 for specimen processing and consultation fee.”¹⁹ No later than November 9, 2020,

¹⁹ Internet Archive Wayback Machine, <https://web.archive.org/web/20200815095842/https://carecube.clinic/covid-19-testing/> (Aug. 15, 2020) (last visited Feb. 16, 2022); Internet Archive Wayback Machine,

CareCube added to the end of this statement that “[f]or PCR Swab/Saliva testing, out of network costs are \$200 for specimen processing and consultation fee,” which remained on CareCube’s website through at least January 20, 2021.²⁰ Contrary to these representations on its website, CareCube often charged consumers more than \$200 for COVID-19 tests.

37. Second, in March 2020, Congress passed both the Families First Coronavirus Response Act (“Families First Act”), which forbade health insurers from charging co-payments or applying deductibles to coronavirus tests and other items and services furnished during the doctor visit,²¹ and the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which created rules for out-of-network COVID-19 tests, providing that those too be covered at no cost to consumers.²² The Families First Act and CARES Act, and the resulting availability of free COVID-19 testing for insured individuals, were widely reported on by the news media.²³

<https://web.archive.org/web/20201022083204/https://carecube.clinic/covid-19-testing/> (Oct. 22, 2020) (last visited Feb. 16, 2022).

²⁰ Internet Archive Wayback Machine, <https://web.archive.org/web/20201109032813/https://carecube.clinic/covid-19-testing/> (Nov. 9, 2020) (last visited Feb. 16, 2022); Internet Archive Wayback Machine, <https://web.archive.org/web/20210120120839/https://carecube.clinic/covid-19-testing/> (Jan. 20, 2021) (last visited Feb. 16, 2022).

²¹ Families First Coronavirus Response Act, Pub. Law No. 116-127 (2020).

²² Coronavirus Aid, Relief, and Economic Security Act, Pub. Law No. 116-136 (2020).

²³ See, e.g., Claire Foran and Ted Barrett, *Trump signs coronavirus relief legislation into law*, CNN.COM (Mar. 19, 2020, 6:55 AM), <https://www.cnn.com/2020/03/18/politics/coronavirus-congress-relief-senate-house/index.html> (“President Donald Trump on Wednesday signed into law a coronavirus relief package that includes provisions for free testing for Covid-19”) (last visited Mar. 30, 2022); Reed Abelson, *Now That Coronavirus Tests Are Free, Some Insurers Are Waiving Costs for Treatment*, N.Y. TIMES (Mar. 19, 2020), <https://www.nytimes.com/2020/03/19/health/coronavirus-tests-bills.html> (last visited Mar. 30, 2022).

38. A reasonable person would expect that CareCube's provision of COVID-19 testing was in compliance with both acts and that obtaining a test with health insurance would not result in any charges or copays.

39. Thus, CareCube takes advantage of customers' reasonable expectation that they will not have to pay for COVID-19 tests and fails to disclose—on its website or in its testing centers—that customers will instead be forced to pay for phony doctor consultations or “office visits,” and that CareCube will extract upfront payments from them under the false pretense that customers will be reimbursed by their health insurance, as detailed below.

B. CareCube Charges Consumers for Phony Doctor Consultations

40. CareCube charges customers who obtain a COVID-19 test at CareCube for a supposed testing-related doctor consultation or “office visit.” The charge is fraudulent, as CareCube does not actually provide any kind of doctor consultation in connection with its provision of COVID-19 testing.

41. Moreover, at no point does CareCube inform customers that they will be required to undergo or be charged for a doctor consultation in connection with their COVID-19 test. This fact is not disclosed by CareCube's employees or by CareCube's website bot. Likewise, this fact is nowhere disclosed on CareCube's website or in its advertising. Indeed, CareCube advertises on its website that it provides “Affordable Healthcare Around the Corner,” which any reasonable consumer would understand means healthcare that does not include surprise charges for phony (and unnecessary) doctor consultations.

42. Upon information and belief, CareCube imposes such phony doctor consultation charges on both insured and uninsured consumers, often through surprise bills sent directly to

customers weeks after their tests were performed and/or through false summaries of patient visits sent to health insurers.

43. CareCube customers' health insurers do not always pay for these phony doctor consultations, and as a result, customers are left on the hook for hundreds of dollars or more in charges for a service that CareCube did not provide.

C. CareCube Extracts Upfront Fees From Customers Under False Pretenses

44. CareCube extracts from insured customers a surprise upfront fee for COVID-19 tests by falsely claiming the fee will be reimbursed by customers' health insurers.

45. Customers who go to CareCube for a COVID-19 test are asked for proof of insurance before they obtain their test. CareCube then falsely tells insured customers that CareCube is unable to contact their health insurer (or provides another false explanation) and that it will therefore need to charge consumers for the COVID-19 test upfront at the time of testing. CareCube often assures customers that their health insurer will reimburse most or all of the upfront costs, and falsely claims that the customer will receive reimbursement at that time. Reasonable consumers have no reason to believe that CareCube is lying.

46. Upon information and belief, the employees carrying out CareCube's scheme do so in a uniform manner and pursuant to CareCube company policy.

