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10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13
14 BOBBIE BROWN, individually and on
behalf of all others similarly situated,

15 **Plaintiff,**

16 v.

17 THERANOS, INC., a Delaware
18 corporation,

19 **Defendant.**

Case No. 4:16-cv-3454

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Bobbie Brown (“Plaintiff”), by and through her attorneys, individually and on
2 behalf of all others similarly situated, brings this Class Action Complaint (“Complaint”) against
3 Defendant Theranos, Inc., a Delaware corporation (“Theranos” or “Defendant”), and makes the
4 following allegations based upon knowledge as to herself and her own acts, and upon information
5 and belief as to all other matters, as follows:

6 **INTRODUCTION**

7 1. In September, 2013, Defendant announced its “long-term” partnership with
8 Walgreen Co. (“Walgreens”) to bring access to Theranos’ new lab testing service through
9 Walgreens’ pharmacies nationwide. The innovative process using the new device named the
10 “Edison,” promised consumers “less invasive and more affordable clinician-directed lab testing,
11 from a blood sample as small as a few drops,” and the elimination of “the need for larger needles
12 and numerous vials of blood required for most diagnostic lab testing.”¹

13 2. Promoting itself as an industry leader in “transparency and quality, [and an] advocate
14 for FDA regulation of lab tests,” Theranos told consumers that its certified clinical laboratory would
15 continuously conduct proficiency testing and participate in multiple proficiency testing programs,
16 and boasted that it processed hundreds of thousands of tests in validating its work for a majority of
17 the 15 largest pharmaceutical companies.²

18 3. Indeed, in 2015, the company said:

19 Theranos undergoes continuous proficiency testing on blinded samples
20 from leading organizations, including the College of American
21 Pathologists (CAP) and the American Proficiency Institute (API). To date
22 in 2015, Theranos Proficiency Testing met or surpassed performance goals
23 98% of the time for CAP and API across hundreds of assays. Theranos is
24 leading the lab industry in transparency by publishing Proficiency Testing
25 performance statistics.

26 ¹ <https://www.theranos.com/news/posts/theranos-selects-walgreens-as-a-long-term-partner-through-which-to-offer-its-new-clinical-laboratory-service>

27 ² <https://www.theranos.com/our-lab>

1 substantial sales in California, and has sufficient minimum contacts with this state and/or
2 sufficiently availed itself of the markets of this state through its promotion, sales, and marketing
3 within this state to render the exercise of jurisdiction by this Court permissible.

4 10. Venue in this Court is proper pursuant to 28 U.S.C. § 1391 because Theranos does
5 substantial business in this District, has intentionally availed itself of the laws and markets within
6 this District through its promotion, marketing, distribution and sales activities in this District, and a
7 significant portion of the facts and circumstances giving rise to Plaintiffs' Complaint occurred in or
8 emanated from this District.

9 **INTRADISTRICT ASSIGNMENT**

10 11. Assignment to the San Jose division of this Court is appropriate under Civil Local
11 Rules 3-2(c) and 3-2(e) because a substantial part of the events and omissions which give rise to this
12 action occurred at the headquarters of Defendant Theranos in Palo Alto, California, Santa Clara
13 County.

14 **BACKGROUND**

15 12. Elizabeth Holmes founded Theranos in 2003.

16 13. According to published reports, the Company initially focused on the development
17 of a hand held device that would use a tiny needle to obtain a small drop of blood for analysis. By
18 2008, the project had grown into what is now known as the Edison device.

19 14. In 2013, Holmes, then CEO of Theranos, announced the company's new technology,
20 the Edison, designed to use a single drop of blood (or any other fluid) for multiple tests at a fraction
21 of current costs. On an early version of Theranos' website, Holmes holds up a tiny vial to show how
22 the startup's "breakthrough advancements have made it possible to quickly process the full range of
23 laboratory tests from a few drops of blood."³

24 15. According to Holmes, blood testing using Theranos' new technology could be done
25 more quickly, conveniently, and inexpensively, and lives could be saved as a consequence. Widely
26 interviewed at the company's inception, Holmes told audiences that her company had developed

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28 ³ <http://www.wsj.com/articles/theranos-has-struggled-with-blood-tests-1444881901>

1 blood tests that can help detect dozens of medical conditions, from high cholesterol to cancer, based
2 on a drop or two of blood drawn with a pinprick from your finger.⁴

3 16. Theranos began offering tests to the public in late 2013. It opened 42 blood-drawing
4 “wellness centers” in the Phoenix area, two in California and one in Pennsylvania. Most were in
5 Walgreens Boots Alliance Inc. drugstores.⁵

6 17. On its website, Theranos says:

7 **theranos**

8 the lab test,
9 reinvented.

