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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED JURISDICTION
12

13 CITY AND COUNTY OF SAN
FRANCISCO,

14 Petitioner,

15 vs.

16 COMMUNITY WELLNESS AMERICA,
17 INC.,

18 Respondent.

Case No. CPF-22-517712

**CITY AND COUNTY OF SAN FRANCISCO'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION TO
ENFORCE ADMINISTRATIVE SUBPOENA**

Hearing Date: April 20, 2022
Hearing Judge: Hon. Richard B. Ulmer Jr.
Time: 9:30 a.m.
Place: Dept. 302

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State Cases

Brown v. City of Berkeley
(1976) 57 Cal.App.3d 2239

Cal. Restaurant Assn. v. Henning
(1985) 173 Cal.App.3d 10698

City and County of San Francisco v. Uber Technologies, Inc.
(2019) 36 Cal.App.5th 668, 9, 11

Connecticut Indemnity Co. v. Superior Court
(2000) 23 Cal.4th 8078, 10

County of Santa Clara v. Atlantic Richfield Co. 2006)
137 Cal.App.4th 2929

Dibb v. County of San Diego
(1994) 8 Cal. 4th 12009

Jessen v. Hartford Cas. Ins. Co.
(2003) 111 Cal. App. 4th 69810

Wilkinson v. United State
(1961) 365 U.S. 3998

State Statutes & Codes

California Civil Code
§§ 3479-809, 10

California Code of Civil Procedure
§ 7319

San Francisco Statutes, Codes & Ordinances

S.F. Admin. Code
§ 2A.2319

Constitutional Provisions

California Constitution, art. XI
§§ 3-68

1 Petitioner the City and County of San Francisco (the “City”) moves the Court to enter an order
2 enforcing the City Attorney’s administrative subpoena on Respondent Community Wellness America,
3 Inc. (“CWA”) and compelling CWA to produce documents necessary for the City Attorney’s
4 investigation into potentially unlawful activity.

5 INTRODUCTION

6 CWA is a company based in Southern California that purports to provide COVID-19 tests to
7 members of the public at pop-up locations throughout California, including San Francisco, and
8 numerous other states. In early January 2022, as the Omicron COVID-19 variant infected
9 unprecedented numbers of San Franciscans and demand for tests was at its highest, San Francisco
10 officials received reports that CWA was offering tests in the City without appropriate permits and
11 claiming to be affiliated with an Irvine-based laboratory, Crestview Clinical Laboratory LLC
12 (“Crestview”). Crestview, however, denied any affiliation with CWA and claimed CWA was not
13 permitted to use the lab’s license or name.

14 The City, concerned about the safety and legitimacy of COVID-19 tests at an especially
15 vulnerable moment in the ongoing pandemic, wrote to CWA on January 10, 2022 seeking information
16 about its permits and the types of tests offered in San Francisco. (Declaration of John H. George, filed
17 herewith [“George Decl.”], Ex. 1.) CWA never responded. On January 20, 2022, the City served an
18 administrative subpoena on CWA seeking documents related to its testing operations in San Francisco.
19 (George Decl., Ex. 4.) CWA has not produced a single document in response to the subpoena despite
20 the City’s offer to extend the deadline for production, and has refused to even communicate with the
21 City Attorney’s Office. This Court should order CWA to immediately produce the requested
22 documents.

23 FACTUAL BACKGROUND

24 On January 5, 2022, as San Francisco reported more COVID-19 cases than it had since the
25 pandemic began, city employees were alerted to a woman offering COVID-19 PCR tests at a pop-up
26 tent set up at the entrance to Golden Gate Park. When asked about her operation and credentials, the
27 woman identified CWA as the company providing tests in partnership with Crestview and displayed
28

1 what appeared to be a government-issued laboratory license. The license identified Crestview at an
2 address in Merced, California and showed that it expired in November 2021. (George Decl., Ex. 6.)