47. CareCube does not inform customers that they will be assessed an upfront charge for their COVID-19 test prior to presenting them with the surprise upfront charge.

48. Nowhere on CareCube's website or in its advertising does CareCube disclose that it will impose an upfront charge on insured consumers for COVID-19 testing. Likewise, CareCube's website bot does not disclose that CareCube will charge an upfront fee to consumers for COVID-19 testing.

49. To the contrary, the Patient Information Form provided to customers visiting CareCube's Park Slope location in Brooklyn states the following: "if we are uncertain whether or not your insurance will cover the costs of testing, we will not collect any upfront fee, co-payment, co-insurance or deductible from you at the time of service, and CareCube will submit a claim for reimbursement to your insurer."²⁴ Upon information and belief, CareCube provides a substantially similar Patient Information Form to all CareCube customers at all locations.

50. Contrary to the representation on its Patient Information Form, CareCube does in fact charge consumers upfront for COVID-19 testing—and then fails to provide reimbursement for the fee.

51. After deceiving consumers into paying an upfront fee, CareCube either obtains reimbursement from health insurers but fails to reimburse the customer, or simply fails to submit the necessary paperwork for customers' COVID-19 tests to their health insurers, in both cases retaining the customer's money.

52. Any reasonable consumer would understand CareCube's misrepresentations and omissions regarding insurance and COVID-19 testing, including those on CareCube's website, from CareCube's bot and its employees, and in its Patient Information Form, to mean that CareCube would not be imposing any fees, let alone an upfront fee for their COVID-19 test.

53. Additionally, reasonable consumers would understand CareCube's provision of COVID-19 testing to be in compliance with the widely publicized statutory and regulatory framework, which prohibits cost sharing, such as assessment of copays or deductibles from

²⁴ *CareCube Patient Information Form (153 Park Slope) COVID-19 Antibody/Swab Test*, <https://hipaa.jotform.com/220366843654157/prefill/620347469cd25046dc7216e10d0f> (last visited Mar. 30, 2022).

insured customers, and would assume that CareCube would not spring a surprise upfront charge on them for COVID-19 testing.

IV. Consumers Would Not Get Their COVID-19 Tests from CareCube If They Knew the Truth Regarding Its Billing Practices

54. If consumers knew the truth about CareCube's scheme, they would use a different COVID-19 testing provider that would not charge them for phony doctor consultations, would not deceive them into paying upfront fees, would not retain reimbursements paid for their health insurers, and would properly bill their health insurers for their COVID-19 tests. Reasonable consumers would seek a COVID-19 testing provider that has honest and properly disclosed billing practices.

55. Thus, CareCube's statements and omissions with respect to its COVID-19 testing are materially misleading because consumers do not receive an honest price, do not receive honest disclosures about charges they will be responsible for, and are billed for phony doctor consultations. CareCube failed and fails to disclose these material facts to its customers.

56. CareCube's statements and omissions regarding its COVID-19 testing are materially misleading, as the most important consideration for any reasonable consumer when choosing where to obtain a routine medical test is the price. No reasonable consumer who knows the truth about CareCube's dishonest billing practices would choose CareCube for COVID-19 testing.

57. Reasonable consumers, based on the statements on CareCube's website and general knowledge of the statutory and regulatory framework in concert with widespread media coverage about COVID-19 testing, would expect their COVID-19 testing to be paid for by their health insurer and not to be charged for phony doctor consultations.

58. CareCube knows full well that it bills consumers for false doctor consultations, deceives consumers into paying upfront fees, and otherwise uses dishonest billing practices to extract payments from consumers it would not otherwise receive. The misrepresentations and omissions CareCube makes with regard to its COVID-19 testing services are made for the sole purpose of inducing consumers to use CareCube for COVID-19 testing and services so that it can reap outrageous profits to the direct detriment of New York consumers without regard to the consequences high medical bills cause such consumers. As such, CareCube's actions are actuated by actual malice or accompanied by wanton and willful disregard for consumers' well-being.

59. As a result of CareCube's deceptive practices and false advertising, New York consumers are being fleeced out of millions of dollars through fraudulent charges.

V. Media Coverage and Consumer Complaints About CareCube's Deceptive Scheme

60. CareCube's fraudulent billing practices have been reported on by a number of New York media outlets.

61. On August 15, 2021 digital news platform THE CITY, an independent outlet that reports on local news, published a story about the "dozens of customers . . . who say they feel deceived after receiving bills in connection with coronavirus tests they'd sought at CareCube."²⁵ These complaints reported on by THE CITY follow the same pattern alleged here, with customers believing the tests would be free and instead being confronted by surprise bills for phony doctor visits or forced to pay upfront charges or copays.²⁶

²⁵ Ibrahim Naber, *Surprise COVID Test Bills Prompt Complaint to NY Attorney General*, THE CITY (Aug. 16, 2021, 9:17 PM), <https://www.thecity.nyc/coronavirus/2021/8/16/22628105/surprise-covid-test-bills-attorney-general-complaint> (last visited Mar. 30, 2022) (emphasis added).