10 At Theranos, we're working to bring about a day when lab testing is accessible and affordable for
11 everyone. So people can engage with their health and their physicians like never before, and no
12 one has to say goodbye too soon.

13 18. By 2014, investors had poured more than \$400 million into Theranos, valuing it at
14 \$9 billion and Holmes' majority stake at more than half that. By the end of the year, Theranos was
15 working to make its testing available to several hospital systems and was in advanced discussions
16 with the Cleveland Clinic.⁶

17 19. Consumers had access to Theranos' testing labs in California and Arizona.⁷

18 **Theranos is easy to find.**

19 You can find Theranos Wellness Center™ locations inside select Walgreens in the greater
20 Phoenix, AZ area. With extended hours, including nights and weekends it's easy to fit your tests
21 into your busy schedule.

22 [Find a center >](#)



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24 ⁴ <http://www.wired.com/2014/02/elizabeth-holmes-theranos/>

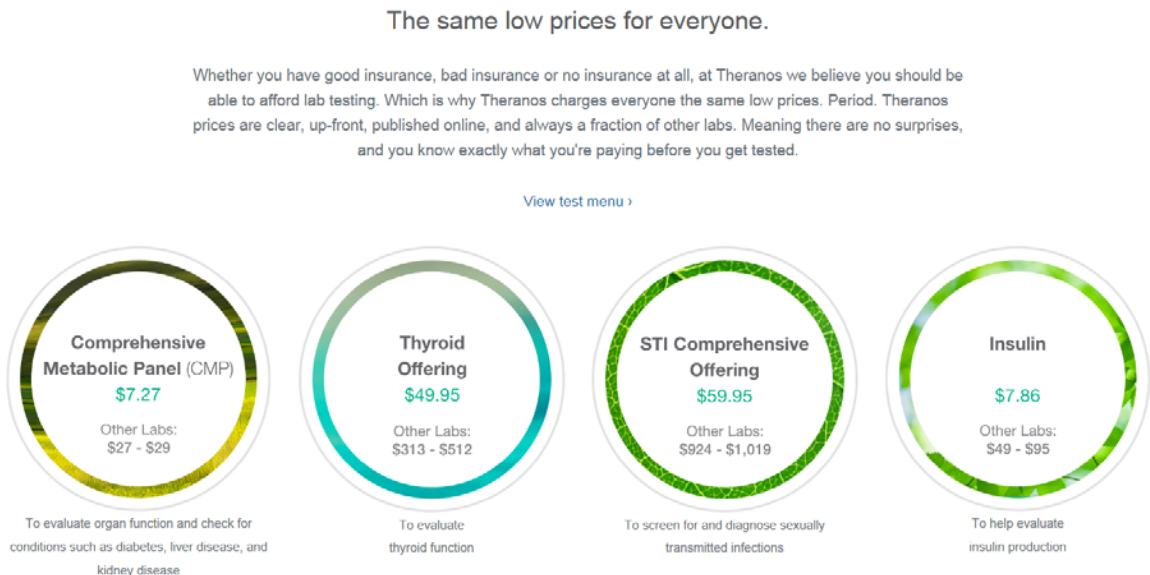
25 ⁵ <http://www.wsj.com/articles/theranos-has-struggled-with-blood-tests-1444881901?cb=logged0.031474877649940614> Oct. 16, 2016

26 ⁶ <http://www.newyorker.com/magazine/2014/12/15/blood-simpler>

27 ⁷ <http://www.walgreens.com/pharmacy/lab-testing/home.jsp>

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20. The company offered more than 240 tests, ranging from cholesterol to cancer. On Walgreens’ website, it said:



Clicking on the “test menu,” consumers see a list of more than 240 tests.

