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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Brian Maltese, individually and on behalf of all others similarly situated, Plaintiff, v. THERANOS, INC., a California Corporation, Defendant.	No. CLASS ACTION COMPLAINT **DEMAND FOR JURY TRIAL**

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I. INTRODUCTION

1. Used for diagnostics and prevention, accurate, reliable, timely blood tests are a critical component of a patient's healthcare. Inaccurate tests cause emotional distress, lead to unnecessary and improper medical care, and endanger patients' health and lives.

2. To avoid these problems, lab operators must follow established policies and procedures, provide accurate information about the test—so patients' decisions are grounded in fact—and ensure that test results are not needlessly inaccurate.

3. Founded in 2003 by Elizabeth Holmes, Theranos, Inc. claims to be a "consumer health technology company," one that entered the laboratory testing market and focused on blood-based tests.

4. According to its website, its "mission is to make actionable health information accessible to people at the time it matters, enabling early detection and prevention of disease, and empowering people with information to live the lives they want to live."

5. As revealed in this Complaint, Theranos was focused more on press and market value than the health of its customers, and it achieved the opposite of its mission: it obfuscated its actions and tests to where no reasonable consumer can rely on the results provided or make health care decisions based on them.

6. Plaintiff sues to address these massive failures on issues relating to customer health, including Theranos using substandard laboratory policies and procedures, failing to honor the promises it made about testing accuracy and quality, concealing and obscuring the truth about the invasiveness of the tests, providing inaccurate test results to patients and not correcting those results when possible after a reasonable person would understand the results were or could be erroneous, and misrepresenting the technological advances that Theranos allegedly developed.

II. PARTIES

7. Defendant Theranos is a California corporation with its principal place of business at 1701 Page Mill Road, Palo Alto, California 94304.

8. Theranos operates blood testing labs in California and Arizona.

9. Plaintiff Brian Maltese is a resident of Maricopa County, Arizona.

III. JURISDICTION AND VENUE

10. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(a) and (d). In the aggregate, Plaintiff's claims and the claims of other Class members exceed $5,000,000, exclusive of interest and costs, and numerous Class members are citizens of different states than Defendant Theranos.

11. This Court has personal jurisdiction over Plaintiff because Plaintiff submits to the Court's jurisdiction. This Court has personal jurisdiction over Defendant because Defendant is headquartered in the District and conducts substantial business in the District. Many of the actions establishing the Complaint took place in the District, to include upon information and belief the creation and final approval of the allegedly false marketing materials.

12. Venue is proper in this District under 28 U.S.C. § 1391 because Defendant, as a corporation, is "deemed to reside in any judicial district in which they are subject to personal jurisdiction," and because many decisions behind the scheme to mislead consumers regarding the accuracy, reliability, and operation of the Theranos blood tests were made in this District.

13. Because Theranos resides in the District, transacted business within the District, and a substantial part of the events establishing the claims arose in this District, venue is proper.

IV. BACKGROUND

14. For its first retail endeavor, Theranos joined with Walgreens to bring its self-proclaimed "revolutionary" blood tests directly to the public, hoping to eventually provide its services nationwide.

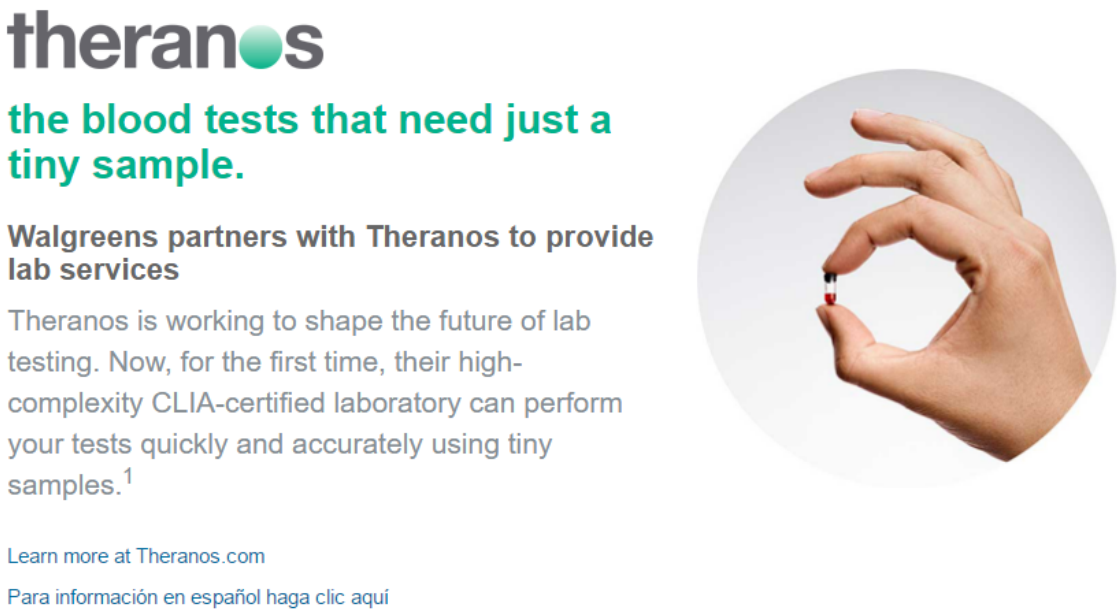
15. Theranos went live with its Walgreens venture in September 2013, and eventually opened 56 "Theranos Wellness Centers" in Arizona and California.

16. The Theranos Wellness Centers are physically located in Walgreens, and staffed by Theranos employees.

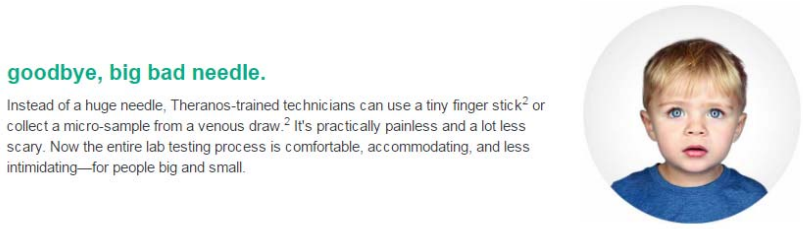
17. Theranos also opened two non-Walgreens based Theranos Wellness Centers, one at the downtown Phoenix campus of Arizona State University and the other at the Generations Medical Center in Tempe, Arizona.

