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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

DAVID TOMPKINS, an individual, on behalf  
of himself and others similarly situated,  
Plaintiffs,

v.

23ANDME, INC.,  
Defendant.

**CASE NO.** \_\_\_\_\_

**CLASS ACTION AND  
REPRESENTATIVE ACTION**

**COMPLAINT FOR DAMAGES,  
EQUITABLE, AND INJUNCTIVE  
RELIEF**

**JURY TRIAL DEMANDED**

1 COMES NOW Plaintiff David Tompkins (“Plaintiff”), on behalf of himself and all  
2 others similarly situated (the “Class”), and brings this action against Defendant 23andMe, Inc.  
3 alleging the following upon personal knowledge as to his actions and upon information and  
4 belief based upon the investigation of his attorneys as to all other facts alleged in this complaint:

### 5 INTRODUCTION

6 1. This class action concerns false, misleading and improper representations,  
7 advertisements and promises cavalierly made by 23andMe, Inc. (“Defendant” or “23andMe”)  
8 concerning its DNA Saliva Collection Kit/Personal Genome Service (“Saliva Kits”). For the  
9 cost of \$99.00, 23andMe suggests, upon receiving a submitted DNA saliva sample from a  
10 customer through the mail, that it can accurately determine and forecast, among other things,  
11 health reports and status, traits and various drug responses. 23andMe makes these promises  
12 without providing any scientific or clinical validation whatsoever that its Saliva Kits are  
13 accurate, reliable or fit for its advertised uses. 23andMe’s Saliva Kits have not even received  
14 marketing authorization or approval from the Food and Drug Administration (“FDA”). Ignoring  
15 this vital requirement and in violation of the Federal Food, Drug and Cosmetic Act (“FDC  
16 Act”), until December 6, 2013, 23andMe continued to market, advertise, promote and sell its  
17 Saliva Kits without the FDA’s approval and in a violative manner.

18 2. In addition to misleading unsuspecting consumers who purchase Saliva Kits in  
19 the belief that they are scientifically valid, 23andMe aggregates genetic information that it  
20 receives from its customers and markets it to the scientific community for scientific research  
21 that “could lead to commercial use.”

22 3. As a result of 23andMe’s improper and unlawful conduct, countless consumers  
23 and end-users, who relied on Defendant’s representations and statements as being truthful and  
24 accurate, have been deceived, wronged, and financially harmed.

1 **JURISDICTION AND VENUE**

2 4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.  
3 § 1332(d)(2), because the Plaintiff and over two-thirds of the Class Members are of diverse  
4 citizenship from the Defendant; and the aggregate amount in controversy exceeds five million  
5 dollars (\$5,000,000.00) exclusive of interest and costs.

6 5. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because a substantial  
7 part of the events or omissions giving rise to Plaintiff's claims occurred here, a substantial part  
8 of the property that is the subject of this action is situated here, and Defendant is subject to  
9 personal jurisdiction, in this District.

10 6. As a result of Defendant's designing, testing, developing, manufacturing,  
11 distributing, advertising, promoting and/or selling of Saliva Kits to purchasers throughout  
12 California, Defendant obtained the benefits of the laws of California.

13 7. Defendant conducted systematic and continuous business activities in and  
14 throughout the state of California and otherwise intentionally availed itself of the markets of the  
15 state of California through the promotion and marketing of its business.

16 **PARTIES**

17 8. At all times herein relevant, Plaintiff Tompkins was and is a resident of  
18 Montgomery County, Maryland.

19 9. In August 2013, Plaintiff Tompkins purchased a Saliva Kit after seeing and  
20 relying on Defendant's print and online advertising suggesting that the product was reliable and  
21 accurate.

22 10. Plaintiff paid \$99.00 for his Saliva Kit.  
23  
24

1 11. After receiving his Saliva Kit, and spitting onto a provided stick (which is used  
2 to obtain the purported DNA testing sample), Plaintiff mailed the materials back to 23andMe for  
3 a determination as DNA related traits, family characteristics and general health condition(s).

4 12. Several days after he submitted his sample, Plaintiff received an e-mail  
5 confirmation from Defendant stating that its laboratory had received the submission.

6 13. On September 25, 2013, Plaintiff received an e-mail from Defendant stating:  
7 “Your health results as well as select ancestry features are ready to review. DNA Relatives and  
8 Ancestry Composition rely on additional computation, and you’ll receive an email when those  
9 are complete.”

10 14. Plaintiff relied on the representations and statements of 23andMe to be accurate.

11 15. Immediately upon receiving his results, Plaintiff did not trust the accuracy of the  
12 tests.

13 16. Plaintiff would not have purchased the Saliva Kit for \$99.00 had he known that  
14 the results would be false, unsubstantiated, misleading and inaccurate.

15 17. Defendant 23andMe, Inc., is a Delaware corporation founded in 2006. It is  
16 headquartered in Mountain View, California and conducts business in the State of California  
17 and throughout the United States.

18 **FACTUAL ALLEGATIONS**

19 18. Defendant 23andMe advertises, markets and sells its Saliva Kits directly to  
20 consumers through print, on-line means and radio advertisement mediums.