21. At the end of 2014, according to a Wall Street Journal (the “Journal”) article published in October, 2015, the Edison lab instrument developed as the linchpin of its strategy, handled just a small fraction of the tests then sold to consumers, and the vast majority of Theranos’ tests were actually done with traditional machines bought from other companies.⁸

22. Theranos also touted the accuracy of its testing on its website:⁹



⁸ <http://www.wsj.com/articles/theranos-has-struggled-with-blood-tests-1444881901?cb=logged0.031474877649940614>

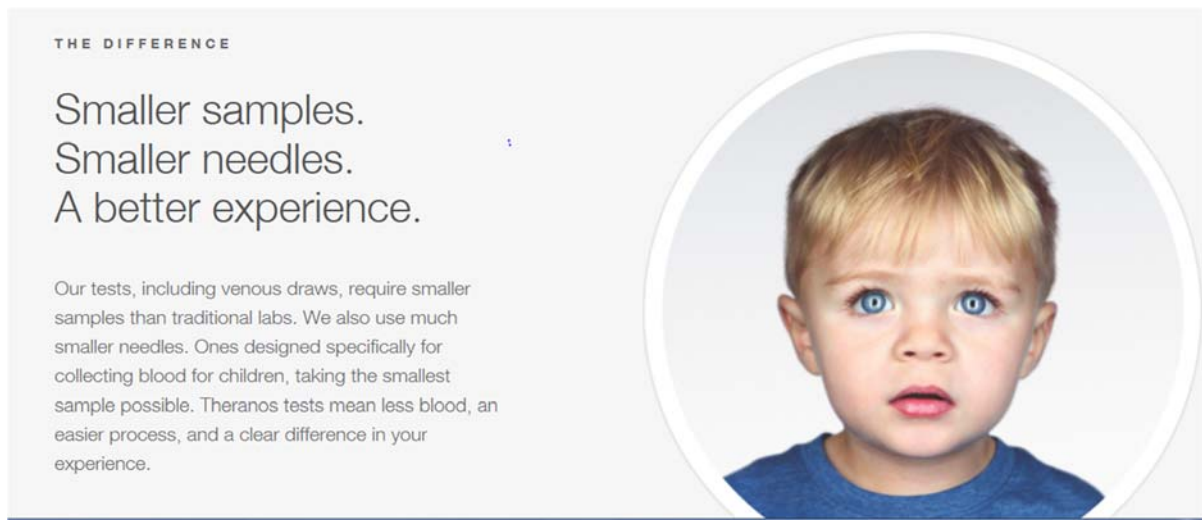
⁹ <https://www.theranos.com/our-lab>

1 23. Further down the page, Theranos promised consumers that its labs were compliant
2 with federal regulations or law and its testing accuracy routinely confirmed:

3 Theranos is a CLIA-certified laboratory. And the first and only lab to
4 proactively begin submitting all our Laboratory Developed Tests to the
5 FDA for clearance and approval. We received our first FDA clearance this
6 summer.

7 We realize our mission only when our tests are performed to the highest
8 standards of quality. The performance of our tests is routinely
9 demonstrated through multiple accredited proficiency testing programs.
10 And despite not being required to do so, we are the first lab that has been
11 and will continue to submit all our Laboratory Developed Tests to the
12 more rigorous standards of the FDA.¹⁰

13 24. The website also reassures consumers that the Theranos tests “use less blood to make
14 the testing experience as wonderful as possible for everyone[,]” and “[w]e do venous blood draws
15 using smaller needles and smaller tubes.”



16 25. In late 2014, however, the Food and Drug Administration (“FDA”) declared the tiny
17 vials used by Theranos to collect finger-pricked blood from patients an “uncleared medical device”
18 that the laboratory company was shipping across state lines. Inspection reports posted on the
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28 ¹⁰ <https://www.theranos.com/our-lab>

1 agency's website also showed that the FDA found deficiencies in Theranos' processes for handling
2 customer complaints, monitoring quality and vetting suppliers.¹¹

3 26. According to an inspection of a Theranos' lab in Newark, California, completed by
4 the Centers for Medicare and Medicaid Services ("CMS") in November, 2015, five major
5 infractions were uncovered that violate the federal law governing clinical labs. One infraction was
6 described as a situation "likely to cause, at any time, serious injury or harm, or death, to individuals
7 served by the laboratory or to the health and safety of the general public." CMS is the chief
8 regulatory overseer of clinical labs.¹²

