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16  
17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 AMANDA LAW, individually and on behalf  
20 of all others similarly situated,

21 Plaintiff,

22 v.

23 NATERA, INC.,

24 Defendant.

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Amanda Law (“Plaintiff”) brings this action on behalf of herself and all others  
2 similarly situated against Defendant Natera, Inc. (“Defendant” or “Natera”). Plaintiff makes the  
3 following allegations pursuant to the investigation of her counsel and based upon information  
4 and belief, except as to the allegations specifically pertaining to herself, which are based upon  
5 personal knowledge.

6 **NATURE OF THE ACTION**

7 1. This is a putative class action lawsuit on behalf of purchasers of Natera’s  
8 Panorama Test (“Panorama Test” or collectively, the “Tests”). Defendant markets and sells the  
9 Tests as genetic, prenatal screening tests for pregnant women that screen for various  
10 chromosomal and genetic conditions affecting a baby’s health. Defendant markets these tests as  
11 accurate. However, unbeknownst to consumers, Panorama Test results indicating a genetic  
12 disorder are incorrect approximately 85 percent of the time.<sup>1</sup> Thus, the Tests are worth far less  
13 than their market price. In addition, as a result of these false results, expecting mothers are often  
14 unnecessarily subjected to further diagnostic testing, genetic counseling, and the even erroneous  
15 termination of a viable pregnancy.

16 2. Prenatal testing in recent years has moved towards non-invasive methods to  
17 determine the fetal risk for genetic disorders, including Non-Invasive Prenatal Testing  
18 (“NIPT”).<sup>2</sup>

19 3. NIPT analyzes DNA fragments from the blood of a pregnant woman to estimate  
20 the risk that the fetus will be born with certain genetic abnormalities, including chromosomal  
21 disorders like Down Syndrome and Trisomy 18, or other, more rare disorders, like Prader-Willi  
22 and Angelman Syndrome.

23 4. NIPT is incredibly popular. However, many of these tests are often inaccurate,  
24 giving pregnant women false positive results for genetic conditions that their fetuses do not have.

25  
26 <sup>1</sup> <https://www.nytimes.com/2022/01/01/upshot/pregnancy-birth-genetic-testing.html>

27 <sup>2</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6545823/>





1 screening. Following this discovery, many companies began working on blood tests, otherwise  
2 known as NIPT, aimed at detecting chromosomal abnormalities without the invasive and risky  
3 nature of amniocentesis and chorionic villus sampling (“CVS”).<sup>4</sup>

4 14. In 2013, Natera launched “Panorama,” its non-invasive prenatal test for  
5 chromosomal disorders, including Down Syndrome (Trisomy 21), Edwards Syndrome (Trisomy  
6 18), and Patau Syndrome (Trisomy 13).<sup>5</sup> Panorama was touted as “a very reliable, yet safe non-  
7 invasive prenatal test” with “no false positives for all the syndromes tested.”<sup>6</sup> Given its  
8 purportedly revolutionary nature, Natera “look[ed] forward to broadly extending the full benefits  
9 of Panorama’s technology” in the future.<sup>7</sup>

10 15. Shortly thereafter, in 2014, Natera announced that its Panorama test would now  
11 screen for several microdeletion syndromes, including DiGeorge, Angelmen, Cri-du-chat, and  
12 Prader-Willi syndromes.<sup>8</sup> Microdeletions are chromosomal abnormalities that occur when a  
13 piece of a chromosome is missing.

14 16. Natera’s Panorama test is presently advertised as a “blood-based genetic, prenatal  
15 screening test” that screens for “common chromosomal conditions that affect a baby’s health.”

16 17. The use of Panorama is widespread through the United States, with more than  
17 400,000 screenings for one microdeletion in 2020 alone—the “equivalent of testing roughly 10  
18 percent of pregnant women in America.”<sup>9</sup>

19 18. Natera claims on its website that Panorama is “clinically-validated,” that it  
20 provides “greater accuracy,” and that it is “rigorously validated.”

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22 \_\_\_\_\_  
23 <sup>4</sup> <https://blog.seracare.com/ngs/evolution-of-non-invasive-prenatal-testing-nipt-testing>

24 <sup>5</sup> <https://investor.natera.com/news-releases/news-release-details/natera-launches-non-invasive-prenatal-test-panoramatm-best-class>.