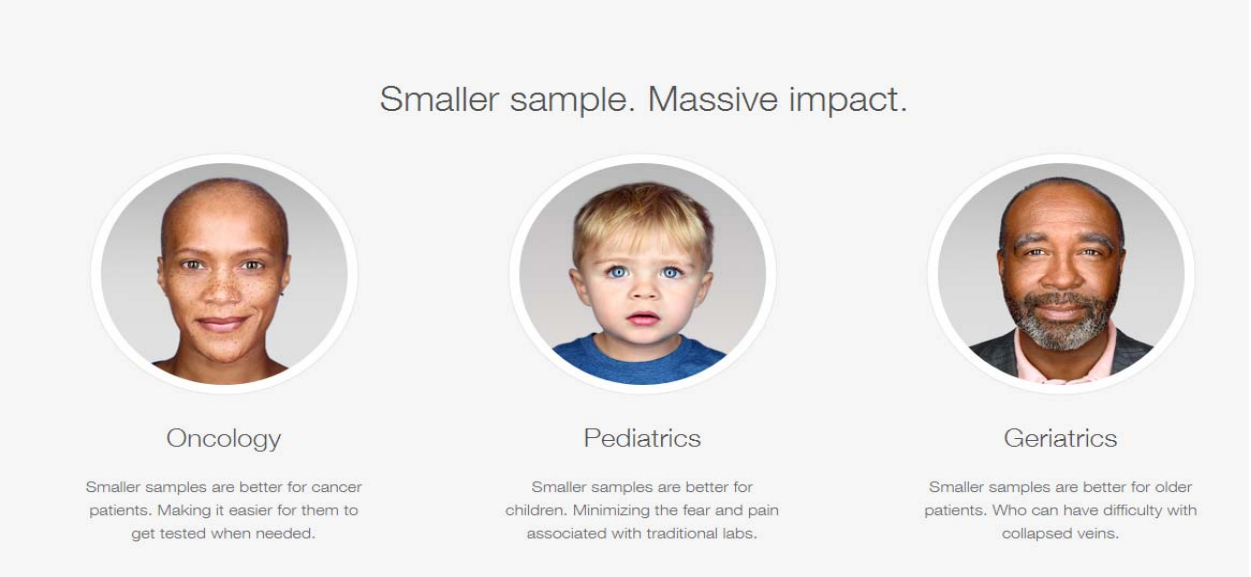
18. In addition to providing space for the Theranos Wellness Centers, Walgreens helped fund Theranos with a $50 million financing arrangement and assisted Theranos in scheduling and collecting payments from consumers.

19. At the Wellness Centers, Theranos offered a comprehensive slate of some 200 lab tests.



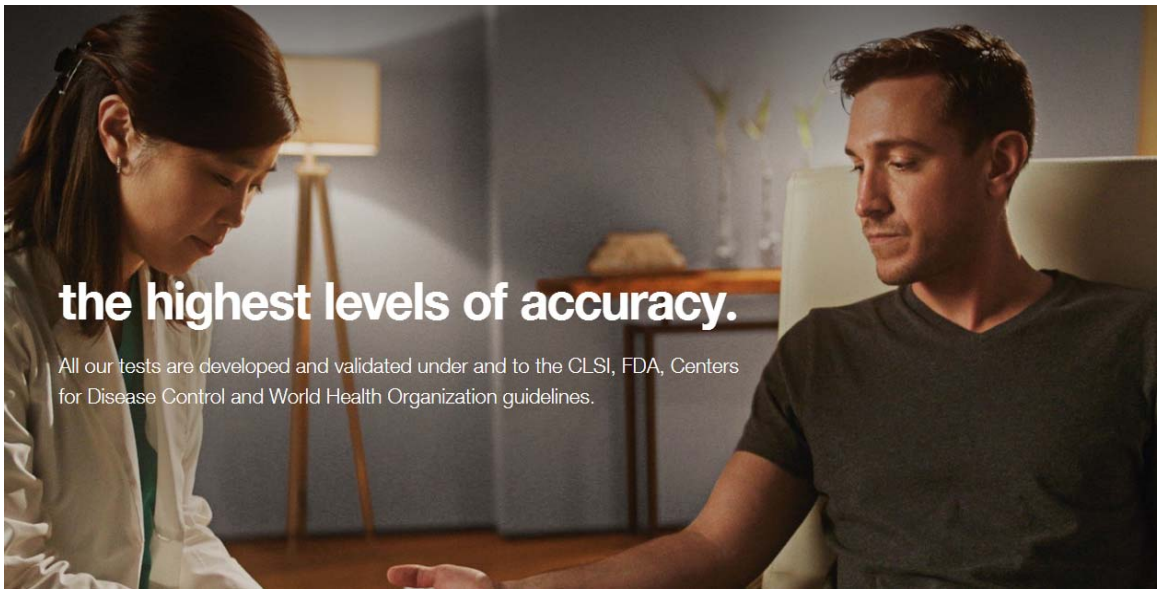
20. The key feature Theranos used to market its tests and differentiate itself was that it brought a new technology and approach to the staid, established blood test industry. Its tagline: "one tiny drop changes everything." This theme was prominent in its advertisements: Theranos boasted it could analyze samples as small as 1/1,000 the size of the typical blood draw and perform tests on any sample type, including blood, urine, and other samples. "It's fast, easy, and the highest level of quality," Theranos informed prospective customers. Theranos stressed it used smaller samples and less invasive techniques, pushing this difference in advertisements and on company web pages:





21. It also advertised its venous blood draws used smaller needles and smaller tubes.

22. Despite using tests requiring only a little blood, Theranos promised consumers it could still deliver the best in accuracy and quality.



23. It announced that it would "realize our mission only when our tests are performed to the highest standards of quality.

24. It endorsed that getting accurate results in a timely manner is essential, declaring "what you decide about your health should be informed and timely enough to protect or improve it.

fast results. fast answers.

Theranos performs their test analyses fast, so they can return results to your clinician[3] faster than ever before.[3] That means a more timely diagnosis to support better, more informed treatment.

25. Theranos summed up its approach this way, "Our technology and our process are all configured to put you and your preventive outcomes first."

26. Theranos claimed vigilance in providing the highest quality tests. "We continuously conduct proficiency testing and participate in multiple proficiency testing programs," and all of our "tests are developed and validated under and to the CLSI, FDA, Centers for Disease Control and World Health Organization guidelines," touting that it had "processed hundreds of thousands of tests in validating our work for 10 of the 15 largest pharmaceutical companies."

27. It claimed to have performed "more than six million tests in the nearly two years since we began serving individuals and physicians through our clinical labs," and worked with over 9,000 physicians.

28. Theranos claimed it was leading the industry in transparency.

> Theranos is the first lab to commit to voluntarily submitting its laboratory developed tests to the FDA. We are working to build a model for the transition to the FDA framework. We are doing this even though we don't need to – opening up to regulators like no lab before.

29. Theranos also claims to be leading the lab industry in transparency by publishing Proficiency Testing performance statistics.

30. It boasted its consumer experience was all-around better. "Our tests use less blood to make the testing experience as wonderful as possible for everyone."

31. "Theranos' revolutionary lab services make tests more efficient, convenient, and affordable than ever before."

32. To help sell its products, Theranos preached that patients should have and deserved timely, accurate information, so they could "engage with their own health and begin working with their doctors preventatively."

33. To help further its bottom line, Theranos pushed to change Arizona law, and succeeded. Arizona became the first state to allow consumers to purchase a blood test without a provider's order and to "expressly recognize[] individual's [sic] rights to their own health information."

34. To accomplish this, Theranos worked closely with leaders in Arizona. Its assistance came from the top: Arizona Governor Doug Ducey wholeheartedly adopted Theranos' claims and pressed to change the law for Theranos to do business.