9 27. A redacted inspection report released in March, 2016, by CMS detailed a long list of
10 shortcomings at Theranos' Newark laboratory, including failures to meet quality-control standards,
11 such as not keeping freezers at the temperatures required by manufacturers; lack of proper
12 documentation and missing signatures on paperwork; and unqualified personnel.¹³

13 28. An independent study by the Icahn School of Medicine at Mount Sinai in New York,
14 published in March, 2016, found that Theranos' blood tests gave irregular results more often than
15 testing services offered by large laboratories. Theranos disputes those results, saying it has concerns
16 with how the study was run.¹⁴

17 29. Recently, in a memorandum to its partners including Walgreens Boots Alliance, Inc.,
18 Theranos said it is under investigation by the U.S. Securities and Exchange Commission ("SEC")
19 and the U.S. Attorney's Office for the Northern District of California, following its scrutiny by
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22 _____
23 ¹¹ <http://www.wsj.com/articles/fda-inspectors-call-theranos-blood-vial-uncleared-medical-device-1445967607>

24 ¹² <http://www.wsj.com/articles/theranos-lab-practices-pose-risk-to-patient-health-regulators-say-1453933143>

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26 ¹³ <http://www.bloomberg.com/news/articles/2016-04-18/theranos-is-under-investigation-by-sec-u-s-attorney-s-office>

27 ¹⁴ <http://www.bloomberg.com/news/articles/2016-04-01/theranos-inspection-report-details-quality-control-problems>
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1 federal and state health regulators.¹⁵ Bloomberg further reported that Theranos has also been
2 probed by the FDA, the CMS, and state health departments in Pennsylvania and California.
3 According to Theranos, the FDA and state inquiries are closed. *Id.*

4 30. In April, 2016, the Journal reported that CMS took a further step to propose
5 sanctions that could ban Holmes from the diagnostics business and stop the blood-testing startup
6 from receiving payments from Medicare. It also reported that federal prosecutors have launched a
7 criminal investigation into whether Theranos misled investors about the state of its technology and
8 operations, and in addition to the criminal probe, the SEC is examining whether Theranos made
9 deceptive statements to investors when it solicited funding.¹⁶

10 31. In May, 2016, sources reported that Theranos told the CMS that it has issued tens of
11 thousands of corrected blood-test reports to doctors and patients, voiding some results and revising
12 others. That means some patients received erroneous results that might have thrown off health
13 decisions made with their doctors.¹⁷

14 32. On June 12, 2016, the New York Times reported that Walgreens had decided to
15 terminate its relationship with Theranos. In a company statement, Brad Fluegel, senior vice
16 president of Walgreens, was quoted: “In light of the voiding of a number of test results, and as the
17 Centers for Medicare and Medicaid Services has rejected Theranos’s plan of correction and
18 considers sanctions, we have carefully considered our relationship with Theranos and believe it is in
19 our customers’ best interests to terminate our partnership.”

20 33. Plaintiff brings this class action alleging that Theranos’ conduct, as described more
21 fully herein, violates California consumer protection laws, and she asserts various common law tort
22 claims. Plaintiff seeks damages, restitution and/or disgorgement of Theranos’ profits, injunctive
23 and declaratory relief on behalf of herself and similarly situated consumers.

24 _____
25 ¹⁵ <http://www.bloomberg.com/news/articles/2016-04-18/theranos-is-under-investigation-by-sec-u-s-attorney-s-office>

26 ¹⁶ <http://www.wsj.com/articles/theranos-is-subject-of-criminal-probe-by-u-s-1461019055?cb=logged0.9031096806151193>

27 ¹⁷ <http://www.wsj.com/articles/theranos-voids-two-years-of-edison-blood-test-results-1463616976>
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FACTUAL ALLEGATIONS CONCERNING PLAINTIFF

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2 34. On October 3, 2014, Bobbie Brown visited a Theranos Service Center at the
3 Walgreens located at 785 S. Cooper Road, Gilbert, Arizona, 85233. Plaintiff was ordered by her
4 physician to obtain several blood tests in anticipation of a medical appointment scheduled for
5 November 12, 2014.

6 35. At the time, Plaintiff did not have medical insurance and had to pay for her own
7 blood work. Plaintiff asked her doctor if so many blood tests were necessary since she was on self
8 pay. Her doctor suggested that she might want to consider a Theranos Service Center, noting that
9 the process was faster, takes less blood, costs less and is conveniently located in Walgreens with
10 extended hours.