25 <sup>6</sup> *Id.*

26 <sup>7</sup> *Id.*

27 <sup>8</sup> <https://www.natera.com/womens-health/panorama-nipt-prenatal-screening/>

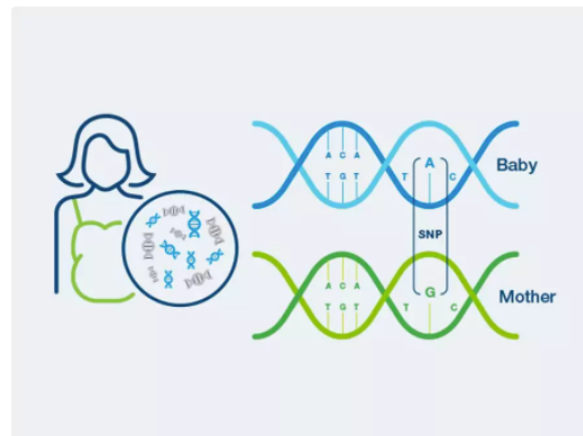
28 <sup>9</sup> <https://www.nytimes.com/2022/01/01/upshot/pregnancy-birth-genetic-testing.html>

The only SNP-based NIPT delivers more insights and greater accuracy

Panorama is:

- ▶ the most rigorously validated NIPT
- ▶ the only NIPT that distinguishes mother’s DNA from baby’s DNA
- ▶ the approach that creates unique, clinically validated capabilities

Panorama evaluates SNPs— the 1% of our DNA that makes us different from one another



19. Natera also claims that Panorama reduces the need for unnecessary invasive diagnostic testing and tells women that its Tests are a “trusted resource” that “poses no risk to the baby compared to amniocentesis or chorionic villus sampling (CVS).”

### A Trusted Resource

- ▶ Validated in SMART, the largest prospective NIPT study with over 20,000 participants enrolled.
- ▶ More than 3 million women in more than 60 countries have chosen Panorama for genetic testing during pregnancy.
- ▶ Panorama has been evaluated in 23 peer-reviewed publications and in more than 1.3 million pregnancies.
- ▶ Panorama offers complimentary pre- and post-test information sessions with board-certified genetic counselors.
- ▶ Panorama poses no risk to the baby compared to amniocentesis or chorionic villus sampling (CVS).

20. Panorama, according to Natera’s website, identifies whether a fetus is a “low risk” or “high risk” for genetic disease. A “high risk” finding, according to Natera, “indicates a *very high* probability that your baby may have [the] condition” identified.



## High Risk

A high risk result does not mean your baby has a chromosomal abnormality; rather, it indicates a very high probability that your baby may have that condition. Your healthcare provider may recommend that you speak with a genetic counselor and/ or maternal fetal medicine specialist. You may be offered invasive diagnostic testing such as amniocentesis or CVS. No irreversible pregnancy decisions should ever be made based on a Panorama result alone.

21. Defendant's brochure makes similar claims of accuracy and trustworthiness. For example, the Panorama brochure states that the Test "[p]rovides substantially fewer incorrect results than maternal serum screening or other prenatal blood tests" and again "[p]oses no risk to your baby unlike amniocentesis and chorionic villus sampling (CVS), which carry a slight risk of miscarriage."

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**NIPT<sup>1-5</sup>**

- Screens for genetic abnormalities such as Down syndrome
- Can identify your baby's sex (optional)
- Provides substantially fewer incorrect results than maternal serum screening or other prenatal blood tests
- Can be done as early as nine weeks into your pregnancy
- Poses no risk to your baby, unlike amniocentesis and chorionic villus sampling (CVS), which carry a slight risk of miscarriage



22. Defendant also claims to distinguish Panorama from other NIPT tests, maintaining that Panorama results in “[f]ewer false positives and fewer false negatives.”

**How is Panorama different?**

**Panorama is the only NIPT that can tell the difference between the mother's and the baby's DNA, which results in:**



Fewer false positives and fewer false negatives<sup>1,2,3</sup>



1 23. Panorama, like other NIPT tests, is costly. Although Natera estimates that the  
2 average out-of-pocket cost for women is less than \$249,<sup>10</sup> it can often be much more expensive,  
3 often costing thousands of dollars.<sup>11</sup>

4 **B. Defendant's False Advertising of the Tests**

5 24. Since the launch of Panorama, Defendant has consistently advertised the Tests as  
6 "clinically-validated" and trustworthy. Unfortunately for pregnant women, like Plaintiff, the  
7 Tests are alarmingly inaccurate.

8 25. A recent investigation by the New York Times found that despite the Tests and  
9 other NIPT tests being advertised as "reliable," "highly accurate," and offering "total  
10 confidence" and "peace of mind" for patients, the tests are inaccurate more than 85 percent of the  
11 time.