²⁶ *Id.*

62. On August 31, 2021, CBS New York also aired a segment on CareCube's profiteering, noting "numerous complaints" on the popular website Reddit, as well as complaints with the Better Business Bureau ("BBB").²⁷ Again, the reporting notes the same pattern of customers' expectation of tests being free and CareCube instead adding made-up charges for bogus "office visits" and extracting costly upfront fees.

63. On January 6, 2022, New York Magazine published an online article based on interviews with CareCube customers who had fallen prey to the same scam alleged herein as well as with multiple former CareCube employees who say "the company crossed the line by purposely lying to insurers and customers . . . in order to charge them unnecessary payments," and using "complicated billing procedures to exploit little-known exemptions in federal law [in order to] charge[] both [customers and insurers] for the same test," and that "the company's management has been aware of the persistent double-billing complaints, with some going back over a year."²⁸ The article also notes that the company "would hear about 30 complaints a day about over- and double billing."²⁹

64. Indeed, a growing number of consumer complaints closely mirroring Plaintiffs' allegations herein are also evident on websites such as TripAdvisor and the BBB.

65. One review on TripAdvisor, titled "This Place is a SCAM – Classic Bait and Switch," explains that the consumer called CareCube and was told that CareCube accepted his insurance and would charge \$100 for a COVID-19 test, only to tell him in person that "the policy had changed" and he would now owe \$225. Making this bait-and-switch even worse, CareCube

²⁷ James, *supra* n.11.

²⁸ Dugan, *supra* n.2.

²⁹ *Id.*

once again jacked up the price of the test when submitting the claim to the consumer's insurance provider, this time charging \$350 for the COVID-19 test.³⁰

66. The BBB's website—which gives CareCube an “F” rating and lists an average customer rating of 1.06 stars on a scale of 1 to 5—has numerous reviews and complaints about CareCube's deceptive billing practices.

67. Consumers on the BBB's website repeatedly state that CareCube unexpectedly charged the for “office visits” and upfront fees, and then also double-billed or wrongly billed their insurers for their COVID-19 tests.³¹

68. One consumer on the BBB's website reports that even though their health insurer was listed on CareCube's website as covering the costs of testing, CareCube nevertheless charged them a \$175 upfront fee, and all efforts to obtain a reimbursement have fallen on deaf ears.³²

69. Another consumer on the BBB's website says that they received two separate PCR tests for COVID-19 that were not sent to their health insurer and CareCube is now billing the consumer directly for the tests.³³

³⁰ *This place is a SCAM – Classic Bait and Switch*, TRIPADVISOR (July 29, 2021), https://www.tripadvisor.com/ShowUserReviews-g60763-d22953703-r800569407-CareCube-New_York_City_New_York.html (last visited Mar. 30, 2022).

³¹ *Better Business Bureau CareCube Complaints*, <https://www.bbb.org/us/ny/brooklyn/profile/health/CareCube-0121-87144502/complaints> (last visited Mar. 30, 2022); *Better Business Bureau CareCube Customer Reviews*, <https://www.bbb.org/us/ny/brooklyn/profile/health/CareCube-0121-87144502/customer-reviews> (last visited Mar. 30, 2022).

³² *Id.*

³³ *Id.*

70. Other consumers on the BBB's website explain that they were told by their health insurer that the health insurer paid CareCube for the consumers' COVID-19 testing, but the consumers continued to receive bills from CareCube for the same test, with, in at least one instance, CareCube charging the two parties "\$900 for 1 Covid-19 swab."³⁴

71. Many consumers on the BBB's website accuse CareCube of "scamming people," sending "fraudulent" bills, and having "dishonest, misrepresented and exorbitant" billing policies.

VI. Named Plaintiffs' Experience With CareCube's Unlawful Billing Practices

72. Plaintiffs' experience with CareCube is consistent with the many complaints about CareCube voiced in media reports and on consumer websites.

Plaintiffs Sabine Schumacher and Linda Cunningham

73. Plaintiffs Schumacher and Cunningham had planned a trip to Europe, departing Monday, June 28, 2021, and needed negative COVID-19 tests to be allowed to travel. On Saturday, June 26, 2021, Plaintiff Schumacher found out online that CareCube was open on the weekend, so Plaintiffs Schumacher and Cunningham went to CareCube that same day in order to receive their COVID-19 test results in time to travel. Ms. Schumacher's and Ms. Cunningham's understanding was that COVID-19 tests were free of charge.

74. CareCube employees did nothing to disabuse them of this notion. At the CareCube location, an employee for Defendants told Plaintiffs Schumacher and Cunningham that CareCube could not reach their health insurer and that they therefore had to pay the full amount for two tests upfront for a total of \$450. But CareCube explicitly assured Plaintiffs Schumacher and Cunningham before they received their COVID-19 tests that their insurance

³⁴ *Id.*

would reimburse this cost. Plaintiffs Schumacher and Cunningham believed CareCube's representations, got their COVID-19 tests, and proceeded to travel to Europe.

75. CareCube never informed Plaintiffs Schumacher and Cunningham that a doctor consultation would be necessary in order to obtain the test, and Plaintiffs Schumacher and Cunningham did not receive a doctor consultation from a CareCube physician at any point in connection with their COVID-19 tests.