21 19. Defendant claims that its Saliva Kits act as an accurate and reliable DNA genetic  
22 test.

23  
24

1 20. Upon receiving a submitted sample from a customer, Defendant allegedly  
2 conducts a DNA test for over 240 “conditions” and genetic traits (claims to test: health factors,  
3 traits, and other related conditions).

4 21. Upon determining the purported results, using unknown testing conditions and  
5 means, Defendant sends a “report” back to customers which it claims to be accurate.

6 **A. 23ANDME’S SALIVA KITS VIOLATE THE FEDERAL FOOD, DRUG**  
7 **AND COSMETIC ACT.**

8 22. Because it cannot provide proof of the validity of its marketing claims to the  
9 FDA and has not obtained marketing permission or approval from the FDA, advertising and sale  
10 of Defendant’s Saliva Kits violate the Federal Food, Drug, and Cosmetic Act (“FD&C Act”).

11 23. On November 22, 2013, the FDA sent Defendant a “Warning Letter” (“FDA  
12 Letter”) enumerating various concerns it had with the Saliva Kits and the way Defendant  
13 advertised the product. The FDA specifically cited concerns about the public danger involved in  
14 false positives and false negatives for serious health conditions purportedly tested by  
15 Defendant’s kits.

16 24. The FDA Letter, among other things, stated that “[t]o date, 23andMe has failed  
17 to provide adequate information to support a determination that the PGS [Saliva Kits] is  
18 substantially equivalent to a legally marketed predicate for any of the uses for which you are  
19 marketing it; no other submission for the PGS device that you are marketing has been provided  
20 under section 510(k) of the [FDC] Act, 21 U.S.C. § 360(k).”

21 25. To date, the FDA still has not received any assurance that the Defendant has  
22 analytically or clinically validated the Saliva Kit for its intended uses.

23 26. The FDA letter importantly states that: “The risk of serious injury or death is  
24 known to be high when patients are either non-complaint or not properly dosed; combined with

1 the risk that a direct-to-consumer test result may be used by a patient to self-manage, serious  
2 concerns are raised if test results are not adequately understood by patients or if incorrect test  
3 results are reported.”

4 27. As the FDA makes clear in its letter, 23andMe advertised and marketed Saliva  
5 Kits to consumers without any analytical or clinical data to support its accuracy or validity.

6 **B. DEFENDANT’S FALSE AND MISLEADING REPRESENTATIONS**  
7 **CONCERNING PURPORTED HEALTH BENEFITS.**

8 28. Defendant cavalierly represents and advertises that the results of Saliva Kit tests  
9 will improve consumers’ health. Defendants state the following on their website:

10 a. “Learn hundreds of things about your health. Using your DNA  
11 information, 23andMe helps you know more about your health so you can take an  
12 active role in managing it. With reports on over 240+ health conditions and traits,  
13 here are a few of the things you’ll learn about you.”

14 b. “Plan for the future. Find out if your children are at risk for inherited  
15 conditions, so you can plan for the health of your family.”

16 c. “Living well starts with knowing your DNA.”

17 d. “Health tools - Document your family health history, track inherited  
18 conditions, and share the knowledge.”

19 e. “Drug response - Arm your doctor with information on how you  
20 might respond to certain medications.”

21 f. “Below are a few examples [diabetes, arthritis, coronary heart disease,  
22 breast cancer, plavix, lactose intolerance] where we can help you learn more. And  
23 when you know more, you can make better lifestyle choices, look out for common  
24 conditions and take steps toward mitigating serious diseases.”

25 29. Defendant’s statements about its health benefits even go as far as stating:

26 23andMe is a DNA analysis service providing information and  
27 tools for individuals to learn about and explore their DNA. We use  
28 the Illumina HumanOmniExpress-24 format chip . . . . Our chip  
29 consists of a fully custom panel of probes for detective single  
30 nucleotide polymorphisms (SNPs) selected by our researchers. The

1 selection was made to maximize the number of actionable health  
2 and ancestry features available to customers as well as offer  
flexibility for future research.

3 30. To the contrary, the Saliva Kits work to confuse customers as to their health and  
4 possibly cause adverse health reviews and diagnoses. For instance, on May 14, 2008, Dr.  
5 Rudolph Tanzi, a professor of neurology at Harvard University and director of the Genetics and  
6 Aging Research Unit at Massachusetts General Hospital, testified before the United States  
7 Senate Special Committee On Aging about the dangers of Defendant's product, stating as  
8 follows in response to a question from then-Senator Hillary Rodham Clinton:

9 [I]t should be noted that companies like 23andMe, Navigenics,  
10 Knome, and DeCode are already charging considerable sums of  
11 money for anyone who wishes to pay to be tested for the  
12 "unconfirmed" genetic risk factors for Alzheimer's and other  
13 common diseases, e.g. cardiovascular disease, cancer, and stroke.  
14 In my view, it is highly premature and both medically and  
15 commercially irresponsible to be conducting these tests. To  
16 reliably predict disease risk, we will first need to establish the full  
17 set of "confirmed" risk factors and then determine how they work  
together to influence risk in a "multigenic" manner. As these  
companies become more popular, the public will need to be  
increasingly informed and educated about the fact these tests are  
not yet accurate, reliable, or scientifically sound. I am concerned  
that these tests may increasingly lead to unwarranted anxiety or a  
false sense of security about one's genetic destiny as these  
companies services become more "trendy."