12 26. As a result of these false positive screenings, women are forced to undergo the  
13 very invasive testing that Defendant claims its Tests help women avoid, including amniocentesis  
14 and CVS. During an amniocentesis, a needle is used to remove amniotic fluid from the uterus  
15 for testing. Similarly, during a CVS procedure, a catheter or needle is used to biopsy placental  
16 cells that are derived from the same fertilized egg as the fetus. Both procedures include an  
17 increased risk of miscarriage.<sup>12</sup>

18 27. Many women also have abortions after obtaining positive results from NIPT  
19 screens, even though those results may very well be inaccurate. For example, a 2014 study  
20 found that six percent of patients who screened positive obtained an abortion without getting  
21 another test to confirm the result.<sup>13</sup>

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23  
24 <sup>10</sup> <https://www.natera.com/wp-content/uploads/2021/01/PTP-Billing-Guide-2020-English.pdf>

25 <sup>11</sup> <https://www.genomeweb.com/molecular-diagnostics/natera-accused-unfair-deceptive-billing-practices-related-nipt-services-new#.YdSpvmjMKUk>

26 <sup>12</sup> <https://www.nytimes.com/2022/01/01/upshot/pregnancy-birth-genetic-testing.html>

27 <sup>13</sup> <https://www.nytimes.com/2022/01/01/upshot/pregnancy-birth-genetic-testing.html>

1 28. Consumers are therefore paying hundreds of dollars for testing that is highly  
2 inaccurate and untrustworthy.

3 29. Plaintiff brings this action on behalf of herself and the Class for equitable relief  
4 and to recover damages and restitution for: (i) breach of express warranty; (ii) breach of implied  
5 warranty; (iii) unjust enrichment; (iv) fraud; (v) fraudulent omission; and (vi) violation of the  
6 Florida Deceptive and Unfair Practices Act (“FDUPTA”), Fla. Stat. §§ 501.201, *et seq.*; (vii)  
7 violation of California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et*  
8 *seq.*; (viii) violation of California’s Consumers Legal Remedies Act (“CLRA”), Civil Code §§  
9 1750, *et seq.*; and (ix) violation of California’s False Advertising Law (“FAL”), Cal. Bus & Prof  
10 Code § 17500.

11 **CLASS ALLEGATIONS**

12 30. Plaintiff seeks to represent a class defined as all persons in the United States who  
13 purchased a Panorama test (the “Nationwide Class”).

14 31. Plaintiff also seeks to represent a class defined as all persons who reside in the  
15 state of Florida who purchased a Panorama test (the “Subclass”) (collectively with the  
16 Nationwide Class, “Class”).

17 32. Specifically excluded from the Class are persons who made such purchase for the  
18 purpose of resale, Defendant, Defendant’s officers, directors, agents, trustees, parents, children,  
19 corporations, trusts, representatives, employees, principals, servants, partners, joint ventures, or  
20 entities controlled by Defendant, and its heirs, successors, assigns, or other persons or entities  
21 related to or affiliated with Defendant and/or Defendant’s officers and/or directors, the judge  
22 assigned to this action, and any member of the judge’s immediate family.

23 33. Subject to additional information obtained through further investigation and  
24 discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or  
25 amended complaint.  
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1           34.     **Numerosity.** The members of the Class are geographically dispersed throughout  
2 the United States and are so numerous that individual joinder is impracticable. Upon  
3 information and belief, Plaintiff reasonably estimates that there are hundreds of thousands of  
4 members in the Class. Although the precise number of Class members is unknown to Plaintiff,  
5 the true number of Class members is known by Defendant and may be determined through  
6 discovery. Class members may be notified of the pendency of this action by mail and/or  
7 publication through the distribution records of Defendant and third-party retailers and vendors.

8           35.     **Existence and predominance of common questions of law and fact.** Common  
9 questions of law and fact exist as to all members of the Class and predominate over any  
10 questions affecting only individual Class members. These common legal and factual questions  
11 include, but are not limited to, the following:

- 12                   (a)     whether the Panorama manufactured, distributed, and sold by Defendant  
13                   was unfit for use as screening test, thereby breaching express and implied  
14                   warranties made by Defendant and making the Panorama Test unfit for its  
15                   intended purpose;
- 16                   (b)     whether Defendant knew or should have known that the Panorama Test  
17                   would often provide false positive results prior to selling the Tests, thereby  
18                   constituting fraud and/or fraudulent omission;
- 19                   (c)     whether Defendant is liable to Plaintiff and the Class for unjust  
20                   enrichment;
- 21                   (d)     whether Plaintiff and the Class have sustained monetary loss and the  
22                   proper measure of that loss;
- 23                   (e)     whether Plaintiff and the Class are entitled to declaratory and injunctive  
24                   relief;
- 25                   (f)     whether Plaintiff and the Class are entitled to restitution and disgorgement  
26                   from Defendant; and
- 27                   (g)     whether the marketing, advertising, packaging, labeling, and other  
28                   promotional materials for Panorama are deceptive.

36.     **Typicality.** Plaintiff's claims are typical of the claims of the other members of  
the Class in that Defendant mass marketed and sold defective Panorama tests to consumers  
throughout the United States. This defect was present in all of the Panorama tests manufactured,

1 distributed, and sold by Defendant. Therefore, Defendant breached its express and implied  
2 warranties to Plaintiff and Class members by manufacturing, distributing, and selling the  
3 defective Panorama Tests. Plaintiff's claims are typical in that she was uniformly harmed in  
4 purchasing and using defective a Panorama Test. Plaintiff's claims are further typical in that  
5 Defendant deceived Plaintiff in the very same manner as it deceived each member of the Class.  
6 Further, there are no defenses available to Defendant that are unique to Plaintiff.