76. When Plaintiffs Schumacher and Cunningham returned from Europe, they discovered that neither CareCube nor their insurer had refunded their money. Plaintiffs Schumacher and Cunningham called their insurer and were told that the insurer had paid CareCube the \$225 for a COVID-19 test plus a doctor consultation for Plaintiff Schumacher. Plaintiffs Schumacher and Cunningham have not received any documents from their insurer.

77. Plaintiff Schumacher called CareCube and was told CareCube had paperwork supposedly proving that Plaintiff Schumacher had a doctor consultation instead of a COVID-19 test and that that was what her \$225 charge was for. CareCube has not provided Plaintiffs with this purported "proof" and when Plaintiff Cunningham spoke on the phone with CareCube about the charges and the supposed doctor consultation, the CareCube representative failed to provide any information and was unhelpful and rude to the point that Plaintiff Cunningham gave up in frustration.

78. The only documents Plaintiffs Schumacher and Cunningham received from CareCube about their COVID-19 tests are (a) reports showing their negative PCR COVID-19 test results, which show that they both obtained COVID-19 tests at CareCube's facility on the date in question and do not include any information about a doctor consultation, attached hereto as Exhibits B-C, and (b) a receipt from CareCube for \$450, that describes the services Plaintiffs

Schumacher and Cunningham received as “Pcr x 2” with no mention of a doctor consultation, attached hereto as Exhibit H.

79. Plaintiff Schumacher’s \$225 charge was eventually refunded by CareCube in or around November 2021. Plaintiff Cunningham has not been refunded.

80. CareCube’s misstatements and omissions caused injury to Plaintiffs Schumacher and Cunningham because they believed that they were paying for COVID-19 PCR tests, not a phony doctor consultation, and they believed that their insurance would reimburse them for this charge. Plaintiffs Schumacher and Cunningham would not have used CareCube for their COVID-19 tests but for CareCube’s false misrepresentations. Had Plaintiffs Schumacher and Cunningham known that CareCube would bill them and their health insurer for a phony doctor consultation, and that they would not be reimbursed what they paid, they would not have made the decision to get COVID-19 testing from CareCube. Plaintiffs Schumacher and Cunningham were injured accordingly when they paid for their COVID-19 tests.

Plaintiff Adam Levine

81. On multiple occasions during 2021, including January 19, 2021, April 25, 2021, April 28, 2021, May 2, 2021, May 14, 2021, June 11, 2021, and July 28, 2021, Plaintiff Adam Levine’s young children were brought to CareCube locations in Brooklyn Heights and Bay Ridge to receive COVID-19 tests.

82. Plaintiff Levine was told by CareCube that it would not accept his insurance for children and that he would have to pay out-of-pocket for his children’s COVID-19 tests. The price he was quoted at different times varied between \$100 and \$250. Plaintiff Levine proceeded with the tests with the understanding that his insurance company UnitedHealthcare would reimburse him for the outlay.

83. CareCube never informed Plaintiff Levine that a doctor consultation would be necessary in order to obtain the COVID-19 tests.

84. Before Plaintiff Levine's minor children were given their COVID tests, they were brought into a room where they were asked for their height and weight and had their temperatures taken. On some visits, they spoke to an individual on a video screen who asked why they were getting COVID-19 tests.

85. Plaintiff Levine struggled to receive reimbursement for the COVID-19 tests from his insurance company. Eventually, he spoke to someone at the insurance company who told him that the insurance company would not be reimbursing him because the insurance company had already reimbursed CareCube. Surprised by this, Plaintiff Levine contacted CareCube and sought reimbursement from CareCube.

86. Plaintiff Levine also noticed in his insurance company statements that in addition to billing his insurance company for COVID-19 tests, CareCube also billed his insurance company for phony doctor consultations of 10–19 minutes or 20–29 minutes even though no such doctor consultations took place, he was never informed that any doctor consultations would be required or would be or were performed, and even though his children were brought to CareCube only for COVID-19 testing and never requested or agreed to any doctor consultations.

87. For a visit on July 28, 2021, CareCube informed Plaintiff Levine's insurance company that he was being charged \$100 for his 6 year-old daughter Sydney's office visit and provided a diagnosis code that indicated that she was "[e]ducated about 2019 novel coronavirus infection" even though that was not the case. Attached as Exhibit I is CareCube's Claim Reimbursement Request Information for Sydney Levine's July 28, 2021 \$100 charge.

88. Upon information and belief, CareCube has not fully reimbursed Plaintiff Levine, having sent him repayment for some, but not all, of his children's CareCube visits.

89. CareCube's misstatements and omissions caused injury to Plaintiff Levine because he believed that he was paying for COVID-19 tests, not phony doctor consultations, and he believed that his insurance would reimburse him for the accompanying charges. Plaintiff Levine would not have used CareCube for his children's COVID-19 tests but for CareCube's misrepresentations and omissions. Had Plaintiff Levine known that CareCube would not only seek reimbursement for the COVID-19 tests for which they had also charged him, but also bill his health insurer for a phony doctor consultation that he never requested or agreed to, and that he would not be reimbursed in the amount that he paid by either the insurer or CareCube, he would not have made the decision to have his children get COVID-19 testing from CareCube. Plaintiff Levine was accordingly injured when he paid for his children's COVID-19 tests and associated phony doctor visits from CareCube.