18 31. Defendant's health assertions, statements and representations are unfounded and  
19 not supported by any scientific research or factual basis.

20 **C. DEFENDANT'S FALSE AND MISLEADING ADVERTISEMENTS AND**  
21 **REPRESENTATIONS.**

22 32. Defendant continues to market and advertise its Saliva Kits as being beneficial  
23 and useful despite having no scientific data or research to support the claims.  
24

1           33.     In January 2013, in response to an FDA inquiry, 23andMe was still “completing  
2 the additional analytical and clinical validations for the tests that have been submitted” and  
3 “planning extensive labeling studies that will take several months to complete.”

4           34.     On November 22, 2013, the FDA issued a Warning Letter to 23andMe, stating  
5 that it was had not received marketing clearance or approval for its Saliva Collection Kit and  
6 Personal Genome Service and was in violation of the Federal Food, Drug and Cosmetic Act,  
7 despite repeated demands from the FDA for further information.

8           35.     On December 6, 2013, in response to the FDA’s November 22, 2013 Warning  
9 Letter, 23andMe ceased marketing its services relating to the disease and other conditions.

10          36.     Consumers would not purchase the Saliva Kits if they knew that Defendant’s  
11 representations were false and that the product was not sanctioned by the FDA.

12          37.     Defendant was and is aware of the misleading nature of its product by way of  
13 countless Internet consumer complaints:

14                   I also found both the so called health analysis to be pretty much  
15 useless. Sure, you're told that people with your genetic markers  
16 have a higher percentage than others markers of a certain disease  
17 or health risk, but so what? That is totally meaningless as lifestyle,  
18 diet, excercise [sic] and a host of other factors come into play and  
19 serve a far more important determination of what kind of health  
20 you have and are going to have. I didn't expect a lot from this test-  
but perhaps something a little more defined than what this offers.  
In addition, there a TON of very personal surveys and questions  
they ask you (optional of course)- some of which seem to written  
by very bored college research interns. In my opinion, unless you  
have no idea what your racial makeup is and no clue about where  
modern humans originate from, don't waste your money on this.

21                   \*\*\*

22                   I heard that you also need to enroll(mandatory)for ten months and  
23 pay \$5/mo to keep your page going. Too many complaints about  
24 CS, ghost Co. overseas? Results are just a general idea generated  
by a PC software....if it is CHEAP, don't expect true good results!  
Also seems like they fail to disclose that your "controversial"



1 information maybe leaked (sold?) to the Health and Insurance  
2 Companies to use for review when you apply for services, don't  
waste your money and loose your personal information at same  
time...STAY AWAY.

3 \*\*\*

4  
23andme charged me \$395 for my DNA analysis. They only  
5 analyzed my DNA to a certain point, saying they have not  
analyzed my branch of DNA any further (I guess it was not  
6 beneficial to the woman, the wife of a GOOGLE founder, to learn  
any more about this genetic profile). They then asked me to pay  
7 them MORE money if I wanted to learn about my genetic  
predisposition to getting Alzheimer's. I wanted to see if I had any  
8 relatives in the world, since all of my relatives except my parents  
were killed in the Holocaust, but they have a very low user rate, so  
9 the chances of finding a close relative are almost nil. If you want to  
get your DNA analyzed, I strongly recommend you try one of the  
10 companies offering this service.

11 \*\*\*

12 Even after sending me a replacement test they can't read my DNA.  
13 They are offering to refund the money I paid for the test but  
offered NO explanation as to why they couldn't read it. I followed  
the directions to the letter both times. This concerns me.

14 \*\*\*

15 Not worth the risk of a very questionable study. The Terms of  
16 Agreement are invasive and not like any requirements for a  
legitimate study. I was very concerned about my private  
17 information, how it would be used, and to whom it would be made  
available.

18 \*\*\*

19 I paid \$299 for the kit 8 months ago. It is now being offered for  
20 \$99 and based on other reviews, has been offered for that price in  
the past. Is is [sic] worth \$299? Absolutely not! Will they offer you  
21 a partial refund? Absolutely not! The genealogy information is  
very general. It may be because they do not have a big enough data  
22 base to offer more detailed information. The information  
concerning health risks while interesting was not entirely accurate.  
23 In my own case, I have had a couple of serious health conditions  
that were listed as very low risk for me. I have to wonder how  
24 accurate the other results are.