7       37.     **Adequacy of Representation.** Plaintiff will fairly and adequately protect the  
8 interests of the Class. Plaintiff has retained counsel that is highly experienced in complex  
9 consumer class action litigation, and Plaintiff intends to vigorously prosecute this action on  
10 behalf of the Class. Furthermore, Plaintiff has no interests that are antagonistic to those of the  
11 Class.

12       38.     **Superiority.** A class action is superior to all other available means for the fair  
13 and efficient adjudication of this controversy. The damages or other financial detriment suffered  
14 by individual Class members are relatively small compared to the burden and expense of  
15 individual litigation of their claims against Defendant. It would, thus, be virtually impossible for  
16 the Class, on an individual basis, to obtain effective redress for the wrongs committed against  
17 them. Furthermore, even if Class members could afford such individualized litigation, the court  
18 system could not. Individualized litigation would create the danger of inconsistent or  
19 contradictory judgments arising from the same set of facts. Individualized litigation would also  
20 increase the delay and expense to all parties and the court system from the issues raised by this  
21 action. By contrast, the class action device provides the benefits of adjudication of these issues  
22 in a single proceeding, economies of scale, and comprehensive supervision by a single court, and  
23 presents no unusual management difficulties under the circumstances.

24       39.     In the alternative, the Class may also be certified because:

- 25             (a)     the prosecution of separate actions by individual Class members would  
26                     create a risk of inconsistent or varying adjudications with respect to  
27                     individual members that would establish incompatible standards of  
28                     conduct for the Defendant;

- 1 (b) the prosecution of separate actions by individual Class members would  
2 create a risk of adjudications with respect to them that would, as a  
3 practical matter, be dispositive of the interests of other Class members not  
4 parties to the adjudications, or substantially impair or impede their ability  
5 to protect their interests; and/or
- 6 (c) Defendant has acted or refused to act on grounds generally applicable to  
7 the Class as a whole, thereby making appropriate final declaratory and/or  
8 injunctive relief with respect to the members of the Class as a whole.

9 **CAUSES OF ACTION**

10 **COUNT I**  
11 **Breach Of Express Warranty**

12 40. Plaintiff incorporates by reference the allegations contained in all preceding  
13 paragraphs of this complaint.

14 41. Plaintiff brings this claim individually and on behalf of the Class against  
15 Defendant.

16 42. In connection with the sale of the Tests, Defendant, as the designer, manufacturer,  
17 marketers, distributor, and/or seller issued written warranties by representing that the Tests are  
18 “clinically-validated” and provide “greater accuracy” as “the most rigorously validated NIPT.”  
19 Defendant further represents that its Tests are a “trusted resource” that “pose[] no risk to the  
20 baby compared to amniocentesis or chorionic villus sampling (CVS)” and result in “[f]ewer false  
21 positives and fewer false negatives.”

22 43. In fact, the Tests do not conform to the above-referenced representations because  
23 the tests are inaccurate approximately 85 percent of the time.

24 44. Plaintiff and Class Members were injured as a direct and proximate result of  
25 Defendant’s breaches because they would not have purchased the Tests if they had known that  
26 the Tests did not work as warranted.

27 45. On February 24, 2022, prior to the filing of this action, Defendant was served  
28 with a notice letter on behalf of Plaintiff and the Class that complied in all respects with U.C.C.  
§§ 2-313 and 2-607. Plaintiff’s counsel sent Defendant a letter advising Defendant that it  
breached an express warranty and demanded that Defendant cease and desist from such breaches

1 and make full restitution by refunding the monies received therefrom. A true and correct copy of  
2 this letter is attached hereto as **Exhibit 1**.

3 **COUNT II**  
4 **Breach Of Implied Warranty**

5 46. Plaintiff hereby incorporates by reference the allegations contained in all  
6 preceding paragraphs of this complaint.

7 47. Plaintiff brings this claim individually and on behalf of the members of the  
8 proposed Class against Defendant.

9 48. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller,  
10 impliedly warranted that the Tests were suited for use to detect chromosomal abnormalities with  
11 a high degree of accuracy. Defendant breached the warranty implied in the contract for the sale  
12 of the Tests because the Tests could not “pass without objection in the trade under the contract  
13 description,” the Tests were not “of fair average quality within the description,” the Tests were  
14 not “adequately contained, packaged, and labeled as the agreement may require,” and the Tests  
15 did not “conform to the promise or affirmations of fact made on the container or label.” *See*  
16 U.C.C. § 2-314(2) (listing requirements for merchantability). As a result, Plaintiff and Class  
17 Members did not receive the goods as impliedly warranted by Defendant to be merchantable.

18 49. Plaintiff and the Class Members purchased the Tests in reliance upon Defendant’s  
19 skill and judgment in properly packaging and labeling the Tests.