Plaintiffs Jacob Wildfong and Naomi Boico

90. Plaintiffs Jacob Wildfong and Naomi Boico went to a CareCube location in Brooklyn to receive PCR tests on February 26, 2021. While waiting in line, a CareCube employee collected Plaintiff Wildfong's and Plaintiff Boico's identification and insurance cards and did the same for others who were waiting in line. While standing in line for hours waiting for their COVID-19 tests, Plaintiffs Wildfong and Boico observed other consumers being turned away because CareCube told them that CareCube did not accept Medicare or Medicaid notwithstanding CareCube's website saying otherwise.

91. When Plaintiff Wildfong arrived at the CareCube front desk, he was first told by a CareCube employee that CareCube did not take his insurance. When asked how much the

COVID-19 test would cost out-of-pocket, the CareCube employee then said that CareCube actually would take his insurance but that Plaintiff Wildfong would have to pay a \$25 copay. Plaintiff Wildfong paid the \$25 and received a receipt that stated that the receipt was for a co-pay and that there would be no refunds. Plaintiff Wildfong then received his PCR test.

92. CareCube never informed Plaintiff Wildfong that a doctor consultation would be necessary in order to obtain the COVID-19 test, and Plaintiff Wildfong did not receive a doctor consultation from a CareCube physician at any point in connection with his COVID-19 test.

93. Afterwards, when reviewing his insurance statement, Plaintiff Wildfong observed that CareCube charged his insurer \$100 for the PCR test through Quest Diagnostics. That statement is attached hereto as Exhibit J. Plaintiff Wildfong also saw that his insurance company showed a \$200 charge for a doctor visit with Niranjana Mittal, someone who Plaintiff Wildfong had never met or spoken to. *See* Exhibit E. The insurance company statements said nothing about Plaintiff Wildfong having paid a \$25 copay.

94. CareCube's misstatements and omissions caused injury to Plaintiff Wildfong because he was led to believe that he was paying a valid copay for a COVID-19 test, not a phony doctor consultation. Plaintiff Wildfong would not have used CareCube for his COVID-19 test but for CareCube's misrepresentations and omissions. Had Plaintiff Wildfong known that CareCube would bill his health insurer for a phony doctor consultation and that he would be charged \$25 out-of-pocket in connection with that phony doctor consultation, he would not have made the decision to get COVID-19 testing from CareCube. Plaintiff Wildfong was accordingly injured when he paid CareCube \$25.

95. As for Plaintiff Boico, a CareCube employee told her that she would have to pay a \$150 copay for a COVID-19 test. Plaintiff Boico said that did not sound right to her, but the CareCube employee charged her credit card \$150 anyway.

96. CareCube never informed Plaintiff Boico that a doctor consultation would be necessary in order to obtain the COVID-19 test, and Plaintiff Boico did not receive a doctor consultation from a CareCube physician at any point in connection with her COVID-19 test.

97. Plaintiff Boico was then led into a separate room where a woman asked for her height and weight and then directed her to another room where she received her COVID-19 test.

98. After leaving the CareCube office, Plaintiff Boico called CareCube's customer service to ask why she was charged \$150. A CareCube employee said that they did not know why Plaintiff Boico was charged \$150. Plaintiff Boico then notified CareCube, her bank, and her insurance company that she had been improperly charged \$150. Her bank subsequently refunded her the \$150 on March 8, 2021.

99. Nonetheless, CareCube sent a bill to Plaintiff Boico for \$108.95, claiming that the charge was for a doctor visit. When Plaintiff Boico called CareCube to figure out what the bill was for, a CareCube employee told Plaintiff Boico that CareCube charged her insurance company \$200 but that the insurance company was only covering \$91.05 and that she thus owed CareCube \$108.95. When Plaintiff Boico asked for her records and an explanation of the bill, CareCube initially refused to provide her with anything.

100. Plaintiff Boico thereafter contacted her insurance company which notified her that the insurance company was actually covering the full \$200 charge for the phony doctor visit along with the \$125 she was charged for the COVID-19 test.

101. Plaintiff Boico has since attempted numerous times over the phone to get CareCube to remove the \$108.95 charge, explaining that her insurance company has already made full payment, but CareCube has continued to insist on payment. CareCube has even threatened to send the \$108.95 bill to a debt collector.

102. Additionally, CareCube provided Plaintiff Boico with a statement with the header “Niranjan K Mittal, Physician, PLLC” that identifies her nurse as Hadleigh Glist, NP and a referring physician as Chandra Kucham. Plaintiff Boico has never heard of or met with either individual. Disconcertingly, the statement includes personal and false information about Plaintiff Boico that she did not provide to CareCube. For example, the statement says “Patient denies depression,” which is false. Numerous other “Patient denies ____” appear in the statement even though Plaintiff Boico did not speak with anyone at CareCube about those topics. The statement also indicates that she had a 117 mm/73 Hg blood pressure even though Plaintiff Boico has no recollection of her blood pressure being examined. Plaintiff Boico suffers from elevated blood pressure and does not believe that reading would have been accurate even if her blood pressure had, in fact, been checked. The statement indicates that Plaintiff Boico was seen by Hadleigh Glist, NP, who signed the statement, and it is co-signed by Niranjan Mittal, MD, who Plaintiff Boico has never met.