\*\*\*

1 I think this is a scam.... They took a sample, and after two months,  
2 I find out that they could not get DNA from the sample, and sent  
3 me another kit. A month later, they tell me that they couldn't get  
4 DNA, and will refund my money "less shipping costs"  
5 So, they keep the shipping costs, I lost months of time waiting, and  
6 have nothing to show for it, except a smaller wallet. I don't want  
7 my money back -- I want my results!  
8 In the meantime, no help as to trying to find out WHY they didn't  
9 get DNA from my saliva... Except that maybe there is no DNA in  
10 saliva??? They need skin cells, so why not provide a swab to  
11 collect DNA from my cheek? Or offer some other way to do it,  
12 other than dropping me and keeping a portion of my money?  
13 There is NO place to call for support. They do NOT respond to  
14 their emails  
15 Their support level is a JOKE.

16 \*\*\*

17 23ANDME is a RIPOFF! RIPOFF! RIPOFF!. It's a SCAM!!! It's a  
18 SCAM!!! I bought one of their \$99 test kits that will break down  
19 my genetics and tell me my chances of getting ill from certain  
20 cancers and heart disease. I could not believe my eyes when I saw  
21 the test results. TOTALY FALSE! They make these numbers up! I  
22 called them for a refund and I was insulted by Andy Page who  
23 refused to return my money. I had my tests done somewhere else  
24 and the results were totally different. I called them again and a  
25 technician by the name of "Arnab Chowdry "secretly told me that  
26 the results are made up and no actual genetic study is done. Anne  
27 "The founder of this scam" he told me, made up the idea when  
28 they where dating each other. I want to make myself available for  
29 any class action lawsuits against this FRAUD!.

30 38. Buried within the TOS is the real reason that Defendant is asking consumers to  
31 pay \$99.00 to have their DNA analyzed: Defendant plans to create a huge DNA database and  
32 use the aggregate and individual data that it collects about customers' DNA for research,  
33 including with commercial partners.

34 39. Defendant's TOS provides that, "in order to expand and accelerate the  
35 understanding and practical application of genetic knowledge in health care, we invite all  
36 genotyped users to participate in 23andWe Research. Participation in such research is voluntary  
37 and based upon an IRB-approved consent document." The TOS define "23andWe Research" as

1 “scientific research that 23andMe performs with the intent to publish in a peer-reviewed  
2 scientific journal. 23andWe Research only uses Genetic and Self-Reported Information from  
3 users who have given consent according to the applicable Consent Document. 23andWe  
4 Research activities do not include R&D.”

5 40. Despite attempting to obtain this consent from each of its customers, Defendant  
6 explains much further in its TOS that they “will not receive compensation for any research **or**  
7 **commercial products** that include or result from [thei]r Genetic Information or Self-Reported  
8 Information.” (Emphasis added.)

9 41. The TOS describes Defendant’s use of customers’ “Genetic and Self-Reported  
10 Information” as follows:

11 If you have given consent for your Genetic Information and Self-  
12 Reported Information to be used in 23andWe Research as  
13 described in the applicable Consent Document, we may include  
14 your information in the Aggregated Genetic Information and Self-  
15 Reported Information we disclose to third parties for the purpose  
16 of publication in a peer-reviewed scientific journal. 23andMe may  
also include your information in Aggregated Genetic and Self-  
Reported Information disclosed to third-party non-profit and/or  
**commercial research partners** who will not publish that  
information in a peer-reviewed scientific journal. (Emphasis  
added.)

17 42. The TOS explicitly requires customers who agree to having their genetic  
18 information become part of 23andMe’s aggregate database to waive their rights to any products  
19 that result from the research that uses their DNA: "Waiver of Property Rights. As stated above,  
20 you understand that by providing any sample, having your Genetic Information processed,  
21 accessing your Genetic Information, or providing Self-Reported Information, you **acquire no**  
22 **rights in any research or commercial products that may be developed by 23andMe or its**  
23 **collaborating partners. You specifically understand that you will not receive compensation**  
24 **for any research or commercial products that include or result from your Genetic**

1 **Information or Self-Reported Information."** (Emphasis Added.) If a customer agrees to  
2 having his or her individual DNA disclosed to researchers, 23andMe's Privacy Statement  
3 discloses that it may also be put to commercial use: "If you have consented to use of your  
4 individual-level data in the Research Portal feature, qualified researchers (who must comply  
5 with certain requirements) may access your individual-level Genetic and/or Self-Reported  
6 Information for the purpose of scientific research, which could **lead to commercial use."**

7 43. Nowhere in the advertising or website does Defendant disclose that this is the  
8 real purpose of its DNA testing services.

9 44. In addition, based on information and belief, in an effort to make its product  
10 appealing, Defendant also publishes false "research" reports and studies that lack any statistical  
11 or scientific data.

12 45. Defendant's representations are misleading, deceptive and unfair. Defendant's  
13 misrepresentation and practices injured and caused the relying Plaintiff and putative Class  
14 Members financially.

#### 15 **CLASS ACTION ALLEGATIONS**

16 46. Plaintiff seeks to bring this case as a class action, under Federal Rule of Civil  
17 Procedure 23, on behalf of himself and all others similarly situated. The proposed Class is  
18 defined as:

19 All individuals and entities that have purchased a 23andMe Saliva Kit in the  
20 United States or California.

21 Excluded from the Class are Defendant, any entity in which Defendant have a  
22 controlling interest or which has a controlling interest of Defendant, and  
23 Defendant's legal representatives, assigns and successors. Also excluded are the  
24 judge to whom this case is assigned and any member of the judge's immediate  
family.