20 50. The Tests were not altered by Plaintiff and Class Members.

21 51. The Tests were not fit for their intended purpose when they left the exclusive  
22 control of Defendant.

23 52. Defendant knew that the Tests would be purchased and used without additional  
24 testing by Plaintiff and Class Members.

25 53. The Tests were defectively designed and unfit for their intended purpose, and  
26 Plaintiff and Class Members did not receive the Tests as warranted.

27 54. Plaintiff and Class Members and Subclass Members were injured as a direct and  
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1 proximate result of Defendant’s breach because (i) they would not have purchased the Tests if  
2 they had known that the Tests were highly inaccurate, not dependable, and therefore unsuitable  
3 for their stated and advertised purpose of detecting chromosomal abnormalities with a high  
4 degree of accuracy, and (ii) they overpaid for the Tests on account of its misrepresentations that  
5 it was capable of detecting chromosomal abnormalities with a high degree of accuracy.

6 55. On February 24, 2022, prior to the filing of this action, Defendant was served  
7 with a notice letter on behalf of Plaintiff and the Class that complied in all respects with U.C.C.  
8 §§ 2-313 and 2-607. Plaintiff’s counsel sent Defendant a letter advising Defendant that it  
9 breached an implied warranty and demanded that Defendant cease and desist from such breaches  
10 and make full restitution by refunding the monies received therefrom. A true and correct copy of  
11 this letter is attached hereto as **Exhibit 1**.

12 **COUNT III**  
13 **Unjust Enrichment**

14 56. Plaintiff incorporates by reference the allegations contained in all preceding  
15 paragraphs of this complaint.

16 57. Plaintiff brings this claim individually and on behalf of the members of the  
17 proposed Class against Defendant.

18 58. Plaintiff and the Class conferred a benefit on Defendant in the form of monies  
19 paid to purchase Defendant’s defective Panorama tests.

20 59. Defendant voluntarily accepted and retained this benefit.

21 60. Because this benefit was obtained unlawfully, namely by selling and accepting  
22 compensation for medical tests unfit for the purpose in which they were sold, it would be unjust  
23 and inequitable for the Defendant to retain it without paying the value thereof.

24 **COUNT IV**  
25 **Fraud**

26 61. Plaintiff hereby incorporates by reference the allegations contained in all  
27 preceding paragraphs of this complaint.





1 Plaintiff and members of the proposed Class reasonably and justifiably relied, and were intended  
2 to induce and actually induced Plaintiff and Class Members to purchase the tests.

3 72. The fraudulent actions of Defendant caused damage to Plaintiff and Class  
4 Members, who are entitled to damages and punitive damages.

5 **COUNT VI**  
6 **(Violation of The Florida Deceptive And Unfair Practices Act,**  
7 **Fla. Stat. §§ 501.201 et seq.)**

8 73. Plaintiff hereby incorporates by reference the allegations contained in all  
9 preceding paragraphs of this complaint.

10 74. Plaintiff brings this claim individually and on behalf of the Subclass against  
11 Defendant.

12 75. Class members are “consumers” within the meaning of the Florida Unfair and  
13 Deceptive and Unfair Trade Practices Act (“FDUTPA”), Fla. Stat. § 501.203(7).

14 76. Defendant is engaged in “trade or commerce” within the meaning of Fla. Stat. §  
15 501.203(8).

16 77. The FDUTPA prohibits “[u]nfair methods of competition, unconscionable acts or  
17 practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce....”  
18 Fla. Stat. § 501.204(1). Defendant participated in unfair and deceptive trade practices that  
19 violated the FDUTPA as described herein.

20 78. In the course of business, Defendant actively concealed information reasonable  
21 consumers need to know before purchasing Defendant’s Tests.

22 79. Defendant knew or should have known that the Tests were inaccurate and  
23 untrustworthy. The Subclass was deceived by Defendant’s misrepresentation into believing that  
24 the Tests were “clinically-validated” and a “trusted resource,” when in reality the Tests provide  
25 an unreasonably high number of false positive results.

26 80. Defendant made material misrepresentations about the accuracy of the Tests that  
27 were false and misleading.

1 81. Defendant knew or should have known its conduct violated the FDUPTA.

2 82. Defendant's unfair or deceptive acts or practices were likely to deceive reasonable  
3 consumers, including the Subclass, about the true nature of the Tests they manufacture,  
4 advertise, sell, and distribute.

5 83. The Subclass suffered ascertainable loss caused by Defendant's material  
6 misrepresentations. But for Defendant's deceptive and unfair conduct, Plaintiff and the Subclass  
7 would not have purchased the Panorama Tests.

8 84. As a direct and proximate result of Defendant's FDUPTA violations, Plaintiff and  
9 the Subclass suffered injury in fact and actual damages.