11 36. In addition to the information supplied by her doctor, Plaintiff learned about
12 Theranos from news releases and the Theranos and Walgreens websites. She saw the list of tests
13 provided on the Theranos website and its pricing.

14 37. Based upon the pricing, the convenience, implied accuracy and credibility of the
15 Theranos technology, Plaintiff chose the option of having her tests performed at the Theranos
16 Wellness Center.

17 38. Plaintiff personally paid \$81.04 for several tests performed by Theranos.

18 39. Theranos conducted eight tests. Those tests were performed at the Theranos Lab
19 located at 7373 Gateway Boulevard, Newark, California.

20 40. When Plaintiff arrived at the Walgreens, her experience differed from what was
21 promoted. She had full vials of blood drawn.

22 41. Just before her appointment, scheduled for November 12, 2014, Plaintiff called her
23 doctor's office to confirm that her test results had been received, and learned that they had not yet
24 arrived.

25 42. She called Walgreens and was instructed to call the Theranos Lab in Newark,
26 California. It took several calls to the Theranos Lab before Plaintiff finally received confirmation
27 the day before her medical appointment that the Theranos blood results had been delivered to her
28 doctor on November 11, 2014.

1 43. Plaintiff later read that Theranos voided test results, has a technology that does not
2 work, and has serious quality control problems in their labs.

3 44. Because of the reported issues with Theranos, Plaintiff has serious concerns about
4 the lab results she received, including the reliability and accuracy of the tests.

5 **CLASS ACTION ALLEGATIONS**

6 45. Plaintiff brings a class action pursuant to Rule 23 of the Federal Rules of Civil
7 Procedure on behalf of herself and all members of the following class:

8 All persons who purchased a Theranos lab test in the United States
9 between September 1, 2013 and the present.

10 46. This action is brought as a class action and may properly be so maintained pursuant
11 to the provisions of Rule 23 of the Federal Rules of Civil Procedure. Plaintiff reserves the right to
12 amend or modify the Class description with greater specificity or further division into subclasses or
13 limitation to particular issues, based on the results of discovery. Excluded from the Class are
14 Defendant, its affiliates, employees, officers and directors, persons or entities, and the Judge(s)
15 assigned to this case. Plaintiff reserves the right to modify, change, or expand the Class definition.

16 47. **Numerosity:** The Class members are so numerous that joinder of all members is
17 impracticable. Though the exact number and identities of Class members are unknown at this time,
18 Theranos estimates on its website that more than 6 million Theranos tests have been performed.
19 The identities of Class members are also ascertainable through records of lab testing purchases,
20 publication notice, self-identification, and other means.

21 48. **Commonality:** Common questions of law and fact exist as to all Class members.
22 These common questions of law or fact predominate over any questions affecting only individual
23 members of the Class. Common questions include, but are not limited to, the following:

- 24 (a) Whether the Theranos blood tests were as represented or promised;
25 (b) Whether Theranos' blood test services, equipment and procedures complied
26 with industry, state and federal standards;
27 (c) Whether Theranos' blood tests were of the highest quality and accuracy;
28 (d) Whether Theranos violated California consumer protection statutes;

- 1 (e) Whether Theranos concealed or omitted material information from
- 2 consumers;
- 3 (f) Whether Plaintiff and Class members have been injured by virtue of
- 4 Theranos' unlawful conduct;
- 5 (g) Whether Plaintiff and Class members are entitled to restitution or other relief
- 6 from Theranos, and if so, in what amounts;
- 7 (h) Whether Plaintiff and Class members are entitled to monetary damages and, if
- 8 so, what is the measure of those damages; and
- 9 (i) Whether Class members are entitled to injunctive and/or declaratory relief.

10 49. Common sources of evidence may also be used to demonstrate Theranos' unlawful
11 conduct on a class-wide basis, including, but not limited to documents and testimony about its
12 public statements, advertising, marketing, and other media; Theranos' records of the factual basis
13 for its representations about the Edison and its lab testing attributes; testing and other methods that
14 can prove or disprove Theranos' conduct regarding its claims about the Theranos lab testing process
15 was unlawful; and records of sales and transactions.