1           47.    **Numerosity.** The number of persons who are members of the Class described  
2 above are so numerous that joinder of all members in one action is impracticable.

3           48.    **Commonality and predominance.** Questions of law and fact that are common to  
4 the entire Class predominate over individual questions because the actions of Defendant  
5 complained of herein were generally applicable to the entire Class. These legal and factual  
6 questions include, but are not limited to:

7                   a. Whether Defendant advertised and sold Saliva Kits with knowledge of its  
8 unreliability and misleading results;

9                   b. Whether Defendant's advertising was unfair, deceptive, untrue, or  
10 misleading;

11                  c. Whether the arbitration clause contained in Defendant's Terms of Service  
12 applies to Class Members and is unconscionable;

13                  d. Whether Defendant's Terms of Service were adequately disclosed to Class  
14 Members;

15                  e. Whether Defendant's Terms of Service contain unconscionable and/or  
16 illusory terms and language;

17                  f. Whether Defendant obtained appropriate and timely approval from the FDA  
18 to market and sell its Saliva Kits;

19                  g. Whether Defendant's promises of health reports and risks were likely to  
20 mislead reasonable and relying consumers;

21                  h. Whether Class Members are entitled to restitution and other equitable relief  
22 requested herein; and

23                  i. Whether Class Members suffered damages and are entitled to damages.  
24

1           49.     **Typicality.** Plaintiff’s claims are typical of Class Members’ claims. Plaintiff and  
2 the Class Members sustained similar injuries as a direct result of purchasing the Saliva Kits in  
3 reliance on Defendant’s deceptive advertising and without reliability of results.

4           50.     **Adequacy.** Plaintiff will fairly and adequately represent and protect Class  
5 Members’ interests. Plaintiff has no interests antagonistic to Class Members. Plaintiff has  
6 retained counsel with experience prosecuting consumer class-action and complex litigation  
7 claims.

8           51.     **Superiority.** A class action is superior to all other available methods for fair and  
9 efficient adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in  
10 the management of this action that would preclude its maintenance as a class action.

11           52.     This action is appropriate. The prosecution of separate actions by individual  
12 members of the Class would create a risk of inconsistent and varying adjudications concerning  
13 the subject of this action, which adjudications could establish incompatible standards of conduct  
14 for Defendant under the laws alleged herein.

15   **FIRST CAUSE OF ACTION**  
16   **California False Advertising Law**  
  **(CAL. BUS. & PROF. CODE §§ 17500 *et seq.*)**

17           53.     Plaintiff re-alleges and incorporates by reference the allegations set forth in this  
18 Class Action Complaint.

19           54.     Defendant is a “person” within the meaning of CAL. BUS. & PROF. CODE §  
20 17506.

21           55.     The TOC provides that “any disputes with 23andMe arising out of or relating to  
22 the Agreement ("Disputes") shall be governed by California law regardless of your country of  
23 origin or where you access 23andMe, and notwithstanding of any conflicts of law principles and  
24 the United Nations Convention for the International Sale of Goods.”

1           56. By representing to the general public, including Plaintiff and the putative Class  
2 Members, that its Saliva Kits allow consumers to “[l]earn hundreds of things about your  
3 health,” “[f]ind out if your children are at risk for inherited conditions, so you can plan for the  
4 health of your family,” “[a]rm your doctor with information on how you might respond to  
5 certain medications,” and learn more about their susceptibility to certain diseases and  
6 conditions, Defendant engaged in false and misleading practices prohibited by the California  
7 False Advertising Law (CFAL).

8           57. In addition to being false, Defendant’s advertisements and representations are  
9 also misleading and have the capacity, likelihood, and tendency to deceive and confuse  
10 consumers, including Plaintiff and the putative Class Members.

11           58. Defendant knew, or would have known with the exercise of reasonable care that  
12 its advertisements and representations about the benefits of its Saliva Kits were false and  
13 misleading.

14           59. Defendant made these false and misleading advertisements and  
15 misrepresentations with the intent of inducing consumers to purchase the Saliva Kits.

16           60. Plaintiff purchased a Saliva Kit in reliance on Defendant’s false and misleading  
17 advertisements and representations about the product. Plaintiff would have foregone purchasing  
18 Defendant's product had he known that the Saliva Kits were unreliable and did not possess the  
19 health and other benefits that Defendant’s advertisements attributed to it.

20           61. As a result of the foregoing acts, omissions, and practices, Plaintiff and the  
21 putative Class Members have suffered actual damages as described herein.

22           62. Pursuant to Business & Professions Code §§ 17203 and 17535, Plaintiff seeks an  
23 order of this Court enjoining Defendant from continuing with the advertisements and  
24

1 representations about its Saliva Kits and requests an order awarding Plaintiff and the putative  
2 Class Members restitution of the money wrongfully acquired by Defendant.