103. CareCube’s misstatements and omissions caused injury to Plaintiff Boico because she was improperly charged a copay for a phony doctor consultation when she only received a COVID-19 test. Plaintiff Boico would not have used CareCube for her COVID-19 test but for CareCube’s misrepresentations and omissions. Had Plaintiff Boico known that CareCube would bill her health insurer for a phony doctor consultation and that she would be charged in connection with that phony doctor consultation, she would not have made the decision to get

COVID-19 testing from CareCube. Plaintiff Boico was accordingly injured when she paid \$150 to CareCube.

104. Defendants' violations of N.Y. GEN. BUS. LAW § 349 and N.Y. GEN. BUS. LAW § 350 and the common law are applicable to all members of the Class, and Plaintiffs are entitled to have Defendants enjoined from engaging in illegal and deceptive conduct in the future.

CLASS ALLEGATIONS

105. Plaintiffs sue on their own behalf and on behalf of a Class for damages and injunctive relief under CPLR § 901, *et seq.*

106. The Class is preliminarily defined as follows:

All consumers who obtained COVID-19 testing from CareCube at any point from January 1, 2020 to the present.

Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment.

107. Excluded from the Class are any officer, director, legal representative, predecessor, successor, or assignee of Defendants, and any members of the immediate families of the officers and directors of Defendants. Also excluded is any judge, justice or judicial officer presiding over this action.

108. This action is properly maintainable as a class action. In accordance with CPLR § 901(a)(1), the proposed Class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable.

109. In accordance with CPLR § 901(a)(2), there are questions of law or fact common to all Class Members that predominated over any questions affecting only individual members. Specifically, the common questions of fact and law include:

- a. whether Defendants' conduct violates N.Y. GEN. BUS. LAW § 349;

- b. whether Defendants' conduct violates N.Y. GEN. BUS. LAW § 350;
- c. whether Defendants defrauded the Class;
- d. whether Defendants were unjustly enriched by its conduct;
- e. whether class members have been injured by Defendants' conduct;
- f. whether, and to what extent, equitable relief should be imposed on Defendants to prevent them from continuing its unlawful practices; and
- g. the extent of class-wide injury and the measure of damages for those injuries.

110. In accordance with CPLR § 901(a)(3), Plaintiffs' claims are typical of those of the proposed Class because Plaintiffs' claims are based upon the same facts and circumstances (practice or course of conduct) that gives rise to the claims of the other class members and based upon the same legal theories.

111. In accordance with CPLR § 901(a)(4), Plaintiffs can adequately and fairly represent the Class. No conflict of interest exists between Plaintiffs and class members because Defendants' alleged conduct affected them similarly.

112. Moreover, pursuant to CPLR § 901(a)(4), Plaintiffs and their chosen attorneys are familiar with the subject matter of the lawsuit and have full knowledge of the allegations contained in this Complaint so as to be able to assist in its prosecution. In addition, Plaintiffs' attorneys are competent in the areas of law relevant to this Complaint and have sufficient experience and resources to vigorously represent the class members and prosecute this action.

113. In accordance with CPLR § 901(a)(5), a class action is superior to any other available method for adjudicating this controversy. The proposed Class is the surest way (i) to fairly and expeditiously compensate so large a number of injured persons that constitute the Class, (ii) to keep the courts from being inundated by dozens or hundreds of repetitive cases, and

(iii) to reduce transactions costs so that the injured class members can obtain the most compensation possible. Accordingly, class treatment presents a superior mechanism for fairly resolving similar issues and claims without repetitious wasteful litigation.

CLAIMS FOR RELIEF

COUNT I

(Violation of New York General Business Law § 349)

114. Plaintiffs incorporate by reference the preceding allegations as if fully set forth herein, and further allege as follows:

115. Plaintiffs bring this claim under N.Y. GEN. BUS. LAW § 349 on their own behalf and on behalf of each member of the Class.

116. N.Y. GEN. BUS. LAW § 349 prohibits “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state.”

117. The acts of Defendants described herein are consumer-oriented in that they are directed at members of the consuming public.

118. The misrepresentations and false, deceptive, and misleading statements and omissions of Defendants with respect to the prices and services it charges consumers for in conjunction with its provision of COVID-19 testing as described above, constitute deceptive acts and practices in the conduct of business, trade, or commerce or in the furnishing of a service in violation of the New York General Business Law.

119. As described above, Defendants have violated and continue to violate N.Y. GEN. BUS. LAW § 349 by:

- a. falsely advertising—and taking advantage of the fact that customers reasonably believe—that COVID-19 tests will be covered by insurance, and failing to disclose otherwise;

- b. springing surprise charges on customers for unnecessary and phony doctor consultations or “office visits” it falsely claims took place alongside or, in some cases, instead of the COVID-19 test the customer actually obtained; and/or
- c. extracting an upfront testing fee from insured customers by falsely claiming the fee will be reimbursed once their health insurers cover the charge, and then failing to reimburse the customers either because CareCube pockets the reimbursement or never obtains it.