16 50. **Typicality:** Plaintiff's claims are typical of the claims of the Class she seeks to
17 represent, in that the named Plaintiff and all members of the proposed Class have suffered similar
18 injuries as a result of the same practices alleged herein. Plaintiff has no interests adverse to the
19 interests of the other members of the Class.

20 51. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the Class and
21 has retained attorneys well-experienced in class actions and complex litigation as her counsel,
22 including cases alleging consumer protection claims arising from corporate conduct that is
23 deceptive and misleading to consumers.

24 52. The Class also satisfies the criteria for certification under Federal Civil Rule 23(b)
25 and 23(c). Among other things, Plaintiff avers that the prosecution of separate actions by the
26 individual members of the proposed Class would create a risk of inconsistent or varying
27 adjudication which would establish incompatible standards of conduct for Theranos; that the
28 prosecution of separate actions by individual Class members would create a risk of adjudications

1 with respect to them which would, as a practical matter, be dispositive of the interests of other Class
2 members not parties to the adjudications, or substantially impair or impede their ability to protect
3 their interests; that Theranos has acted or refused to act on grounds that apply generally to the
4 proposed Class, thereby making final injunctive relief or declaratory relief described herein
5 appropriate with respect to the proposed Class as a whole; that questions of law or fact common to
6 the Class predominate over any questions affecting only individual members and that class action
7 treatment is superior to other available methods for the fair and efficient adjudication of the
8 controversy which is the subject of this action. Plaintiff also avers that certification of one or more
9 subclasses or issues may be appropriate for certification under Federal Civil Rule 23(c). Plaintiff
10 further states that the interests of judicial economy will be served by concentrating litigation
11 concerning these claims in this Court, and that the management of the Class will not be difficult.

12 53. Plaintiff and other members of the Class have suffered damages as a result of
13 Theranos' unlawful and wrongful conduct. Absent a class action, Theranos will retain substantial
14 funds received as a result of its wrongdoing, and such unlawful and improper conduct shall, in large
15 measure, not go remedied. Absent a class action, the members of the Class will not be able to
16 effectively litigate these claims and will suffer further losses, as Theranos will be allowed to
17 continue such conduct with impunity and retain the proceeds of its ill-gotten gains.

18 **COUNT I**

19 **Breach of Contract**

20 54. Plaintiff realleges each and every allegation contained above, and incorporates by
21 reference all other paragraphs of this Complaint as if fully set forth herein.

22 55. Defendant entered uniform or substantially similar contracts with Class members to
23 provide blood tests with its proprietary "Edison" blood analysis technology.

24 56. Defendant assured consumers of its expertise and capability to provide accurate and
25 reliable blood tests. Theranos promised consumers that it was the industry leader in lab blood tests
26 for accuracy and that the testing was done in accordance with the highest quality standards.

27 57. In exchange for payment, Theranos agreed to provide blood testing using its
28 proprietary blood testing technology.

1 58. Plaintiff and putative Class members each paid money for the blood tests offered by
2 Defendant. Plaintiff paid \$81.04 for the blood tests related to her medical condition.

3 59. Theranos breached its contract with Plaintiff and putative Class members by
4 (1) providing tests that were not of the promised high level of accuracy and quality, (2) conducting
5 tests using traditional blood testing methodologies and equipment instead of its self-proclaimed
6 minimally invasive state-of-the art proprietary system, (3) failing to draw blood in the minimally
7 invasive way advertised, (4) failing to ensure its equipment met its own quality standards, (5) failing
8 to ensure its services were tendered with reasonable care and workmanlike effort, including failing
9 to ensure its equipment met industry, state, or federal standards and failing to ensure lab staff was
10 properly trained and monitored, and (7) failing to act in good faith and deal fairly with Class
11 members by acting to deprive Class members of the justified expectations they were to receive
12 under the contract, including failing to notify Class members in a timely fashion of the deficiencies
13 and problems with the tests or their results and not clarifying that certain services were conventional
14 and no different than other blood tests on the market.

15 60. In May, 2016, Theranos told federal health regulators that the company voided two
16 years of blood test results from its Edison blood-testing devices. Each Class member who had a test
17 using the Edison technology between 2014 and 2015 did not receive the benefit of the bargain – a
18 reliable, accurate blood test.

19 61. As a result of Defendant's conduct, Plaintiff and Class members have been injured.