3 Across town, CWA set up a similar tent to take PCR test samples from people on the sidewalk
4 at Dolores and 18th Streets. (Kafton, Unauthorized Covid Testing Site In San Francisco Has Outdated
5 License (Jan. 10, 2022) <[https://www.ktvu.com/news/unauthorized-covid-testing-site-in-san-](https://www.ktvu.com/news/unauthorized-covid-testing-site-in-san-francisco-has-outdated-license)
6 [francisco-has-outdated-license](https://www.ktvu.com/news/unauthorized-covid-testing-site-in-san-francisco-has-outdated-license)> [as of March 9, 2022]; Kafton, Unauthorized Covid Test Site In San
7 Francisco Has Murky Ties (Jan. 11, 2022) <[https://www.ktvu.com/news/unauthorized-covid-test-site-](https://www.ktvu.com/news/unauthorized-covid-test-site-in-san-francisco-has-murky-ties)
8 [in-san-francisco-has-murky-ties](https://www.ktvu.com/news/unauthorized-covid-test-site-in-san-francisco-has-murky-ties)> [as of March 9, 2022].) Like its tent in Golden Gate Park, CWA’s
9 Dolores and 18th Street location displayed the same expired laboratory license and a document
10 claiming CWA “was proud to partner with Crestview” to offer COVID-19 tests to the public. (George
11 Decl., Ex. 7.) In fact, Crestview denies any business relationship with CWA and claimed, to the City
12 and media outlets, that CWA was not permitted to use its name or laboratory license. Moreover, the
13 Merced address on the license CWA displayed at its San Francisco test sites was not Crestview’s
14 address, but that of a lab no longer in business.

15 On January 10, 2022, the City wrote to CWA, Crestview, the closed Merced lab, and the lab
16 director listed on the license CWA displayed at its sites. The letters requested each provide copies of a
17 valid laboratory license, a permit to operate on public property in San Francisco, and information
18 establishing each is using only FDA-approved COVID-19 tests. (George Decl., Exs. 1-2.) CWA
19 never responded to the City’s letter. Every other recipient responded within days. Notably,
20 Crestview’s President, Justin Nguyen, responded that anyone using Crestview’s name or lab
21 credentials “must have obtained it illegally without our knowledge,” did not have approval to do so,
22 and “should be shut down immediately.”¹ (George Decl., Ex. 3.) A former employee of the closed
23 Merced lab and the purported lab director each explained they had no relationship with CWA and did
24 not have anything to do with COVID-19 testing in San Francisco. (George Decl. at ¶ 7.)

25
26 _____
27 ¹ Nguyen made similar statements to the press when reporters inquired into CWA’s use of Crestview’s
28 name and lab license. (Bote, Amid omicron fears, questionable COVID testing sites are popping up
around San Francisco (Jan. 11, 2022) <[https://www.sfgate.com/coronavirus/article/questionable-](https://www.sfgate.com/coronavirus/article/questionable-COVID-testing-site-in-san-francisco-16765264.php)
[COVID-testing-site-in-san-francisco-16765264.php](https://www.sfgate.com/coronavirus/article/questionable-COVID-testing-site-in-san-francisco-16765264.php)> [as of March 9, 2022].)