120. Defendants fail to inform customers that obtaining COVID-19 tests from CareCube is not free and that CareCube instead adds charges for undisclosed and phony doctor consultations, and misleads consumers into paying upfront costs for testing, pockets reimbursements from health insurers in connection with COVID-19 testing, and fails to submit the necessary paperwork to health insurers for reimbursement. That information would have been material to any consumer deciding whether to purchase COVID-19 tests from Defendants.

121. The aforementioned acts are willful, unfair, unconscionable, deceptive, and contrary to the public policy of New York, which aims to protect consumers.

122. As a direct and proximate result of Defendants’ unlawful deceptive acts and practices, Plaintiffs and the Class have suffered injury and monetary damages in an amount to be determined at the trial of this action. Plaintiffs do not seek to recover on their own behalf or on behalf of the members of the Class any penalties or minimum measures of recovery provided by N.Y. GEN. BUS. LAW § 349.

123. Plaintiffs and the other members of the Class suffered an ascertainable loss caused by CareCube’s misrepresentations and omissions because they would not have chosen to use CareCube for COVID-19 testing if the true facts concerning CareCube’s billing practices had been known.

124. Plaintiffs and the other members of the Class further seek equitable relief against Defendants. Pursuant to N.Y. GEN. BUS. LAW § 349, this Court has the power to award such relief, including but not limited to, an order declaring Defendants' practices as alleged herein to be unlawful, an order enjoining Defendants from undertaking any further unlawful conduct, and an order directing Defendants to refund to Plaintiffs and the Class all amounts wrongfully assessed, collected, or withheld.

COUNT II

(Violation of N.Y. General Business Law § 350)

125. Plaintiffs incorporate by reference the preceding allegations as if fully set forth herein, and further allege as follows:

126. Plaintiffs bring this claim under N.Y. GEN. BUS. LAW § 350 on their own behalf and on behalf of each member of the Class.

127. N.Y. GEN. BUS. LAW § 350 prohibits “[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state.”

128. The misrepresentations and omissions and false, deceptive, and misleading advertisements of Defendants with respect to the prices and services they charge consumers in conjunction with their provision of COVID-19 testing as described above, constitute false advertising in the conduct of business, trade, or commerce or in the furnishing of a service in violation of the New York General Business Law.

129. As described above, Defendants have violated and continue to violate N.Y. GEN. BUS. LAW § 350 by:

- a. falsely advertising – and taking advantage of the fact that consumers reasonably believe—that COVID-19 tests will be covered by insurance, and failing to disclose otherwise;

- b. springing surprise charges on customers for unnecessary and phony doctor consultations or “office visits” it falsely claims took place alongside or, in some cases, instead of the COVID-19 test the customer actually obtained; and/or
- c. extracting an upfront testing fee from insured customers by falsely claiming the fee will be reimbursed once their health insurers cover the charge, and then failing to reimburse the customers either because CareCube pockets the reimbursement or never obtains it.

130. Defendants fail to inform customers that obtaining COVID-19 tests from CareCube is not free and that CareCube instead adds charges for phony doctor consultations, and misleads consumers into paying upfront costs for testing, pockets reimbursements from health insurers in connection with COVID-19 testing, and fails to submit the necessary paperwork to health insurers for reimbursement. That information would have been material to any consumer deciding whether to purchase COVID-19 tests from Defendants.

131. The aforementioned acts are willful, unfair, unconscionable, deceptive, and contrary to the public policy of New York, which aims to protect consumers.

132. As a direct and proximate result of Defendants’ unlawful deceptive acts and practices, Plaintiffs and the Class have suffered injury and monetary damages in an amount to be determined at the trial of this action. Plaintiffs do not seek to recover on their own behalf or on behalf of the members of the Class any penalties or minimum measures of recovery provided by N.Y. GEN. BUS. LAW § 350.

133. Plaintiffs and the other members of the Class suffered an ascertainable loss caused by Defendants’ false advertisements because they would not have chosen to use CareCube for COVID-19 testing if the true facts concerning their billing practices had been known.

134. Plaintiffs and the other members of the Class further seek equitable relief against Defendants. This Court has the power to award such relief, including but not limited to, an order

declaring Defendants' practices as alleged herein to be unlawful, an order enjoining Defendants from undertaking any further unlawful conduct, and an order directing Defendants to refund to Plaintiffs and the Class all amounts wrongfully assessed, collected, or withheld.

COUNT III

(Common Law Fraud)

135. Plaintiffs incorporate by reference the preceding allegations as if fully set forth herein, and further allege as follows:

136. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Class.