10 85. Plaintiff and the Subclass also seek an order enjoining Defendant's unfair,  
11 unlawful, and/or deceptive practices, declaratory relief, attorneys' fees, and any other just and  
12 proper relief available under the FDUPTA.

13 **COUNT VI**  
14 **Violation of California's Unfair Competition Law**  
15 **California Business and Professions Code § 17200 *et seq.***

16 86. Plaintiff hereby incorporates by reference the allegations contained in all  
17 preceding paragraphs of this complaint.

18 87. Plaintiff brings this claim individually and on behalf of the members of the Class  
19 against Defendant.

20 88. By committing the acts and practices alleged herein, Defendant has violated  
21 California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.* by  
22 engaging in unlawful, fraudulent, and unfair conduct.

23 89. Defendant has violated the UCL's proscription against engaging in unlawful  
24 conduct as a result of its violations of the CLRA, FAL, and by committing fraud, unjust  
25 enrichment, and breaching express and implied warranties, as alleged herein.

26 90. Defendant's acts and practices described above also violate the UCL's  
27 proscription against engaging in fraudulent conduct. As more fully described above,  
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1 Defendant's misleading marketing, advertising, packaging, and labeling of the Tests is likely to  
2 deceive reasonable consumers.

3 91. Plaintiff and the other Class members suffered a substantial injury by virtue of  
4 buying the Tests that they would not have purchased absent Defendant's unlawful, fraudulent,  
5 and unfair marketing, advertising, packaging, and omission about the accuracy of the Tests, or by  
6 virtue of paying an excessive premium price for the unlawfully, fraudulently, and unfairly  
7 marketed, advertised, packaged, and labeled Tests.

8 92. There is no benefit to consumers or competition from deceptively marketing and  
9 omitting material facts about the highly inaccurate nature of the Tests.

10 93. Plaintiff and the other Class members had no way of reasonably knowing that the  
11 Tests they purchased were not as marketed, advertised, packaged, or labeled. Thus, they could  
12 not have reasonably avoided the injury each of them suffered.

13 94. The gravity of the consequences of Defendant's conduct as described above  
14 outweighs any justification, motive, or reason therefore, particularly considering the available  
15 legal alternatives which exist in the marketplace, and such conduct is immoral, unethical,  
16 unscrupulous, offends established public policy, or is substantially injurious to Plaintiff and the  
17 other members of the Class.

18 95. Plaintiff, on behalf of herself and the Class, seeks injunctive relief to require  
19 Defendant to: (1) provide notice to every class member that the NIPT test they purchased is not  
20 suited for its intended purpose; and (2) provide a refund to Plaintiff and the Class for their NIPT  
21 test in an amount to be determined at trial.

22 96. Defendant's conduct has caused substantial injury to Plaintiff, Class Members,  
23 and the public. Defendant's conduct is ongoing and will continue absent a permanent injunction.  
24 Accordingly, Plaintiff seeks an order enjoining Defendant from committing such unlawful,  
25 unfair, and fraudulent business practices. Plaintiff further seeks an order granting restitution to  
26

1 Plaintiff and the Class members in an amount to be proven at trial. Plaintiff further seeks an  
2 award of attorneys' fees and costs under Cal. Code Civ. Proc. § 1021.5.

3 97. Plaintiff and the general public lack an adequate remedy at law to remedy and/or  
4 mitigate the totality of the injuries and misconduct described herein.

5 98. Absent injunctive relief, Defendant will continue to injure Plaintiff and the Class  
6 members. Defendant's conduct and omissions of material fact are ongoing. And, even if such  
7 conduct were to cease, it is behavior that is capable of repetition or reoccurrence by Defendant,  
8 yet evades review.

9 99. In order to prevent injury to the general public, Plaintiff, in her individual  
10 capacity, seeks a public injunction requiring Defendant to stop advertising, and to instruct its  
11 resellers to stop advertising, any NIPT test as being highly accurate.

12 **COUNT VII**  
13 **Violation of California's False Advertising Law**  
14 **California Business and Professions Code § 17500, *et seq.***

15 100. Plaintiff incorporates by reference the allegations contained in all preceding  
16 paragraphs of this complaint.

17 101. Plaintiff brings this claim individually and on behalf of the members of the Class  
18 against Defendant.

19 102. Defendant has engaged in false or misleading advertising in violation of  
20 California's statutory False Advertising Law ("FAL").

21 103. Defendant's conduct as described herein is misleading, and/or has a capacity,  
22 likelihood, or tendency to deceive reasonable consumers.

23 104. Defendant, with intent directly or indirectly to dispose of personal property or to  
24 perform services, or to induce the public to enter into any obligation relating thereto, makes,  
25 disseminates, has made or disseminated, causes to be made or disseminated, and/or has caused to  
26 be made or disseminated, before the public, in newspaper or other publication, or other  
27 advertising device, or by public outcry or by proclamation, or in any other manner or means,  
28

1 including over the internet, statements concerning that personal property or those services, and/or  
2 concerning any circumstance or matter of fact connected with the proposed performance or  
3 disposition thereof, which are untrue or misleading and which are known (or which by the  
4 exercise of reasonable care should be known) to be untrue or misleading.