35. Theranos' lobbying resulted in Ducey having a favorable impression: "My administration is focused on making Arizona the easiest and most attractive place in the nation for 21st-century companies like Theranos to operate and grow. By reducing burdensome regulations and red tape, this law not only shows innovative companies we're open and ready for business, it also gives Arizonans access to more efficient, cost-effective services while promoting preventive health care and price transparency. That's good for business, good for patients and providers, and good for taxpayers – an all-around win for Arizona."

36. Later, Elizabeth Holmes in a letter to the editor of the Arizona Republic on December 1, 2015, reiterated Theranos' commitment to the highest standards for testing and quality: "Theranos fought for direct access in Arizona to bring high-quality … lab testing to everyone. We have fought—and always will fight—for the highest quality standards for Arizonans…."

37. In lobbying to change the law, Theranos disseminated claims of astonishing advancements in the lab testing industry.

38. "We can perform hundreds of tests, from standard to sophisticated, from a pinprick and tiny sample of blood, and we have performed more than 70 tests from a single tiny sample," said a Theranos representative.

39. According to Holmes, the claim went even further—Theranos' new technology applied across the board: "Every test that we offer in our lab can be run on our proprietary devices." Espousing this claim—that the Edison machines can run all tests Theranos submitted to the FDA—on a nationally syndicated financial TV program helped bolster Theranos' prospects and reputation with many stakeholders.

40. At some point, money came easy to Theranos as its reputation grew. According to CrunchBase, Theranos raised:

Funding Rounds (8) - **$686.3M** UPDATE

Date	Amount / Round	Valuation	Lead Investor	Investors
Mar, 2015	$348.5M / Private Equity	—	—	0
Feb, 2014	$198.9M / Private Equity	—	—	0
Sep, 2013	$50M / Undisclosed	—	Walgreens	1
Jul, 2010	$45M / Venture	—	—	0
Nov, 2006	$28.5M / Series C	—	—	4
Feb, 2006	$9.1M / Series B	—	—	1
Feb, 2005	$5.8M / Series A	—	—	0
Jun, 2004	$500k / Seed	—	Draper Fisher Jurvetson (DFJ)	1

41. Theranos adeptly spun its storyline about its successes and "revolutionary" testing. It pushed and embraced positive, glowing reports of the company's "transformative" nature and industry-changing technologies. These efforts spanned the media spectrum—old and new, big and small—including The Wall Street Journal, Business Insider, San Francisco Business Times, Fortune, Forbes, Medscape, and Silicon Valley Business Journal. The reports adopt Theranos' assessment that its work is novel and the coming of a "golden idea":

- "Theranos: The Biggest Biotech You've Never Heard of." San Francisco Business Times, August 30, 2013.
- "Elizabeth Holmes: The Breakthrough of Instant Diagnosis." Wall Street Journal, September 8, 2013.
- "Creative disruption? She's 29 and Set to Reboot Lab Medicine." MedPageToday, November 18, 2013.

- "This CEO is Out for Blood."
  Fortune, June 12, 2014.

- "Bloody Amazing."
  Forbes, July 2 and July 21, 2014.

- "Meet Elizabeth Holmes, Silicon Valley's Latest Phenomenon."
  San Jose Mercury News, July 15, 2014.

- "This Woman's Revolutionary Idea Made Her A Billionaire—And Could Change Medicine."
  Business Insider, September 29, 2014.

- "She's America's Youngest Female Billionaire - And a Dropout."
  CNN/Money, October 16, 2014.

- "Here's How the World's Youngest Self-Made Female Billionaire Shows People She's In Charge."
  Business Insider, December 8, 2014.

- "Top 10 Most Innovative Companies in Health Care, 2015: #7, Theranos."
  Fast Company, February 2015.

- "Theranos CEO: Avoid Backup Plans."
  INC., Stanford Business School, February 10, 2015.

- "Elizabeth Holmes: 2015 Horatio Alger Award Winner."
  Horatio Alger Association, March 9, 2015.

- "Theranos One Step Closer to Consumerizing Health."
  Decibio, April 8, 2015.

- "Elizabeth Holmes." 100 Most Influential People edition.
  TIME, April 16, 2015.

- "World's Youngest Billionaire - Another Steve Jobs?"
  CNBC, April 27, 2015.

- "Airbnb Chesky, Theranos Holmes among presidential entrepreneurs."
  USAToday, May 11, 2015.

- "Personalized Technology Will Upend the Doctor-Patient Relationship"
  Harvard Business Review, June 19, 2015.

- "Disruptive Diagnostics Firm Theranos Gets Boost from FDA."
  Fortune, July 2, 2015.

- "Theranos' Holmes Marks 50th Anniversary of Medicare and Medicaid with Vision for Next 50 Years."
  Business Wire, July 30, 2015.

- "Elizabeth Holmes on Using Business to Change the World."
  Forbes, October 5, 2015.

- "How Theranos is Disrupting the Health Care Industry."
  Bloomberg, October 6, 2015.

- "Theranos Founder Elizabeth Holmes to Deliver Keynote Address at 2015 Medical Innovation Summit."
  Crain's Cleveland Business, October 7, 2015.

- "Theranos' Elizabeth Holmes Call on Women to Help Each Other."
  Fortune, October 12, 2015.

- "CME Group Announces Elizabeth Holmes as the 2015 Melamed-Arditti Innovation Award Recipient."
  MarketWatch, October 12, 2015.

42. The result of Theranos' promotional efforts: a market value over $9 billion by 2014 and a CEO widely acclaimed as one of the most successful entrepreneurs in the world—and one of the youngest billionaires ever.

43. Theranos purposely ginned up excitement and funding, pushed it was disrupting an antiquated, stodgy industry, and shrouded its product in secrecy. Theranos, however, didn't keep its promises that its services allow consumers to proactively engage in their own healthcare decisions using accurate, timely information provided by Theranos. As one health reporter said, "New innovations can't simply surf on excitement when people's lives are at stake."

44. Theranos also advertised its tests on Walgreens' website promising a test that would support "better, more informed treatment":

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

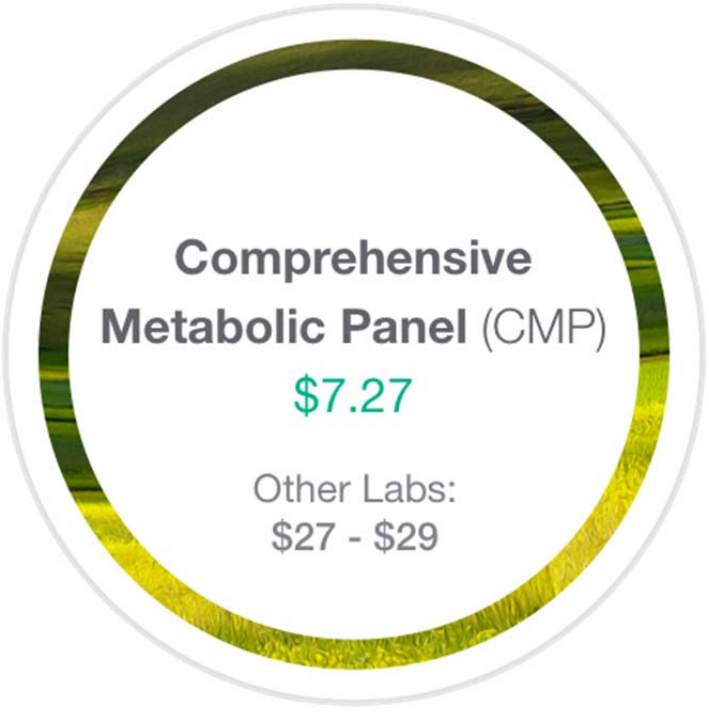
Learn more at theranos.com ›

- Visiting or living in Arizona?