20 **COUNT II**

21 **Violation of the California Consumer Legal Remedies Act, Cal. Civil Code §§ 1750, *et seq.***

22 62. Plaintiff realleges each and every allegation contained above, and incorporates by
23 reference all other paragraphs of this Complaint as if fully set forth herein.

24 63. The California Consumer Legal Remedies Act ("CLRA"), Civil Code section 1750,
25 *et seq.*, was designed and enacted to protect consumers from unfair and deceptive business
26 practices. To this end, the CLRA sets forth a list of unfair and deceptive acts and practices in Civil
27 Code section 1770.

28

1 64. The CLRA applies to Theranos' actions and conduct described herein because it
2 extends to the transactions involving the sale of goods or services for personal, family, or household
3 use within the meaning of Civil Code section 1761.

4 65. At all relevant times, Plaintiff and members of the Class were "consumers" as that
5 term is defined in Civil Code section 1761(d).

6 66. Theranos' practices in connection with the marketing and sale of its blood tests
7 violate the CLRA in at least the following respects:

- 8 ➤ In violation of section 1770(a)(5), Theranos knowingly misrepresented the
9 character, uses and benefits of its product and services;
- 10 ➤ In violation of section 1770(a)(7), Theranos represented that its products and
11 services are of a particular standard, quality or grade, which they are not; and
- 12 ➤ In violation of section 1770(a)(9), Theranos knowingly advertised its product
13 and services with the intent not to sell the product and services as advertised.

14 67. As set forth above, Theranos' claims about the Edison blood analysis technology are
15 deceptive and misleading to reasonable consumers in violation of the CLRA because, among other
16 things, its promises that its tests are of the highest levels of accuracy and performed to the highest
17 standards of quality are untrue, misleading and deceptive, and consumers do not get what they paid
18 for when they received blood tests using Theranos' products and services.

19 68. By way of the foregoing, Theranos engaged in the knowing concealment,
20 suppression, and omission of material facts with intent that others act upon such concealment,
21 suppression, and omission, in connection with the sale and advertisement of its goods and services.
22 Through Theranos' uniform concealment and suppression of material facts, Theranos engaged in
23 misleading and deceptive conduct that created a likelihood of confusion or misunderstanding on the
24 part of Plaintiff and Class members.

25 69. Theranos' conduct described herein was undertaken in transactions intended to result
26 and which did result in the purchase of its blood tests by consumers, which caused harm to Plaintiff
27 and Class members who would not have purchased Theranos blood tests and services had they
28 known the truth. Plaintiff in fact was injured by purchasing Defendant's products and services.

1 meaning of California Business & Professions Code section 17500, *et seq.* Theranos' acts and
2 practices have deceived and/or are likely to continue to deceive Plaintiff, members of the Class, and
3 the public. As set forth above, Theranos' claims about its proprietary "Edison" blood analysis
4 technology are deceptive and misleading to reasonable consumers.

5 77. In making and disseminating the statements alleged herein, Theranos knew or should
6 have known its representations were deceptive and misleading. Plaintiff and members of the Class
7 based their decisions to purchase Theranos' blood tests because of Theranos' misrepresentations
8 and omissions of material facts.

9 78. Plaintiff and Class members are entitled to relief, including enjoining Defendant to
10 cease and desist from engaging in the practices described herein, as well as a declaration of rights
11 that Theranos' representations and omissions are deceptive and misleading.

12 **COUNT IV**

13 **Violation of California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.***

14 79. Plaintiff realleges each and every allegation contained above, and incorporates by
15 reference all other paragraphs of this Complaint as if fully set forth herein.

16 80. Theranos has engaged in unfair competition within the meaning of California
17 Business & Professions Code section 17200, *et seq.* (the "UCL"), because Theranos' conduct is
18 unlawful, misleading and unfair as herein alleged.

19 81. Plaintiff, the members of the Class, and Theranos are a "person" or "persons," within
20 the meaning of Section 17201 of the UCL.

21 82. The UCL prohibits any unlawful, unfair, or fraudulent business practices or acts.
22 Theranos' conduct, as alleged herein, constitutes an unlawful, unfair and fraudulent business
23 practice that occurred in connection with the marketing, advertisement and sale of its product and
24 services.

25 83. Theranos' misleading and deceptive misrepresentations and omissions, concealment
26 and suppression of material fact, as described within, violated the UCL's unlawful, unfair, and
27 fraudulent prongs.