3 **SECOND CAUSE OF ACTION**  
4 **Violation of California Unfair Competition Law**  
5 **CAL. BUS. & PROF. CODE § 17200, *et seq.***  
6 **(“unlawful” element)**

7 63. Plaintiff re-alleges and incorporates by reference the allegations set forth in this  
8 Class Action Complaint.

9 64. Defendant is a “person” within the meaning of CAL. BUS. & PROF. CODE §  
10 17201.

11 65. Defendant unfairly, unlawfully, deceptively, and misleadingly represented what  
12 the Saliva Kits could do. Defendants boasted that the kits would allow consumers to “[l]earn  
13 hundreds of things about your health,” “[f]ind out if your children are at risk for inherited  
14 conditions, so you can plan for the health of your family,” and “[d]ocument your family health  
15 history, track inherited conditions, and share the knowledge,” and learn about various diseases.  
16 To the contrary, the Saliva Kits do none of those things and the results it provides are not  
17 supported by any scientific evidence or data.

18 66. Plaintiff and the putative class purchased Saliva Kits in reliance on Defendant’s  
19 unfair, unlawful, deceptive, and misleading representations about the product. Plaintiff would  
20 have foregone purchasing Defendant’s product had he known that the Saliva Kit was unreliable  
21 and did not possess the health and other benefits that Defendant’s advertisements claimed.

22 67. Defendant’s business practices, as alleged herein, are unlawful because they  
23 violate the Federal Food, Drug and Cosmetic Act and California law.

24 68. As a result of the foregoing acts, omissions, and practices, Plaintiff and the  
putative Class Members have suffered actual damages as described herein and are entitled to



1 recover such damages, together with punitive damages, equitable relief, injunctive relief and  
2 reasonable attorneys' fees.

3 69. Pursuant to Section 17203 of the California Business & Professions Code,  
4 Plaintiff seeks an order of this Court enjoining Defendant from continuing to engage, use, or  
5 employ its unfair and fraudulent practice of advertising the sale and use of the Products and  
6 making false claims about the Saliva Kits.

7 **THIRD CAUSE OF ACTION**  
8 **Violation of California Unfair Competition Law**  
9 **CAL. BUS. & PROF. CODE § 17200, et seq.**  
10 **(“unfair” and “fraudulent” elements)**

11 70. Plaintiff re-alleges and incorporates by reference the allegations set forth in this  
12 Class Action Complaint.

13 71. Plaintiff purchased a Saliva Kit in reliance on Defendant's false and misleading  
14 advertisements and representations about the product. Plaintiff would not have purchased  
15 Defendant's products had he known that the Saliva Kit was unreliable and did not possess the  
16 suggested benefits that Defendant's advertisements claimed it has.

17 72. Defendant's false and misleading representations about the health and other  
18 benefits of its Saliva Kits violate long standing public policy in the United States and California  
19 prohibiting businesses from claiming a product will provide health benefits without  
20 substantiating scientific evidence and/or data.

21 73. Defendant's false promise that the Saliva Kits will help its customers determine  
22 if their “children are at risk for inherited conditions” and “[u]nderstand [thei]r genetic health  
23 risks” is improper and unfounded.  
24

1           74. Defendant knew or should have known that its claims about the Saliva Kits were  
2 fraudulent and likely to deceive the public, including Plaintiff and the putative Class Members,  
3 into believing that the Saliva Kits have uses and benefits that they do not possess.

4           75. Plaintiff purchased a Saliva Kit in reliance on Defendant's unfair and fraudulent  
5 representations about the kits. Plaintiff would have foregone purchasing Defendant's product  
6 had he known that the Saliva Kit was unreliable and did not possess the health and other  
7 benefits that Defendant's advertisements attributed to it.

8           76. Plaintiff and the putative Class Members' injuries are substantial and not  
9 outweighed by any real benefits to consumers or competition. Plaintiff and the Class Members  
10 could not reasonably have avoided the information because Defendant intentionally misled the  
11 consuming public by means of the claims made with respect to the Saliva Kits as set forth  
12 herein.

13           77. In addition, Defendant's use of various forms of advertising media to advertise,  
14 call attention to, or give publicity to the sale of goods or merchandise which are not as  
15 represented in any manner constitutes unfair competition; unfair, deceptive, untrue, or  
16 misleading advertising; and an unlawful business practice within the meaning of the California  
17 law.

18           78. Defendant's wrongful business practices and procedures constituted, and  
19 constitute, a continuing course of conduct of unfair competition.

20           79. As a result of the foregoing acts, omissions, and practices, Plaintiff and the  
21 putative Class Members have suffered actual damages as described herein.

22           80. Pursuant to Section 17203 of the California Business & Professions Code,  
23 Plaintiff and the putative Class Members seek an order of this Court enjoining Defendant from  
24 continuing to engage, use, or employ its unfair and fraudulent practice of advertising the sale

1 and use of the Saliva Kits products. Likewise, Plaintiff and the putative Class Members seek an  
2 order requiring Defendant to cease making the unfair and fraudulent claims about its Saliva Kits  
3 that are described herein. Plaintiff also requests an order awarding Plaintiff and the Class  
4 restitution of the money wrongfully acquired by Defendant by means of responsibility attached  
5 to Defendant's false and misleading representations.