1 CWA's conduct in San Francisco, including operating without any regard to local permit
2 requirements and under an expired and possibly fraudulent lab license, is unfortunately similar to its
3 behavior in numerous other places. For example, public health and other local authorities in
4 Washington, Illinois, and Oregon warned members of the public against taking tests at CWA locations
5 due to the Company's lack of credentials and questionable practices, including asking for social
6 security numbers. (Apa, Public Alert Get Tested If You Have Covid-19 Symptoms Or Exposure But
7 Avoid Unusual Testing Operations (April 22, 2021)
8 <[https://publichealthinsider.com/2021/04/22/public-alert-get-tested-if-you-have-covid-19-symptoms-
9 or-exposure-but-avoid-unusual-testing-operations/](https://publichealthinsider.com/2021/04/22/public-alert-get-tested-if-you-have-covid-19-symptoms-or-exposure-but-avoid-unusual-testing-operations/)> [as of March 9, 2022]; Tilkin, Beware of pop-up
10 COVID testing sites in Oregon (Sept. 23, 2021) <[https://www.koin.com/video/beware-of-pop-up-
11 covid-testing-sites-in-oregon/](https://www.koin.com/video/beware-of-pop-up-covid-testing-sites-in-oregon/)> [as of March 9, 2022]; KMOV, Authorities warn about possible
12 unauthorized COVID-19 test sites (Jan. 3, 2022) <[https://www.msn.com/en-us/news/us/authorities-
13 warn-about-possible-unauthorized-covid-19-test-sites/ar-AASoE7m](https://www.msn.com/en-us/news/us/authorities-warn-about-possible-unauthorized-covid-19-test-sites/ar-AASoE7m)> [as of March 10, 2022].) In
14 Marin County, public health officials and law enforcement shut down CWA's operations in August
15 2021 after the Company began testing people in Fairfax without a permit or license. (Flores,
16 Unauthorized coronavirus testing site shut down in Marin County, officials say (Aug. 9, 2021)
17 <[https://www.sfchronicle.com/health/article/Unauthorized-coronavirus-testing-site-shut-down-
18 16376018.php](https://www.sfchronicle.com/health/article/Unauthorized-coronavirus-testing-site-shut-down-16376018.php)> [as of March 9, 2022].)

19 Nor has CWA exhibited the type of responsible behavior one expects from a company
20 providing health services at a time of incalculable public need. CWA's CEO has bragged that it is
21 staffed by former signature gatherers instead of medical professionals, and the only doctor publicly
22 associated with the Company, Phillip Milgram MD, was recently accused by former patients of
23 surreptitiously impregnating them with his own sperm and previously relinquished his medical license
24 in the face of numerous accusations of malfeasance ranging from unnecessary surgery to illegally
25 providing drugs to patients. (Gutman, Public Health – Seattle & King County warns of 'unusual'
26 coronavirus testing operations; company CEO says all is fine (Apr. 22, 2021)
27 <[https://www.seattletimes.com/seattle-news/health/public-health-seattle-company-ceo-says-all-is-
28 fine/](https://www.seattletimes.com/seattle-news/health/public-health-seattle-company-ceo-says-all-is-fine/)> [March 9, 2022]; Page, Doctor Accused of Artificially Inseminating Patient With His Sperm:

1 Lawsuit (Sept. 18, 2020) <[https://www.nbcsandiego.com/news/local/doctor-accused-of-artificially-](https://www.nbcsandiego.com/news/local/doctor-accused-of-artificially-inseminating-patient-with-his-sperm-lawsuit/2408265/)
2 [inseminating-patient-with-his-sperm-lawsuit/2408265/](https://www.nbcsandiego.com/news/local/doctor-accused-of-artificially-inseminating-patient-with-his-sperm-lawsuit/2408265/)> [as of March 9, 2022].) Like in San Francisco,
3 numerous people who were tested at CWA locations in Petaluma and Texas have reported that they
4 never received test results and were concerned about identity theft because of the substantial amount
5 of personal information they provided to CWA.² (Endicott, Petaluma COVID-19 testing site deemed
6 ‘suspicious’ (Feb. 3, 2022) <[https://www.pressdemocrat.com/article/news/petaluma-covid-19-testing-](https://www.pressdemocrat.com/article/news/petaluma-covid-19-testing-site-deemed-suspicious/)
7 [site-deemed-suspicious/](https://www.pressdemocrat.com/article/news/petaluma-covid-19-testing-site-deemed-suspicious/); [https://www.everythinglubbock.com/news/local-news/residents-in-](https://www.everythinglubbock.com/news/local-news/residents-in-plainview-want-to-know-why-they-havent-gotten-covid-test-results/)
8 [plainview-want-to-know-why-they-havent-gotten-covid-test-results/](https://www.everythinglubbock.com/news/local-news/residents-in-plainview-want-to-know-why-they-havent-gotten-covid-test-results/)> [as of March 9, 2022].)
9 Reviews of CWA by people tested at their locations all over the country also report a complete lack of
10 results or a result that has only come after weeks of waiting. (Google Reviews
11 <[https://www.google.com/search?client=firefox-b-1-](https://www.google.com/search?client=firefox-b-1-d&q=community+wellness+america+encinitas#lrd=0x80d955d5489e2f23:0x87a4f2dd6f13b87a,1,,,>)
12 [d&q=community+wellness+america+encinitas#lrd=0x80d955d5489e2f23:0x87a4f2dd6f13b87a,1,,,>](https://www.google.com/search?client=firefox-b-1-d&q=community+wellness+america+encinitas#lrd=0x80d955d5489e2f23:0x87a4f2dd6f13b87a,1,,,>)
13 [as of March 10, 2022].)