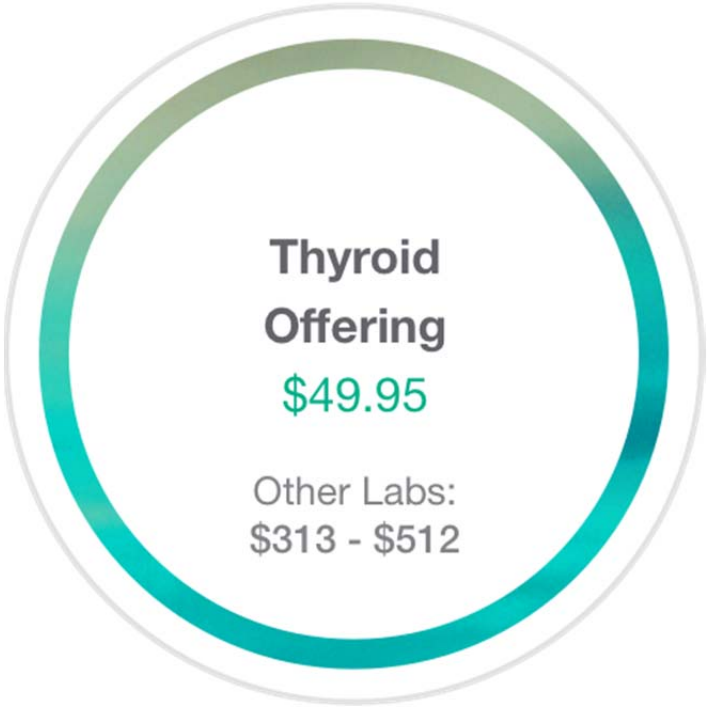
Learn more about Direct Access testing at Theranos Wellness Centers ›

- **Theranos is easy to find.**

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

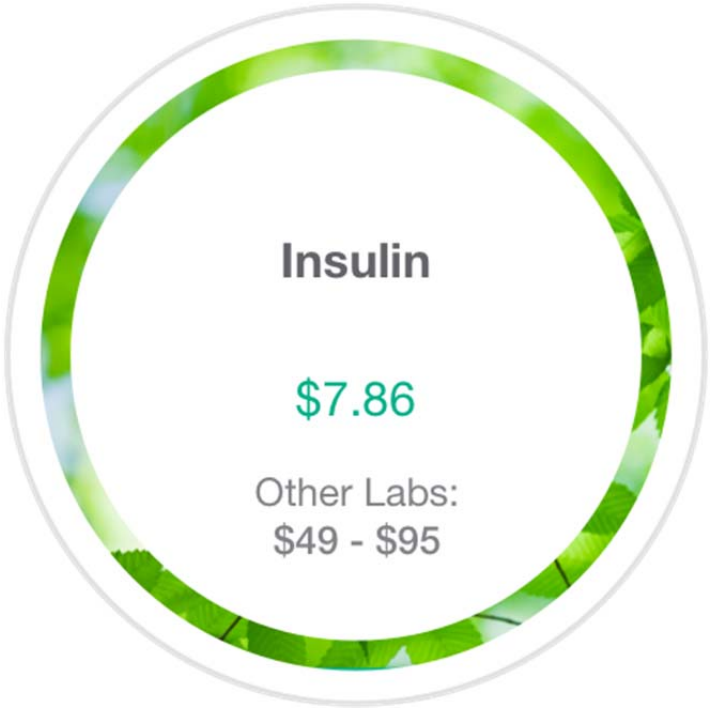


To evaluate organ function and check for conditions such as diabetes, liver disease, and kidney disease



To evaluate thyroid function

To screen for and diagnose sexually transmitted infections



To help evaluate insulin production

- Fast results. Fast answers.

At Theranos, we've dramatically reduced the time it takes to analyze samples. So you and your physician get your results faster than ever before.[1] Which means a more timely diagnosis to support better, more informed treatment. So you can engage with your physician, and your health, like never before.[1]

45. Behind the claims of revolution and disruption, there were unfounded, false, deceptive, and misleading claims of superiority over existing systems and practices.

46. First, Theranos' labs were negligently maintained and operated and did not follow proper procedures and policies.

47. On March 18, 2016, Centers for Medicare & Medicaid Services wrote Theranos to notify it of proposed sanctions against Theranos' Clinical Laboratory Improvement Amendments of 1988 (CLIA) certificate. CLIA is a federal regulatory standards program whose goal is to ensure accuracy, reliability and timeliness of test results, regardless of where the test was performed, for all clinical laboratory tests on humans.

48. CMS conducted a CLIA recertification and complaint survey at Theranos' laboratory, completing its onsite portion on November 20, 2015, and concluding the survey on December 23, 2015.

49. Based on this survey, Theranos was out of compliance with five CLIA Condition-level requirements, including (a) D5024: 42 C.F.R. § 493.1215; (b) D5400: 42 C.F.R. § 493.1250; (c) D6076: 42 C.F.R. § 493.1441; (d) D6108: 42 C.F.R. § 493.1447; and (e) D6168: 42 C.F.R. § 493.1487.

50. In a January 25, 2016, letter CMS outlined these deficiencies and notified Theranos of the seriousness of the deficiencies under 42 C.F.R. § 493.1215, which resulted in a finding of immediate jeopardy to patient safety and health, and demanded immediate action to remove the jeopardy and come into compliance.

51. Theranos, after requesting an extension, responded on February 12, 2016.

52. After reviewing Theranos' response, CMS concluded that Theranos' response did not "constitute a credible allegation of compliance and acceptable evidence of correction for the deficiencies cited during the CLIA recertification and complaint survey completed on December 23, 2015, and does not demonstrate that the laboratory has come into Condition-level compliance and abated immediate jeopardy."

53. A credible allegation of compliance is a statement or document that is (1) made by a representative of a laboratory with a history of having maintained a commitment to compliance and taking corrective action when required; (2) realistic in terms of the possibility of corrective action being accomplished between the survey and the date of the allegation; and (3) indicates resolution of the problem.

54. The report found that Theranos' blood tests often failed to meet the lab's own standards, and that Theranos employed unqualified staff to review patient test results.

55. According to the Wall Street Journal, which viewed an unredacted report, 13 tests conducted on Theranos' inventions performed poorly. Examples include (1) 29 percent of the quality control checks performed on the company's inventions in October 2014, fell outside the normal range; (2) a hormone test run on Theranos' proprietary machines failed 87 percent of quality control

checks; and (3) a test used to detect prostate cancer failed quality control verifications 22 percent of the time between April and May 2015.

56. Second, Theranos pushed its revolutionary, fast, minimally invasive techniques on cutting edge technology, yet that is not what consumers received when they went to the Walgreens stores.