6 **FOURTH CAUSE OF ACTION**  
7 **Violations of California Consumer Legal Remedies Act**  
8 **CAL. CIV. CODE §§ 1750 *et seq.***

8 81. Plaintiff re-alleges and incorporates by reference the allegations set forth supra in  
9 this Class Action Complaint.

10 82. Defendant is a “person” within the meaning of CAL. CIV. CODE § 1761.

11 83. Plaintiff and the putative Class Members are “consumers” within the meaning of  
12 CAL. CIV. CODE § 1761.

13 84. Plaintiff purchased a Saliva Kit from Defendant for personal, family or  
14 household purposes. The purchase of the Saliva Kits by Plaintiff and the putative Class  
15 Members were and are “transactions” within the meaning of CAL. CIV. CODE § 1761.

16 85. Defendant's marketing, labeling, advertising, and sales of the Saliva Kits violated  
17 the CLRA in at least the following respects:

18 a. Defendant represented that the Saliva Kits have characteristics, ingredients,  
19 uses, and benefits which it does not have;

20 b. Defendant represented that the Saliva Kits are of a particular standard,  
21 quality, or grade, which they are not;

22 c. Defendant advertised the Saliva Kits with an intent not to sell the Saliva Kits  
23 as advertised; and

1 d. Defendant represented that the subject of the sale of the Saliva Kits has been  
2 supplied in accordance with a previous representation when it has not.

3 86. Defendant's actions as described herein were done with conscious disregard of  
4 Plaintiff's and the Class Members' rights, and Defendant was wanton and malicious in its  
5 concealment of the same.

6 87. Defendant's wrongful business practices constituted, and constitute, a continuing  
7 course of conduct in violation of the CLRA because Defendant is still representing that the  
8 Saliva Kits has characteristics and abilities which it does not have.

9 88. Pursuant to Civil Code § 1782, Plaintiff will notify Defendant in writing by  
10 certified mail of the alleged violations of section 1770 and demand that the same be corrected.

11 89. Any waiver of a claim under the CLRA by Plaintiff and/or the putative Class  
12 Members is unenforceable and void.

13 90. As a result of the foregoing acts, omissions, and practices, Plaintiff and the  
14 putative Class Members have suffered actual damages as described herein, and these Class  
15 Members are entitled to recover such damages, together with punitive damages, equitable relief,  
16 injunctive relief, diminution of value, and reasonable attorneys' fees.

17 **FIFTH CAUSE OF ACTION**

18 **Deceit by Concealment**

19 **CAL. CIV. CODE §§ 1709, 1710**

20 91. Plaintiff re-alleges and incorporates by reference the allegations set forth in this  
21 Class Action Complaint.

22 92. Defendant made material representations and omissions to the general public,  
23 including Plaintiff and the putative Class Members about the Saliva Kits that were false and  
24 misleading.

1           93.     Defendant knew that its representations about the Saliva Kits were untrue or it  
2 did not have sufficient knowledge to warrant belief that it was true. Defendant made these false  
3 representations with intent to induce Plaintiff and the putative Class Members to act in reliance  
4 thereon.

5           94.     Defendant willfully deceived Plaintiff and the putative Class Members by  
6 concealing the true facts concerning the Saliva Kits. Defendant knew in advance of Plaintiff and  
7 the Class Members' use of the Saliva Kits and of the lack of scientific validity associated with  
8 the Saliva Kits

9           95.     Plaintiff and the putative Class Members reasonably believed that Defendant's  
10 representations about the Saliva Kits were true, and in reliance on those representations,  
11 Plaintiff and the putative Class Members purchased a Saliva Kit from Defendant.

12           96.     Plaintiff would have foregone purchasing Defendant's product had he known that  
13 the Saliva Kit was unreliable and did not possess the health and other benefits that Defendant's  
14 advertisements attributed to it.

15           97.     As a result of the foregoing acts, omissions, and practices, Plaintiff and the  
16 putative Class Members have suffered actual damages as described herein, and these Class  
17 Members are entitled to recover such damages, together with punitive damages, equitable relief,  
18 injunctive relief and reasonable attorneys' fees.

19   **SIXTH CAUSE OF ACTION**  
20   **Breach of Warranty of Merchantability and**  
  **Fitness for a Particular Purpose**

21           98.     Plaintiff re-alleges and incorporates by reference the allegations set forth in this  
22 Class Action Complaint.

23           99.     Defendant developed, designed, tested, manufactured, inspected, labeled,  
24 distributed, marketed, promoted, sold, and otherwise released into the stream of commerce the

1 Saliva Kits and, in the course of same conduct, directly advertised or marketed the Saliva Kits  
2 to the FDA and consumers.

3 100. Defendant impliedly warranted that its Saliva Kits were of merchantable quality  
4 and fit for the ordinary, common and intended uses for which the product was sold. Specifically,  
5 Defendant falsely impliedly warranted that the Saliva Kits could be used to, among other things,  
6 identify genetic health risks, and find out if consumers' children are at risk for inherited  
7 conditions.