5 105. Defendant made, disseminated, makes, disseminates, caused to be made or  
6 disseminated and/or causes to be made or disseminated any statements concerning the  
7 disposition of personal property or the performance of services, and/or concerning any  
8 circumstance or matter of fact connected with such statement as part of a plan or scheme with the  
9 intent not to sell that personal property or those services, professional or otherwise, as advertised.

10 106. With respect to omissions, Defendant at all relevant times had a duty to disclose  
11 the information in question because, *inter alia*: (a) Defendant had exclusive knowledge of  
12 material information that was not known to Plaintiff and the Class; (b) Defendant concealed  
13 material information from Plaintiff and the Class; and/or (c) Defendant made partial  
14 representations which were false and misleading absent the omitted information.

15 107. Defendant committed such violations of the FAL with actual knowledge that its  
16 advertising was misleading, or Defendant, in the exercise of reasonable care, should have known  
17 that its advertising was misleading.

18 108. Plaintiff and the Class reasonably relied on Defendant's representations and/or  
19 omissions made in violation of the FAL.

20 109. As a direct and proximate result of Defendant's unfair, unlawful, and fraudulent  
21 conduct, Plaintiff and each member of the Class suffered injury-in-fact and lost money.

22 110. But for Defendant's deceptive conduct and omissions of material facts, Plaintiff  
23 and the Class would not have purchased the subject NIPT tests and/or would have purchased an  
24 appropriate NIPT test from one of Defendant's competitors instead.

25 111. Defendant should be ordered to disgorge or make restitution of all monies  
26 improperly accepted, received, or retained.

1 112. Defendant’s conduct has caused substantial injury to Plaintiff, members of the  
2 Class, and the public. Defendant’s conduct is ongoing and will continue and recur absent a  
3 permanent injunction. Accordingly, Plaintiff seeks an order enjoining Defendant from  
4 committing such violations of the FAL. Plaintiff further seeks an order granting restitution to  
5 Plaintiff and the Class in an amount to be proven at trial. Plaintiff further seeks an award of  
6 attorneys’ fees and costs under Cal. Code Civ. Proc. § 1021.5.

7 113. Plaintiff, on behalf of herself and the Class, seeks injunctive relief to require  
8 Defendant to: (1) provide notice to every class member that the NIPT test they purchased is not  
9 suited for its intended purpose; and (2) provide a refund to Plaintiff and the Class for their NIPT  
10 tests in an amount to be determined at trial.

11 114. Absent injunctive relief, Defendant will continue to injure Plaintiff and the Class  
12 members. Even if such conduct were to cease, it is behavior that is capable of repetition or  
13 reoccurrence by Defendant, yet evades review.

14 115. In order to prevent injury to the general public, Plaintiff, in her individual  
15 capacity, seeks a public injunction requiring Defendant to stop advertising, and to instruct its  
16 resellers to stop advertising, any NIPT test as being highly accurate.

17 116. Plaintiff and the general public lack an adequate remedy at law to remedy and/or  
18 mitigate the totality of the injuries and misconduct described herein.

19 **COUNT VIII**  
20 **Violation of California’s Consumers Legal Remedies Act**  
21 **California Civil Code § 1750 *et seq.***  
22 **(Injunctive Relief Only)**

23 117. Plaintiff incorporates by reference the allegations contained in all preceding  
24 paragraphs of this complaint.

25 118. Plaintiff brings this claim individually and on behalf of the members of the Class  
26 against Defendant.

27 119. Defendant is a “person,” as defined by California Civil Code § 1761(c).  
28

1           120. Plaintiff and members of the Class are “consumers,” as defined by California  
2 Civil Code § 1761(d).

3           121. The NIPT tests purchased by the Plaintiff and the members of the Class are  
4 “goods” as defined by California Civil Code § 1761(a).

5           122. The purchases by the Plaintiff and the members of the Class constitute  
6 “transactions,” as defined by California Civil Code § 1761(e).

7           123. The unlawful methods, acts or practices alleged herein to have been undertaken  
8 by Defendant were all committed intentionally and knowingly. The unlawful methods, acts or  
9 practices alleged herein to have been undertaken by Defendant did not result from a *bona fide*  
10 error notwithstanding the use of reasonable procedures adopted to avoid such error.

11           124. With regard to this count of the pleading which alleges one or more violations of  
12 the CLRA, venue is proper in the state or federal court having jurisdiction over San Mateo  
13 County, California (the county in which this action has been commenced) pursuant to Section  
14 1780(d) of the California Civil Code because, without limitation, San Mateo County is a county  
15 in which Defendant is located. A declaration establishing that this Court has proper venue for  
16 this count is attached hereto as **Exhibit 2**.