57. Theranos' new technology did not extend to its entire product line and, even where it did, it was not always used.

58. Theranos told regulators it used the Edison, its proprietary device, for 12 types of tests out of over 200 types offered to consumers and stopped using the devices altogether in late June 2015.

59. Consumers arrived expecting to have minimal blood drawn and small needles or finger pricks, but they got conventional venous blood draws.

60. Likewise, the tests were often then run on standard testing equipment (operated incorrectly or with inadequate training), not the novel technology touted in the promotional efforts or marketing material.

61. Even when the technology existed, it wasn't used. Theranos consequently halted its finger-stick draws, collected in a small tube called a nanotainer, after the FDA declared the container was a medical device that should be regulated. Theranos ceased using its proprietary technology, nicknamed Edison, in June 2015.

62. Theranos' Arizona lab handled the vast majority of blood samples collected at Arizona-based Walgreens locations and at Arizona State University's clinic and the Generations Medical Center.

63. The June 2015 decision to cease using Edison did not affect the company's Arizona lab because it exclusively used traditional FDA-approved blood analyzers and instruments made by companies such as Siemens and Olympus.

64. Arizona patients could have blood drawn through capillary draw or venous draw, and the samples would be sent to the applicable lab by Theranos. But Theranos did not inform consumers it had new technology only for twelve of the 200 tests and that conventional equipment would be

used for many tests. Nor did Theranos advise that the blood draw might not be the minimally invasive draw, a fact consumers learned only during the blood draw.

65. Third, contrary to its mission statement, Theranos did not strive to provide accurate information to its consumers so they could make an informed choice.

66. Its path to success was far from open and public. Despite its claims of transparency, Theranos kept information about its technology and blood tests secret.

67. Holmes' most descriptive statements were that Theranos uses "the same fundamental chemical methods" as existing labs do, and its advances relate to "optimizing the chemistry" and "leveraging software" to permit those conventional methods to work with tiny sample volumes.

68. Nor has Theranos engaged the scientific community. Theranos, to this day, has not published on its work in peer-reviewed biomedical literature. Reportedly, by January 5, 2015, a search for Theranos in PubMed returned only two unrelated articles co-authored by Theranos employees, neither of which offered insights about the company.

69. Holmes has said the company has proof its tests are as accurate as traditional ones, but has provided no support for the statement.

70. To allay criticism of Theranos' tests, its spokesperson promised that Theranos planned to publish data "in the near future. Stay tuned!" Despite its promise, no data have been forthcoming on this topic.

71. Theranos did not even disclose its methodologies to its medical services partners. As part of a "long-term strategic alliance" to use Theranos' technology, the Cleveland Clinic and Theranos agreed to a joint study that would compare the effectiveness of Theranos' approach to traditional approaches. In January, three Cleveland Clinic scientists visited Theranos' headquarters, where they were shown the company's Edison devices, but Theranos did not show the scientists how the devices worked or provide written materials on how exactly the machines operated.

72. Because details of the Theranos technology have not been disclosed, peers cannot evaluate or comment on its claims. As a leading physician has noted, "The quality of the results are [sic] not known since the Theranos system has not been independently evaluated, nor do any published results exist to compare with conventional technologies. New diagnostic tests must be

evaluated for their accuracy, precision, specificity and long-term robustness. Trueness and precision (accuracy) must be maintained over months or years, and monitored by external quality assurance programs, so that patient's data can be directly compared over long periods of time. Without independent validation, Theranos technology's quality and robustness will remain in question."

73. Without such review and assessment, patients receive the opposite of what was promised. They must manage their health based on assumptions and promises, not timely, accurate information.

74. Fourth, Theranos' promises of the highest levels of accuracy and quality are unfounded, false, and misleading.

75. A study showed that Theranos' results are not as accurate as the two dominant players in the industry. In March 2016, Theranos' results were compared to those from LabCorp and Quest Diagnostics in a study funded by Icahn Institute for Genomics and Multiscale Biology and the Harris Center for Precision Wellness at the Icahn School of Medicine at Mount Sinai.

76. The percentages for measurements outside their normal range were 8.3%, 7.5%, and 12.2% for LabCorp, Quest, and Theranos, respectively. Although LabCorp and Quest showed no significant difference in the rates of their tests outside the reference range, the odds ratio that Theranos reported a measurement outside its normal range compared with the other services was 1.6.

77. This increase in abnormal test results can have negative consequences for medicine—usually extra testing, additional patient visits to clinics or hospitals, and added doctor services, all of which result in additional costs and burdens to patients or to the healthcare system and are potentially harmful where the abnormal tests were misdiagnoses (*i.e.*, false positives).

78. Nor did Theranos' labs meet state and federal standards—all of which are designed to protect patients.

79. Arizona inspectors claimed that Theranos could not provide back-up data showing that it had fully validated three lab instruments used to analyze test samples despite federal regulations requiring labs to furnish such data.

80. Theranos also failed to meet proficiency testing and lab-instrument validation requirements, which are key to ensuring patients and doctors get accurate results.

81. During a separate inspection, the Federal Drug Administration issued 14 "observations" after a review of Theranos' testing facilities in California from August 25 through September 16. Most findings addressed problems with quality-control issues, but notably the FDA determined Theranos' nanotainer was an unapproved medical device.

82. Fifth, consumers are not getting what they paid for when they receive blood tests from Theranos.

83. In May 2016, Theranos voided two years of test results—comprising tens of thousands of tests—from 2014 and 2015, and corrected some results and did not revise others, leaving the voided results as the only result the consumer received.

84. These tests were conducted on both Edison equipment and conventional tests, and at multiple labs.

85. It was reported that the Arizona lab performed the blood-coagulation tests with a traditional machine from Siemens AG programmed to the wrong settings by Theranos, and failed several tests to gauge the purity of the water it used in its Siemens machines, which could affect the accuracy of some blood tests run on the devices.

86. Brooke Buchanan, a Theranos spokeswoman, confirmed that Theranos "made mistakes in the past in the Newark" lab, which housed the Edison.

87. Based on reports, both Theranos laboratories have been identified as operationally deficient in material ways.

88. Theranos' cure for deficient results was to re-run tests using conventional means with either the residual blood from the minimal draw or with blood already tested (presumably an amount that would not work with traditional machines, since Theranos' approach was the "first time" testing was accomplished using small amounts of blood), calling into question the reliability of any re-testing program.

89. Theranos has also misrepresented the import of the timeliness of its results.

90. Theranos claims the usual delay of testing in centralized laboratories is approximately three days and that they will generate and deliver their data much faster (*e.g.*, within four hours).

91. But according to a leading practitioner, the three-day delay claim is not accurate. The bulk of laboratory testing in centralized laboratories is completed within an hour or two (calculated from time of sample collection to time of results posting for physician review). For these tests, the claim that Theranos gets results faster is false. While there may be some tests that takes days, not hours, those are typically situations where time is not critical for adjusting patient care and faster analysis will not assist patient management or outcomes.

V. FACTUAL ALLEGATIONS CONCERNING PLAINTIFF

92. Despite being fit, active, and relatively young, Mr. Maltese suffered a massive heart attack in 2013.

93. As a result of the heart attack, he began seriously monitoring his overall health, especially his heart health, and decided to have his blood tested to help ensure his health was on the right track.