137. As discussed above, Defendants made multiple materially misleading statements and/or omissions in the advertising and providing of COVID-19 tests, including:

- a. Failing to disclose to customers that they will undergo doctor consultations or "office visits" in connection with their COVID-19 tests;
- b. Failing to disclose to customers that they will be charged for doctor consultations or "office visits" in connection with or instead of their COVID-19 tests;
- c. Failing to disclose to customers that their insurance will be charged for doctor consultations or "office visits" in connection with or instead of their COVID-19 tests;
- d. Stating and creating the net impression that insured customers will not have to pay for COVID-19 tests;
- e. Stating and creating the net impression that customers will not have to pay upfront costs for COVID-19 testing;
- f. Stating and creating the net impression that upfront costs for COVID-19 tests would be refunded;
- g. Failing to disclose that the upfront costs for COVID-19 tests were non-refundable;

- h. Failing to disclose that CareCube will keep reimbursements obtained from customers' health insurers in connection with COVID-19 testing; and
- i. Failing to disclose that CareCube will fail to submit the necessary paperwork to health insurers to properly reimburse customers for COVID-19 testing.

138. In deciding to obtain COVID-19 testing from CareCube, Plaintiffs and the Class reasonably relied on these representations and/or omissions to form the mistaken belief that they would not be charged for phony doctor consultations, they would not have to pay an upfront fee for COVID-19 testing, and that CareCube would submit the necessary paperwork for COVID-19 testing to their health insurers and return any reimbursement it received from the health insurers.

139. CareCube's fraudulent conduct was knowing and intentional. The omissions and misrepresentations made by CareCube were intended to induce and actually induced Plaintiffs and Class Members to obtain COVID-19 testing from CareCube and tender payment for same.

140. Defendants' fraud caused damage to Plaintiffs and the Class, who are entitled to damages and other legal and equitable relief as a result.

141. Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' rights and well-being in order to enrich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, in an amount to be determined according to proof.

COUNT IV

(Unjust Enrichment)

142. Plaintiffs incorporate by reference the preceding allegations as if fully set forth herein, and further allege as follows:

143. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Class.

144. As a result of their unjust conduct as described above, Defendants have been unjustly enriched.

145. By reason of Defendants' wrongful conduct, Defendants have benefited from receipt of improper funds, and under principles of equity and good conscience, Defendants should not be permitted to keep this money.

146. As a result of Defendants' conduct, it would be unjust and inequitable for Defendants to retain: (1) the payments Plaintiffs and the Class made for phony, unnecessary and undisclosed doctor consultations; and (2) upfront payments that were procured under false pretenses.

147. By reason of the foregoing, Defendants are liable to Plaintiffs and the other members of the Class for the damages that they have suffered as a result of Defendants' actions, the amount of which shall be determined at trial.

COUNT V

(Conversion)

148. Plaintiffs incorporate by reference the preceding allegations as if fully set forth herein, and further allege as follows:

149. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Class.

150. Plaintiffs and the Class own and have a right to possess the money paid to Defendants for COVID-19 testing.

151. Defendants interfered with Plaintiffs' and the Class's possession of this money by procuring payments for COVID-19 testing under false pretenses and then failing to submit the

necessary paperwork to health insurers to cover the costs of COVID-19 testing or keeping reimbursements obtained from health insurers.

152. Defendants wrongfully retained dominion over this monetary property and/or the time-value of the monetary property.

153. Plaintiffs and the Class have been damaged by Defendants' wrongful taking of such money that is rightfully due to Plaintiffs and the Class in an amount that is capable of identification through Plaintiffs' and CareCube's records.

154. By reason of the foregoing, Defendants are liable to Plaintiffs and the other members of the Class for conversion in an amount to be proved at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- (a) Issue an order certifying the Class defined above, appointing the Plaintiffs as Class representatives, and designating their Attorneys as Class Counsel;
- (b) Find that Defendants have committed the violations of law alleged herein;
- (c) Enter an order granting monetary relief and treble damages on behalf of the Class in an amount of at least \$10,000,000;
- (d) Determine that Defendants have been unjustly enriched as a result of their wrongful conduct, and enter an appropriate order awarding restitution and monetary damages to the Class;
- (e) Enter an order granting all appropriate relief on behalf of the Class under the applicable New York state laws;
- (f) Render an award of compensatory damages, the amount of which is to be determined at trial;
- (g) Enter judgment including interest, costs, reasonable attorneys' fees, costs, and expenses; and
- (h) Grant all such other relief as the Court deems appropriate.

JURY TRIAL DEMAND

Plaintiffs hereby demand a jury trial on all issues so triable.

Dated: March 30, 2022

Respectfully Submitted:

By: /s/ Steven L. Wittels

Steven L. Wittels

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Tiasha Palikovic

Steven D. Cohen

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Attorneys for Plaintiffs and the Class

VERIFICATION

Steven L. Wittels, an attorney duly admitted to practice before the Courts of this State affirms under penalty of perjury and pursuant to CPLR § 2106 that the following facts are true.

I am counsel for Plaintiffs in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters, I believe them to be true.

The grounds for my belief as to all matters not stated upon my own knowledge are as follows: these matters were made known to the undersigned from the Plaintiffs and from documents reviewed. The reason this verification is made by the undersigned and not the Plaintiffs is that Plaintiffs reside outside the County where counsel maintains our office.

Dated: March 30, 2022
Armonk, New York

By: /s/ Steven L. Wittels
Steven L. Wittels