14 On January 20, 2022, as part of its investigation into CWA and potential legal violations in San
15 Francisco, the City served an administrative subpoena on CWA.³ (George Decl., Ex. 4.) The
16 subpoena seeks 11 specific categories of documents for production, including: the requisition forms
17 completed by San Franciscans or in the City; policies and procedures related to testing; training
18 materials; licenses and permits; documents concerning CWA’s relationship with Crestview and the
19 doctor identified on its forms, Phillip Milgram, MD; organizational charts and documents showing
20 CWA’s ownership; communications with regulatory authorities and law enforcement; advertising in
21 San Francisco; and documents concerning billing and fees.⁴ (*Id.* at pp. 3-4.)

22
23
24 ² CWA charges the federal government and possibly insurance companies instead of the people
25 who come for tests. As of March 9, 2022, CWA has received more than \$3 million in reimbursements
26 from the federal government according to the CDC website that tracks payments related to COVID-19
27 testing. (CDC, Claims Reimbursement to Health Care Providers and Facilities for Testing, Treatment,
28 and Vaccine Administration of the Uninsured <[https://data.cdc.gov/Administrative/Claims-](https://data.cdc.gov/Administrative/Claims-Reimbursement-to-Health-Care-Providers-and-/rksx-33p3/data)
[Reimbursement-to-Health-Care-Providers-and-/rksx-33p3/data](https://data.cdc.gov/Administrative/Claims-Reimbursement-to-Health-Care-Providers-and-/rksx-33p3/data)> [as of March 10, 2022].)

³ A subpoena was also served on Crestview, which, to date, has been complying.

⁴ The subpoena also requests, in the event CWA asserts it a covered provider under HIPAA, certain information substantiating that claim.

1 On February 3, 2022, the day before CWA’s response to the subpoena was due, an attorney for
2 CWA contacted the City to request additional time to respond, explaining that he had not yet met his
3 client in person or determined what documents it had. (George Decl. ¶ 10.) The City agreed to allow
4 CWA additional time to respond to the subpoena and agreed to discuss the timeline for production the
5 following week. (*Id.* at ¶¶ 10-11.) CWA’s attorney inexplicably stopped responding to the City’s
6 communications on February 11, 2022. (*Id.* at ¶¶ 13-15.) Now over a month beyond the date for
7 compliance, CWA has not produced anything in response to the administrative subpoena.

8 LEGAL STANDARD

9 San Francisco’s “City Attorney has a broad right to investigate, including the use of subpoenas,
10 when it suspects an entity operating within its jurisdiction is violating the law.” (*City and County of*
11 *San Francisco v. Uber Technologies, Inc.*, (2019) 36 Cal.App.5th 66, 73-74.) An administrative
12 subpoena is enforceable when it “(1) relates to an inquiry which the administrative agency is
13 authorized to make; (2) seeks information reasonably relevant to that inquiry; and (3) is not too
14 indefinite.” (*Id.* at p. 74; *Cal. Restaurant Assn. v. Henning*, (1985) 173 Cal.App.3d 1069, 1075; *see*
15 *also, Connecticut Indemnity Co. v. Superior Court* (2000) 23 Cal.4th 807, 813 [citing *Wilkinson v.*
16 *United States* (1961) 365 U.S. 399, 408-409.) The administrative subpoena meets each of the
17 requirements for enforceability and this Court should therefore order CWA to immediately produce
18 the requested information.