94. In 2014, Mr. Maltese first heard about Theranos. Based on the company's advertising, he understood Theranos had new and improved technology for analyzing blood using only a finger prick. He was so excited about the new technology, including the ability to have his blood tested with only a finger prick, he boasted about the company to his friends and sent them links to the company's website.

95. He was especially excited by the company's marketing claim that Theranos would help him and other take charge of their own health, and was impressed the labs were FDA approved and Arizona governor Doug Ducey signed a bill allowing Theranos to perform tests without a doctor's order.

96. In 2015, after seeing an advertisement from Theranos to "Take Charge of Your Own Health," Mr. Maltese decided to take his health into his own hands and chose to have his blood tested at Theranos over LabCorp and Sonoran Quest.

97. He called Theranos and located the closest location to his home in Ahwatukee, Arizona. He was directed to a Theranos clinic located inside a Walgreens Pharmacy at 3960 East Chandler Boulevard in Phoenix, Arizona.

98. At the clinic, using the Theranos branded form, he chose tests that were pertinent to his heart health based on knowledge from previous visits to his cardiologist and primary care physician, as well as tests correlating with potential damage caused by statin drug use after a heart attack, such as a CK test, B12 test, Vitamin D test, and fasting glucose.

99. Mr. Maltese made payment to Theranos..

100. He believed the test would take ten minutes, at most, and (as advertised) would only require a finger prick. When he went back to the testing room, the phlebotomist said "it's very rare we do finger sticks with your requested labs," and that the blood work requested required seven vials of blood. He was also told by Theranos that he would receive his results within 48 hours.

101. Mr. Maltese was upset that Theranos did not fulfill its promise to test his blood using only a finger prick, and informed friends later that night he believed he was misled by the advertising.

102. To compound matters, the test results he received in the first 48 hours were incomplete, with very few test results displaying online. After calling Theranos by phone to find out why everything he ordered did not display on the Theranos website, the representative said "Oh some lab tests take up to seven days or longer, so just keep logging in to check." It took approximately seven days to have all results display online. Already anxious to see important heart health related tests, the delay made Mr. Maltese further question the credibility of the company when it failed to fulfill its promise to post results in 48-hours.

103. With the help of a medical doctor—a friend located in Florida—Mr. Maltese reviewed the test results and learned they were relatively normal, but that his Vitamin D was low and his cholesterol was a little high. Because his cholesterol was higher than a previous blood test—performed by LabCorp—and his Vitamin D was low, his doctor friend instruction him to follow-up with his primary care physician and take Vitamin D supplements.

104. In 2016, Mr. Maltese began seeing news articles discussing the accuracy and reliability of the tests performed by Theranos. Mr. Maltese now questions whether the lab results he obtained from Theranos were accurate and reliable. He is fearful that inaccurate results could have

prevented him from seeing his doctor when it was necessary or prompted him to take supplements or higher doses of statin drugs he did not need.

105. Mr. Maltese is also worried that others may have received inaccurate and unreliable test results that put their health at risk.

106. Because Theranos misled him, Mr. Maltese no longer has his blood tested at Theranos, and uses LabCorp instead. He also informed friends to whom he had previously promoted the company that their test results may not be accurate and recommended they get re-tested.

VI. CLASS ALLEGATIONS

107. Under Rule 23 of the Federal Rules of Civil Procedure, Plaintiff seeks certification of the following class:

108. All consumers who purchased a Theranos blood test in California or Arizona.

109. Plaintiff also seeks certification of the following subclass.

110. Arizona Subclass: All consumers who purchased a Theranos blood test in Arizona.

111. Excluded from the Classes are Defendant; the officers, directors or employees of Defendant; any entity in which Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of Defendant. Also, excluded from the Class are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

112. Plaintiff does not know the exact number of Class members. But Theranos claims to have conducted millions of tests, meaning there are at least tens of thousands of Class members such that joinder of all Class members is impracticable.

113. The Class is easily determined by objective criteria using Defendant's own records, which by law must exist. Theranos knows where each test was performed, by whom, for whom, and when.

114. There are questions of law and fact common to the Class. Defendant's illegal business practices and unlawful omissions similarly impact Class members, all of whom purchased a Theranos blood test.

115. Plaintiff asserts claims that are typical of the Class. Plaintiff and all Class members have been subjected to the same wrongful conduct because they all purchased a Theranos blood test marketed and sold by Theranos using the same marketing or substantively similar marketing materials or received a test conducted or handled in a similar way. And like other members of the Class, Plaintiff purchased and paid for a Theranos blood test which he otherwise would not have paid for had the test been properly marketed based on truthful and accurate information or did not receive the test promised or due as a matter of law.

116. As a purchaser of Theranos' services, Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff and the Class are represented by counsel competent and experienced in both consumer protection and class action litigation.

117. Class certification is appropriate because common questions of law and fact substantially predominate over questions that may affect only individual members of the Class, including:

a. Whether Theranos' blood tests were suitable or merchantable.

b. Whether Theranos' methodologies and equipment complied with industry, state, and federal standards.

c. Whether Theranos' blood tests were as represented or promised.

d. Whether Theranos' blood tests were of the highest accuracy and quality.

e. Whether Theranos misrepresented its tests were minimally invasive, accurate, and reliable.

f. Whether Theranos' conduct violation the UCL.

g. Whether Theranos' conduct violated California's false advertising laws.

h. Whether Theranos' conduct violated the Arizona Consumer Fraud Act.

i. Whether the challenged practices harmed Plaintiff and members of the Class; and

j. Whether Plaintiff and members of the Class are entitled to damages, restitution, equitable relief, and/or injunctive relief.

118. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all the individual Class members is impracticable. Because the restitution and/or damages suffered, and continue to be suffered, by each individual Class member may be relatively small, the expense and burden of individual litigation would make it very difficult, if not impossible, for individual Class members to redress the wrongs done to each individually and the burden imposed on the judicial system would be enormous.

119. A class action is manageable, conserves judicial resources and the parties' resources, and protects the rights of each putative class member.

VII. CAUSES OF ACTION

FIRST CAUSE OF ACTION (BREACH OF CONTRACT)

120. Plaintiff incorporates the allegations in the above paragraphs as if fully set forth herein.

121. Defendant Theranos entered uniform or substantially similar contracts with class members to provide blood tests.

122. Theranos assured its customers it had the expertise and capability to provide accurate and reliable blood tests. Theranos promised that its tests were the most accurate and highest quality tests in the market.

123. For monetary consideration, Theranos agreed to provide blood testing using its proprietary system.

124. Plaintiff and putative Class members each paid money for blood tests offered by Theranos. Plaintiff paid approximately $150.00 for the blood tests performed by Theranos.