8 101. Defendant knew, or had reason to know that consumers, including Plaintiff and  
9 the putative Class Members, purchased the Saliva Kits for purposes described above.

10 102. Defendant knew, or had reason to know that consumers, including Plaintiff and  
11 the putative Class Members, were relying on its skill and judgment to select or furnish a product  
12 that was suitable for the particular purposes.

13 103. Defendant breached its implied warranties of the Saliva Kits product sold to  
14 Plaintiff and the putative Class Members because the product was not fit for the particular  
15 purposes described above.

16 104. As a direct and foreseeable result of the foregoing acts, omissions, and practices,  
17 Plaintiff and the putative Class Members have suffered actual damages as described herein, and  
18 these Class Members are entitled to recover such damages, together with punitive damages,  
19 equitable relief, injunctive relief, diminution of value, reasonable attorneys' fees, costs of suit,  
20 and such other relief set forth herein.

21 **SEVENTH CAUSE OF ACTION**  
22 **Negligent Misrepresentation**

23 105. Plaintiff re-alleges and incorporates by reference the allegations set forth in this  
24 Class Action Complaint.

1           106. Defendant made misrepresentations to Plaintiff and the putative Class Members,  
2 including without limitation, the misrepresentation that the Saliva Kits were effective,  
3 scientifically sound and valid, and could provide consumers with reliable health-related  
4 information.

5           107. Defendant made the foregoing representations without reasonable grounds for  
6 believing them to be true. These representations were made directly by Defendant and its  
7 authorized agents on the Saliva Kits packaging and in publications and other written materials  
8 directed to the public with the intention of inducing reliance and the purchase and use of the  
9 Saliva Kits.

10           108. The representations by Defendant were in fact false and made with the intention  
11 of inducing reliance resulting in the purchase and use of the Saliva Kits.

12           109. In reliance on the above misrepresentations by Defendant, Plaintiff and the  
13 putative Class Members were induced to purchase and to use the Saliva Kits. If Plaintiff and the  
14 Class Members had known of the true facts and the facts concealed by Defendant, Plaintiff  
15 would not have purchased or used the Saliva Kits.

16           110. Plaintiff's reliance on the misrepresentations by Defendant was justified and  
17 reasonable in that such misrepresentations were made by individuals and entities that held  
18 themselves out as experts in the field of DNA testing and were in a position to know the actual  
19 facts.

20           111. As a result of the foregoing acts, omissions, and practices, Plaintiff and the  
21 putative Class Members have suffered actual damages as described herein, and these Class  
22 Members are entitled to recover such damages, together with punitive damages, equitable relief,  
23 injunctive relief, diminution of value, reasonable attorneys' fees, costs of suit, and such other  
24 relief set forth below.

1 **EIGHTH CAUSE OF ACTION**  
2 **Unjust Enrichment**

3 112. Plaintiff re-alleges and incorporates by reference the allegations set forth in this  
4 Class Action Complaint.

5 113. As a result of their unlawful conduct described above, Defendant was unjustly  
6 enriched.

7 114. Defendant has benefited from their unlawful acts and it would be inequitable for  
8 Defendant to be permitted to retain any of the ill-gotten gains resulting from payments made by  
9 Plaintiff and the putative Class Members in reliance on their false, misleading, and unlawful  
10 representations about the health and other benefits of the Saliva Kits.

11 115. Plaintiff and the putative Class Members' are entitled to the amount of  
12 Defendant's ill-gotten gains resulting from their unlawful, unjust, and inequitable conduct.

13 116. Plaintiff and Class Members may have no adequate other remedy at law.

14 **PRAYER FOR RELIEF**

15  
16 **WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

17 1. For an order certifying that the action may be maintained as a class action,  
18 certifying Plaintiff as representative of the Class, and designating his attorneys as Class  
19 counsel;

20 2. For an award of equitable relief as follows:

21 a. Enjoining Defendant from making any claims for the Saliva Kits found to  
22 violate the California law as it is defined by and coterminous with FDA rules, regulations  
23 and pronouncements, as set forth above,  
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JS 44 (Rev 12/12) cand rev (1/15/13)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b> DAVID TOMPKINS</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>Montgomery County, MD</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys (Firm Name, Address, and Telephone Number) Michael A. McShane, Dana M. Isaac AUDET &amp; PARTNERS, LLP 221 Main Street, Suite 1460, San Francisco, CA 94105 (415)568-2555</p>	<p><b>DEFENDANTS</b> 23ANDME, INC.</p> <p>County of Residence of First Listed Defendant <u>Santa Clara, CA</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</p> <p>Attorneys (If Known)</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>		
<input type="checkbox"/> 110 Inheritance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 448 Education	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p><b>Other:</b></p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District (specify)     6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)  
28 U.S.C. Sec. 1332

Brief description of cause:  
False and misleading advertising, unfair business practices

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE: 12/09/2013    SIGNATURE OF ATTORNEY OF RECORD: [Signature]

**IX. DIVISIONAL ASSIGNMENT** (Civil L.R. 3-2) (Place an "X" in One Box Only)

SAN FRANCISCO/OAKLAND     SAN JOSE     EUREKA