19 ARGUMENT

20 **I. The City Attorney is Authorized to Investigate a Potential Nuisance and the Subpoena to** 21 **CWA Relates to that Inquiry**

22 As the Court of Appeal recently confirmed, the “City Attorney has a broad right to investigate,
23 including the use of subpoenas, when it suspects an entity operating within its jurisdiction is violating
24 the law.” (*Uber Technologies, supra*, 36 Cal.App.5th at pp. 73-74.) The subpoena issued to CWA is
25 comfortably within this “broad right to investigate” potential legal violations and directly “relates to an
26 inquiry which the [City Attorney] is authorized to make.” (*Id.* at p. 74.)

27 San Francisco is a Charter City and County, empowered by the California Constitution to
28 control its own “municipal affairs.” (Cal. Const. art. XI, §§ 3-6.) Charter City powers include the

1 authority to confer subpoena power. (*Dibb v. County of San Diego* (1994) 8 Cal. 4th 1200, 1213-
2 1219; *Brown v. City of Berkeley* (1976) 57 Cal.App.3d 223, 236.) San Francisco has granted the City
3 Attorney the power “to subpoena witnesses . . . take evidence and require by subpoena the production
4 of any books, papers, records or other items” in several situations, including “where State law grants to
5 the City Attorney the duty or power to act as the civil prosecutor with respect to any provision of the
6 State law or to institute a civil action for violation of any State law.” (S.F. Admin. Code § 2A.231.)

7 State law grants the City Attorney the right to bring a civil action for violation of the State’s
8 public nuisance law. (Code of Civ. Proc., § 731 [“A civil action may be brought . . . to abate a public
9 nuisance, as defined in Section 3480 of the Civil Code, by the . . . city attorney of any town or city in
10 which the nuisance exists”]; *see also County of Santa Clara v. Atlantic Richfield Co.* (2006) 137
11 Cal.App.4th 292, 305.) Accordingly, the City Attorney’s power to investigate potential public
12 nuisances, including by issuing subpoenas, is beyond dispute.

13 The subpoena also “relates to an inquiry” – *i.e.*, a nuisance investigation – the City Attorney is
14 “authorized to make.” (*Uber Technologies, supra*, 36 Cal.App.5th at p. 74.) In fact, the first page of
15 the subpoena makes clear that it was issued to further the City Attorney’s investigation of potential
16 violations of the nuisance statutes. (George Decl., Ex. 4 at p. 1 [“The Subpoenaed Items are relevant
17 to an investigation by this Office of possible violations of California Civil Code §§ 3479 and 3480”].)

18 **II. The Subpoena Seeks Information Reasonably Relevant to the City’s Nuisance** 19 **Investigation**

20 As set out above, CWA’s most recent actions in San Francisco began during the surge in
21 infections due to the Omicron variant. Although testing throughout the pandemic has been critical to
22 public health, fast, accurate, and safe COVID-19 testing was especially important during the recent
23 Omicron surge and remains so now. Without an accurate test result, a person who was tested has no
24 way of knowing if they are infected and could therefore expose countless others to COVID-19.
25 Similarly, an infected person required to wait weeks for a result (even if it is ultimately accurate) may
26 continue to expose many others to the disease while they wait. For those who receive no result at all,
27 the threats to personal and public health are compounded by the resulting lack of trust in test providers
28 and potential refusal to get tested in the future.