125. Theranos breached its contract with Plaintiff and putative class members by (1) providing tests that were not of the promised high level of accuracy and quality, (2) conducting tests using traditional blood testing methodologies and equipment instead or its self-proclaimed minimally invasive state-of-the art proprietary system, (3) not drawing blood in the minimally invasive way advertised, (4) not ensuring its equipment met its own quality standards, (5) not ensuring its services were tendered with reasonable care and workmanlike effort, including failing to

ensure its equipment met industry, state, or federal standards and failing to ensure lab staff was properly trained and monitored, and (7) failing to act in good faith and deal fairly with class members by acting to deprive class members of the justified expectations they were to receive under the contract, including failing to notify class members in a timely fashion of the deficiencies and problems with the tests or their results and not clarifying that certain services were conventional and no different than other blood tests on the market.

126. In May 2016, Theranos invalidated the results of all tests conducted using its Edison system between 2014 and 2015. Each class member who had a test conducted using the Edison system did not receive the benefit of its bargain—a reliable, accurate blood test.

127. Theranos claims it is issuing corrected results, but upon information and belief it is impossible to re-test samples and give accurate and reliable updated results from samples taken in 2014 and 2015, especially when the blood draws should have been minimally invasive, small sample sizes according to Defendant's own advertisements. Even if the samples could be re-tested, there is no reason to believe that the new results would be accurate or reliable, nor are they useful to consumers months or even years after the date.

128. Because of Defendant's conduct, Plaintiff and Class members have been injured.

SECOND CAUSE OF ACTION

(ARIZONA CONSUMER FRAUD)
(ARIZONA SUBCLASS ONLY)

129. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set forth.

130. Defendant's advertising and website made use of deception, deceptive acts, unfair acts, fraud, false pretenses, false promises, misrepresentations, concealments, suppression of material facts, and/or omission of material facts in connection with the sale and advertisement of its services in violation of the Arizona Consumer Fraud Act, Arizona Revised Statute § 44-1522 (A).

131. These acts include, but are not limited to:

- Advertising its tests are the most accurate in the industry when they are the least accurate.

- Advertising its proprietary Edison machine can test blood accurately and reliably using smaller quantities of blood than traditional methods even though each claim is false. By Defendant's own admission, all tests conducted using the Edison machine between 2014 and 2015 are invalid and should be voided.
- Advertising that many of its tests are minimally invasive, requiring a skin prick or small vial of blood when in reality the tests require a traditional blood draw by the same size needle and vial used by its competitors.
- Advertising its proprietary technology as if it exists and is used for all Theranos tests when it only exists for a small fraction of the tests Theranos markets and sells.
- Advertising it performs the highest quality testing in the industry when its testing procedures and equipment are flawed and fail to meet its own standards, standards set by the manufacturer, and industry, state, or federal standards.
- Advertises its goal is to give consumers actionable information, but conceals and obfuscates on the methodologies of its tests.
- Failing to notify consumers in a timely manner that its tests were inaccurate and voidable despite knowing that the tests were not reliable or accurate.

132. Theranos intended that others rely on the concealment, suppression or omission of material facts by, among other things, promising to disclose the results of independent testing of its equipment and methodology but failing to do so.

133. Theranos has engaged in a pattern or practice of misrepresentation and deceptive conduct in the sale of blood testing services to consumers.

134. Theranos' actions were willful because it knew or should have known that the practices described in this Complaint violated the Consumer Fraud Act.

THIRD CAUSE OF ACTION

(VIOLATION OF THE UNFAIR COMPETITION ACT, CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200, *ET SEQ.*)

135. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set forth herein.

136. Cal. Bus. & Prof. Code § 17200 prohibits any "unlawful, unfair, or fraudulent business act or practice."

137. Theranos' conduct, as alleged in the Complaint, constituted and constitutes unfair, unlawful and fraudulent business practices in violation of Section 17200, *et seq.* of the California Business and Professions Code.

138. The conduct is unfair, unlawful, and fraudulent because Theranos breached its contract with Plaintiff and putative class members and engaged in false advertising under Section 17500, *et seq*. of the California Business and Professions Code.

139. Defendant's conduct is unfair because it impairs competition within the market for blood tests. Theranos falsely advertises and claims its blood tests are minimally invasive, accurate, and reliable. Theranos' conduct prevents consumers from making fully informed decisions regarding where to have their blood tests performed and by whom. Reasonable consumers are likely to be deceived by Defendant's false statements.

140. Defendant's conduct also offends established public policy supporting truth in advertising to consumers.

141. Defendant's conduct is unlawful because Theranos breached its contract with Plaintiff and putative class members and engaged in false advertising under Section 17500, *et seq*. of the California Business and Professions Code.

142. Defendant has violated the fraudulent prong of section 17200 because it misrepresentation and material omissions are likely to deceive a reasonable consumer and the facts would be material to a reasonable consumer.

143. Theranos' advertisements and public statements create the false impressions its blood tests are minimally invasive, reliable, and accurate when they are not.

144. Consumers can choose their blood test provider. Given that Theranos' blood tests are equally invasive to traditional tests, unreliable, and inaccurate, the economic harm to consumers who had their tests performed by Theranos over its competitors is obvious.

145. Theranos' misrepresentations and omissions were material, and likely to deceive reasonable consumers.

146. Theranos knew or should have known that the marketing and sale of its blood tests as minimally invasive, reliable, and accurate was deceptive.

147. Theranos had a duty to disclose the inherent flaws and limitations in its tests, and any inaccuracy and reliability problems before the tests were performed. Theranos also had a duty to

disclose in a timely manner the fact that the tests were inaccurate and voidable. Theranos failed to fulfill these obligations.

148. Plaintiff and putative class members have suffered injury, including the loss of money, as result of Defendant's unlawful, unfair, and/or deceptive practices. Plaintiff and putative class members are accordingly entitled to disgorgement of Theranos' profits, plus interest and attorneys' fees, under California Code of Civil Procedure § 1021.5.

FOURTH CAUSE OF ACTION

(CONSUMER LEGAL REMEDIES ACT.)
(CAL. CIV. CODE § 1750, *ET SEQ.*)

149. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set forth herein.

150. Defendant is a "person" under Cal. Civ. Code § 1761(c).

151. Plaintiff and putative class members are "consumers," as defined by Cal. Civ. Code § 1761(d), who purchased blood tests from Theranos.

152. The blood tests are "goods or services" under Cal. Civ. Code § 1770(a).

153. Cal. Civ. Code § 1770(a)(5) prohibits "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have…."

154. Cal. Civ. Code § 1770(a)(7) prohibits "[r]epresenting that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another."

155. Theranos violated these CLRA provisions by it misrepresentations and omissions regarding the sponsorship, approval, certification, characteristics, benefits, standards, and quality of its blood testing in its advertising.

156. As alleged in the Complaint, Theranos creates the impression that it is providing consumers with the most advanced, accurate, least invasive, and highest quality testing available in the market. Theranos omits and fails to disclose that (1) its labs were negligently maintained and operated, and did not follow proper procedures and policies; (2) consumers did not receive

revolutionary, fast, minimally invasive techniques on cutting edge technology promised by Theranos; (3) Theranos did not strive to provide accurate information to its consumers so they could make an informed choice despite promises to do so; (4) its promises that its tests are of the highest levels of accuracy and quality are unfounded, false and misleading; and (5) consumers are not getting what they paid for when they receive blood tests from Theranos.