28

1 84. Unlawful prong: Theranos' conduct, as described within, violated the UCL's
2 unlawful prong because it breached its contract with Plaintiff and putative Class members, violated
3 the CLRA and engaged in false advertising under the FAL, section 17500, *et seq.* of the California
4 Business & Professions Code.

5 85. Unfair prong: Theranos' conduct, as described within, violated the UCL's unfair
6 prong because its conduct is immoral, unethical, oppressive, or unscrupulous and has caused
7 injuries to the Plaintiff and the Class that outweighs any purported benefit. At all times relevant
8 herein, Theranos' conduct of misrepresenting and concealing material facts regarding its proprietary
9 "Edison" blood analysis technology from the Plaintiff and consumers caused them injury by
10 inducing them to purchase Theranos blood tests they would not have otherwise purchased. The
11 utility of Theranos' conduct in misrepresenting and concealing material facts from Plaintiff and the
12 Class is far outweighed by the gravity of harm to consumers who have now spent money they
13 would not have otherwise spent and that has resulted in Defendants being unjustly enriched.

14 86. Fraudulent prong: Theranos' conduct, as described within, violated the UCL's
15 fraudulent prong by misrepresenting and concealing material information that caused, or would
16 likely cause, Plaintiff and the Class to be deceived into purchasing Theranos blood tests they would
17 not have otherwise purchased. Plaintiff and the Class did, in fact, purchase Theranos blood tests
18 they would not have otherwise purchased but for Theranos' fraudulent conduct misrepresenting and
19 concealing material information about the accuracy and reliability of the Edison blood analysis
20 technology. Plaintiff and the Class have been harmed and sustained injury as a result of Theranos'
21 fraudulent conduct in violation of the UCL as explained herein.

22 87. Plaintiff has standing to pursue this claim because she has been injured by virtue of
23 suffering a loss of money and/or property as a result of the wrongful conduct alleged herein.
24 Plaintiff would not have purchased the Theranos blood test had she known the truth, though she has
25 an interest in purchasing such products in the future. As a direct result of Theranos' actions and
26 omissions of material facts, Plaintiff and Class members did not obtain the value of the products for
27 which they paid; were unlawfully, unfairly, and fraudulently induced to make purchases that they
28

1 otherwise would not have; and lost their ability to make an informed and reasoned purchasing
2 decision.

3 88. The UCL is, by its express terms, a cumulative remedy, such that remedies under its
4 provisions can be awarded in addition to those provided under separate statutory schemes and/or
5 common law remedies, such as those alleged in the other Counts of this Complaint. *See* Cal.
6 Bus. & Prof. Code § 17205.

7 89. As a direct and proximate cause of Theranos' conduct, which constitutes unlawful,
8 unfair, and fraudulent business practices, as herein alleged, Plaintiff and Class members have been
9 damaged and suffered ascertainable losses measured by the cost of their Theranos blood test
10 purchases, thereby entitling them to recover restitution and equitable relief, including disgorgement
11 or ill-gotten gains, refunds of moneys, interest, reasonable attorneys' fees, filing fees, and the costs
12 of prosecuting this class action, as well as any and all other relief that may be available at law or
13 equity.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff, on behalf of herself and on behalf of the Class, prays for relief as
16 follows:

- 17 A. For an Order certifying this case as a class action pursuant to Federal Civil Rule 23
18 against Theranos, appointing Plaintiff as Class Representative, and Kaplan Fox &
19 Kilsheimer LLP and Wites & Kapetan P.A. as Class Counsel;
- 20 B. Awarding monetary, punitive and actual damages and/or restitution, as appropriate;
- 21 C. Awarding declaratory and injunctive relief as permitted by law or equity to assure
22 that the Class has an effective remedy, including enjoining Theranos from continuing
23 the unlawful practices as set forth above;
- 24 D. Prejudgment interest to the extent allowed by the law;
- 25 E. Awarding all costs, experts' fees and attorneys' fees, expenses and costs of prosecuting
26 this action; and
- 27 F. Such other and further relief as the Court may deem just and proper.
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JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all issues so triable.

DATED: June 21, 2016

KAPLAN FOX & KILSHEIMER LLP

By: /s/ Laurence D. King
Laurence D. King

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