1 As press coverage and customer reviews spell out in detail, CWA has taken test samples from
2 numerous people, including in San Francisco, and provided no result whatsoever. For many others,
3 the test results came so long after the test sample was taken that it was of no use to determine whether
4 to quarantine or not or avoid situations in which others may be infected. Moreover, the accuracy of
5 any eventual result from CWA is seriously called into question by CWA’s inability to produce any
6 valid license from an affiliated lab, Crestview’s denial of a relationship with CWA, and CWA’s
7 refusal to respond to the City’s letter with details of its operation and the type of FDA-approved tests
8 offered.

9 Under California law, a nuisance is defined as “[a]nything which is injurious to health . . . or an
10 obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or
11 property” and which affects “any considerable number of persons.” (Civ. Code §§ 3479-80.)
12 Nonexistent, fraudulent, inaccurate, unsafe, or excessively slow tests in the midst of the COVID-19
13 pandemic are unquestionably a threat to public health and therefore a quintessential nuisance under
14 California law.

15 Each of the requests in San Francisco’s administrative subpoena seeks specific information
16 “reasonably relevant” to the City’s investigation of CWA’s potential violation of the nuisance statutes.
17 For example, the first request seeks the forms completed at CWA’s test sites by San Franciscans or in
18 San Francisco. (George Decl., Ex. 4 at p. 3.) These forms, known as requisition forms, are critical to
19 the City’s investigation because they are sent to the lab with the sample to be tested and connect the
20 person to their sample. Such forms may confirm whether or not CWA was, in fact, sending samples to
21 licensed labs that reported results.

22 Similarly, CWA’s training materials and protocols are directly relevant to the City’s inquiry
23 because each bear directly on whether CWA trained those running its test sites and ensured that the
24 test samples taken were properly labeled, stored, and transported such that a lab (potentially hundreds
25 of miles away) could conduct an accurate and timely test for COVID-19 and report the result to the
26 person who provided the sample. The information sought by the other requests also relates to the
27 subject matter of the City’s investigation – that is, CWA’s testing operation in San Francisco and
28 whether it provided safe, timely, and accurate results. (*See Jessen v. Hartford Cas. Ins. Co.* (2003) 111

1 Cal. App. 4th 698, 711-712 [“[F]or discovery purposes, information is relevant to the ‘subject matter’
2 of an action if the information might reasonably assist a party in evaluating the case, preparing for
3 trial, or facilitating settlement.”].) In short, the information sought by the subpoena is “reasonably
4 relevant” the City’s inquiry. (*Uber Technologies, supra*, 36 Cal.App.5th at p. 74.)

5 **III. The Subpoena Requests Are Sufficiently Definite**

6 Requests that are limited in scope and time are enforceable. (*Uber Technologies, supra*, 36
7 Cal.App.5th at pp. 73-74, [holding request seeking thousands of datapoints over a four-year period
8 was “not too indefinite” because it was limited in both scope and time].) Here, each request is limited
9 in scope and specifically spells out identifiable documents and information that must be produced.
10 The requests are also limited in time. The City Attorney’s office communicated to CWA’s counsel
11 that the time period for the subpoena was March 2020 through the present and CWA’s counsel
12 accepted this time period. (George Decl. ¶ 11.)

13 In sum, the City’s subpoena to CWA “relates to an inquiry” the City Attorney is authorized to
14 make, “seeks information reasonably relevant to that inquiry,” and “is not too indefinite.” (*Uber*
15 *Technologies, supra*, 36 Cal.App.5th at p. 74.) The subpoena is accordingly enforceable and CWA’s
16 failure to comply inexcusable.

17 **CONCLUSION**

18 The City has authority to investigate potential public nuisance violations and has issued a
19 narrowly-tailored subpoena to CWA seeking documents directly relevant to its current investigation
20 into pressing public health concerns. Despite the City’s valid subpoena, CWA has utterly failed to
21 comply and has shown no sign of doing so. The City respectfully requests the Court order CWA to
22 produce the information requested by the administrative subpoena within 14 days of the Court’s order.

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1 Dated: March 10, 2022

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