17           125. Defendant’s methods, acts and/or practices, including Defendant’s  
18 misrepresentations, omissions, active concealment, and/or failures to disclose, violated and  
19 continue to violate the CLRA in ways including, but not limited to, the following:

- 20           (a) Defendant misrepresented that its products had characteristics, benefits, or  
21 uses that they did not have (Cal. Civ. Code § 1770(a)(5));
- 22           (b) Defendant misrepresented that its products were of a particular standard,  
23 quality, grade, or of a particular style or model when the products were of  
24 another (Cal. Civ. Code § 1770(a)(7));
- 25           (c) Defendant advertised its products with an intent not to sell them as  
26 advertised (Cal. Civ. Code § 1770(a)(9)); and
- 27           (d) Defendant represented that its products were supplied in accordance with  
28 previous representations when they were not (Cal. Civ. Code  
§ 1770(a)(16)).

1           126. Specifically, Defendant advertised and represented that these NIPT tests were  
2 suitable for the particular purpose when in fact the NIPT tests were not as accurate as stated.

3           127. With respect to omissions, Defendant at all relevant times had a duty to disclose  
4 the information in question because, *inter alia*: (a) Defendant had exclusive knowledge of  
5 material information that was not known to Plaintiff and the Class; (b) Defendant concealed  
6 material information from Plaintiff and the Class; and/or (c) Defendant made partial  
7 representations which were false and misleading absent the omitted information.

8           128. Defendant's misrepresentations and nondisclosures deceive and have a tendency  
9 and ability to deceive the general public.

10           129. Defendant's misrepresentations and nondisclosures are material, in that a  
11 reasonable person would attach importance to the information and would be induced to act on  
12 the information in making purchase decisions. Indeed, the utility and value of Defendant's NIPT  
13 tests are significantly reduced, to the point of worthlessness, because these tests should not and  
14 cannot be used for their intended and advertised purpose.

15           130. As a direct and proximate result of Defendant's unfair, unlawful, and fraudulent  
16 conduct, Plaintiff and the Class suffered injury-in-fact and lost money.

17           131. But for Defendant's deceptive conduct and omissions of material facts, Plaintiff  
18 and the Class would not have purchased the subject NIPT tests and/or would have purchased an  
19 appropriate NIPT test from one of Defendant's competitors instead. Defendant's conduct as  
20 alleged herein caused substantial injury to Plaintiff, Class Members, and the public. Defendant's  
21 conduct is ongoing and will continue and recur absent a permanent injunction. Accordingly,  
22 Plaintiff and the Class seek an order enjoining Defendant from committing such practices.

23           132. If not enjoined by order of this Court, Defendant is free to resume its unlawful  
24 behavior and injure Plaintiff and consumers through the misconduct alleged herein once more.  
25 Defendant has a duty to speak truthfully or in a non-misleading manner.

26           133. Plaintiff will be harmed if, in the future, she is left to guess as to whether  
27  
28



1 Defendant's representations are accurate and whether there are omissions of material facts  
2 regarding the features or specifications of the NIPT tests.

3 134. In order to prevent injury to the general public, Plaintiff, in her individual  
4 capacity, seeks a public injunction requiring Defendant to stop advertising, and to instruct its  
5 resellers to stop advertising, any NIPT test as being highly accurate.

6 135. The balance of the equities favors the entry of permanent injunctive relief against  
7 Defendant. Plaintiff and the general public will be irreparably harmed absent the entry of  
8 permanent injunctive relief against Defendant. Plaintiff and the general public lack an adequate  
9 remedy at law. A permanent injunction against Defendant is in the public interest. Defendant's  
10 unlawful behavior is capable of repetition or re-occurrence absent the entry of a permanent  
11 injunction.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks  
14 judgment against Defendant, as follows:

- 15 (a) For an order certifying the nationwide Class under Rule 23 of the Federal Rules of  
16 Civil Procedure, naming Plaintiff as representative of the Class, and naming  
Plaintiff's attorneys as Class Counsel to represent the Class;
- 17 (b) For an order declaring the Defendant's conduct violates the statutes referenced  
18 herein;
- 19 (c) For an order finding in favor of Plaintiff and the Class on all counts asserted  
20 herein;
- 21 (d) For compensatory, statutory, and punitive damages in amounts to be determined  
by the Court and/or jury;
- 22 (e) For prejudgment interest on all amounts awarded;
- 23 (f) For an order of restitution and all other forms of equitable monetary relief;
- 24 (g) For injunctive relief as pleaded or as the Court may deem proper; and
- 25 (h) For an order awarding Plaintiff and the Class their reasonable attorneys' fees and  
26 expenses and costs of suit.
- 27
- 28

**DEMAND FOR TRIAL BY JURY**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any and all issues in this action so triable of right.

Dated: February 24, 2022

Respectfully submitted,

**BURSOR & FISHER, P.A.**

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