157. Theranos' omissions are material. Reasonable consumers would consider the promise of minimally invasive, accurate, and reliable blood tests—indeed, the most accurate and highest quality tests according to Defendant— to be important in determining whether or not to purchase blood tests from Theranos or another provider.

158. Reasonable consumers were likely to be deceived, and were in fact misled, by Defendant's misrepresentations and omissions.

159. Theranos knew or reasonably should have known that the marketing and sale of its blood tests was and is deceptive.

160. Plaintiff and putative class members were directly and proximately injured by Theranos' conduct and lost money as a result of, and in reliance on, Defendant's misrepresentations and omissions, because they would not have purchased or paid as much for the Theranos blood tests had they been told the truth.

161. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendant's business. Defendant's wrongful conduct is part of a general practice that is still being perpetuated and repeated.

162. In accordance with Civil Code § 1780 (a), Plaintiff and putative class members seek injunctive and equitable relief for Defendant's violations of the CLRA, including an injunction to enjoin Theranos from continuing its deceptive advertising and sales practices.

163. In accordance with Civil Code § 1782 (a) of the CLRA, Civ. Code § 1782(a), on June 17, 2016, Plaintiff's counsel served Defendant with notice of their alleged violations of the CLRA by certified mail, return receipt requested. After 30 days of the date of such notification, Defendant intends to amend his Complaint to maintain an action for damages under Section 1780 of the CLRA, Civ. Code § 1780.

FIFTH CAUSE OF ACTION

(VIOLATION OF THE UNFAIR COMPETITION ACT, CALIFORNIA BUSINESS & PROFESSIONS CODE § 17500, *ET SEQ.*)

164. Plaintiff incorporates by reference the allegations in the above paragraphs as if fully set forth herein.

165. California Business & Professions Code § 17500, et seq. (the "FAL") broadly proscribes deceptive advertising in this State. Section 17500 makes it unlawful for any corporation intending to sell products or perform services to make any statement in advertising those products or services concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by exercising reasonable care would be known, to be untrue or misleading, or not to sell those products or services as advertised at the price stated therein, or as so advertised.

166. Theranos' advertising creates the impression that its blood tests are minimally invasive, reliable, and highly accurate. Theranos claims its tests are the highest quality, most advanced tests available. All these statements are false.

167. Theranos fails to disclose its tests are equally invasive as its competitors' tests, unreliable, and inaccurate. Theranos itself voided all tests performed by its proprietary Edison system between 2014 and 2015, as inaccurate and unreliable.

168. Theranos had a duty to disclose its tests were equally invasive as its competitors' tests, unreliable, and inaccurate before they were offered to consumers. Theranos failed to fulfill this duty.

169. Theranos had a duty to disclose its labs did not meet all industry, state, and federal standards before the tests were offered to consumers. Theranos failed to fulfill this duty.

170. Theranos' omissions are material. Consumers are given the choice to have their blood tested at any facility. Reasonable consumers would consider the omitted facts to be important in determining whether to have their blood tested at a Theranos facility or elsewhere.

171. Reasonable consumers were likely to be deceived, and were misled, by Defendant's misrepresentations and omissions.

172. Theranos knew or should have known that the marketing and sale of its blood tests was deceptive.

173. Plaintiff and putative class members have suffered injury, including the loss of money, because of Defendant's conduct. Plaintiff and putative class members were directly and proximately injured by Defendant's conduct and lost money because of, and in reliance on, Defendant's misrepresentations and omissions, because they would not have purchased or paid as much for a Theranos blood test had they known that the tests were equally invasive, unreliable, and inaccurate.

174. All of the wrongful conduct alleged in the Complaint occurred, and continues to occur, in the conduct of Defendant's business. Defendant's wrongful conduct is part of a general practice that is still being perpetuated and repeated throughout the State of California and nationwide.

175. Plaintiff requests this Court enter such orders or judgments as may be necessary to enjoin Defendant from continuing its unfair and deceptive business practices, to restore to Plaintiff and putative class members any money that Defendant acquired by unfair competition, and to provide such other relief as set forth below.

SIXTH CAUSE OF ACTION

(UNJUST ENRICHMENT)

176. Plaintiff incorporates the allegations in the above paragraphs as if fully set forth herein.

177. In the event that there is no legal contract between Theranos and putative class members, Plaintiff alleges the following, in the alternative to the breach of contract claim alleged in Count I, on behalf of himself and the putative class.

178. As the intended and expected result of its conscious wrongdoing as set forth in this Complaint, Theranos has profited and benefited from the unlawful sale of its misleading, unreliable, and inaccurate blood tests.

179. To the detriment of Plaintiff and putative class members, Theranos has been and continues to be unjustly enriched as a result of the unlawful and/or wrongful conduct alleged herein.

180. Theranos has voluntarily accepted and retained the fees paid by Plaintiff and putative class members with full knowledge and awareness that as a result of its unlawful conduct, Plaintiff and the putative class paid substantial monies to Theranos to which it was not lawfully entitled.

181. Plaintiff and putative class members paid for minimally invasive, accurate, and reliable blood tests, but received invasive, inaccurate and unreliable tests.

182. Between Theranos and Plaintiff/putative class members, it would be unjust for Theranos to retain the benefits attained by its wrongful actions.

183. Theranos has been unjustly enriched at the expense of Plaintiff and putative class members who are entitled in equity to disgorgement and restitution of Defendant's wrongful profits, revenue, and benefits, to the extent, and in the amount deemed appropriate by the court, and any other relief the court deems just and proper to remedy Defendant's unjust enrichment.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and for members of the Class, respectfully request that the Court enter judgment in their favor and against Defendant, as follows:

A. Certification of the proposed Class, including appointment of Plaintiff's counsel as Class Counsel and Plaintiff as class representative;

B. An order temporarily and permanently enjoining Defendant from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;

C. Costs, restitution, damages, including punitive damages, and disgorgement in an amount to be determined at trial;

D. An order requiring Defendant to pay both pre- and post-judgment interest on any amounts awarded;

E. An award of costs and attorneys' fees; and

F. Such other or further relief as may be appropriate.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial for all claims so triable.

DATED: June 17, 2016

HAGENS BERMAN SOBOL SHAPIRO LLP

By */s/ Shana E. Scarlett*

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Attorneys for Plaintiff

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.)*

I. (a) PLAINTIFFS
Brian Maltese

(b) County of Residence of First Listed Plaintiff Maricopa
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Shana E. Scarlett, Hagens Berman Sobol Shapiro LLP
715 Hearst Avenue, Suite 202, Berkeley, CA 94710
tel: 510.725.3000

DEFENDANTS
Theranos, Inc.

County of Residence of First Listed Defendant Santa Clara
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ❒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	☒ 4
Citizen of Another State	☒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

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 (d)(2)

Brief description of cause:
Consumer Fraud Class Action - Diversity

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 Jacqueline Scott Corley DOCKET NUMBER 3:16-cv-02810-JSC

DATE
06/17/2016

SIGNATURE OF ATTORNEY OF RECORD
/s/ Shana E. Scarlett

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) ☐ SAN FRANCISCO/OAKLAND ☑ SAN JOSE ☐ EUREKA

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. **Origin.** Place an "X" in one of the six boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.