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14
15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 C.M. and S.G., on behalf of themselves and
18 all others similarly situated,

19 Plaintiffs,

20 v.

21 THERANOS, INC. and WALGREENS
22 BOOTS ALLIANCE, INC.,

23 Defendants.

24 Case No. _____

25 **CLASS ACTION COMPLAINT**

26 **JURY TRIAL DEMANDED**

1 **INTRODUCTION**

2 1. Accurate analysis of blood samples is essential to the safe practice of medicine. Doctors
3 rely on blood tests to detect everything from relatively mundane conditions like elevated cholesterol to
4 serious maladies like liver disease and certain types of cancer. These results also inform doctors’
5 therapeutic recommendations, helping them determine whether to treat a condition, what to treat it
6 with, and how aggressively. Inaccurate blood tests, then, can contribute to serious conditions going
7 undetected, to treatable conditions growing worse unnoticed, to patients forgoing medications they
8 should take, or taking medications they shouldn’t. An inaccurate blood test can change a patient’s life.

9 2. For decades, blood collection and analysis have been straightforward and reliably
10 accurate. Standard blood draw techniques involve venipuncture (drawing blood from a vein, typically
11 in the arm), collection of a sample using vials of 5 to 10 milliliters, labeling and recording the sample,
12 analyzing it in a lab, and then reporting the results to doctors trained to interpret them. Federal
13 agencies regulate laboratories and lab devices so that patients and doctors can count on accurate testing.
14 With its track record of safety and reliability, diagnostic lab testing in the United States has grown into
15 a \$75 billion per year industry.

16 3. Defendant Theranos, Inc. is a Silicon Valley startup that set out to “disrupt” that industry
17 by introducing what it said was a revolutionary new way of drawing and testing blood. Instead of the
18 large needles, tubes, and vials that phlebotomists conventionally use, Theranos claimed to have
19 invented a system that drew blood with a mere pinprick to the fingertip, captured only a few drops in a
20 tiny, proprietary vial, and analyzed the sample on a secret device it code-named “Edison.” Edison was
21 supposed to be able to run dozens of tests using a single miniscule sample, generate results within
22 minutes instead of days or weeks, and deliver results right to a patient’s smartphone using a Theranos-
23 developed app.

24 4. Theranos’s first major step toward that disruption came in fall 2013, when it announced
25 a long-term partnership with Defendant Walgreens Boots Alliance, Inc. (“Walgreens”), operator of a
26 nationwide drugstore chain. Walgreens was as eager to branch out into the lucrative blood-testing
27 market as Theranos was to expand its access to the public. Top-level executives at the two corporations
28 agreed on a scheme to open “wellness centers” that conducted blood testing inside Walgreens

1 pharmacies using Theranos’s secret system. As a first step toward opening wellness centers in all of
2 Walgreens’ over 8,000 U.S. locations, Theranos and Walgreens opened an initial cluster of wellness
3 centers in the Phoenix, Arizona area, along with two wellness centers in northern California near
4 Theranos’s Palo Alto headquarters. These wellness centers collected samples that were then sent to
5 nearby Theranos-run labs, one in Scottsdale, Arizona, the other in Newark, California. Within months
6 of announcing their partnership, Theranos and Walgreens had opened more than 40 wellness centers
7 and begun delivering blood tests to the public. By the end of 2015, Theranos, bolstered by the
8 enhanced retail presence and credibility that Walgreens provided, had performed roughly 1.8 million
9 lab tests.

10 5. The partnership had a problem, however: Theranos’s revolutionary system did not work.
11 In October 2015, public reports began to reveal that Theranos never performed more than a small
12 fraction of its tests using the proprietary system on which it had built its brand and, by mid-2015, had
13 given up using Edison entirely. Instead, Theranos secretly used conventional lab machines it purchased
14 from third parties. It even outsourced tests to university-affiliated, third-party labs. But Theranos and
15 Walgreens nevertheless kept billing their wellness centers as offering cutting-edge, less-invasive, and
16 highly accurate testing.

17 6. Theranos’s problem is bigger than Edison, however, for even using conventional lab
18 equipment it has proved incapable of providing reliable test results. In January 2016, the federal
19 agency that oversees diagnostic laboratories released a 121-page report detailing violations of federal
20 regulations in Theranos’s Newark lab, including five major violations pertaining to hematology,
21 analytics, and staffing. The most serious of these violations, the regulator said, posed an “immediate”
22 risk of serious injury or death to patients. Among the report’s other findings were that Theranos staffed
23 its lab with unqualified and inadequately trained personnel; kept freezers at incorrect temperatures;
24 neglected to calibrate machines properly or sometimes at all; and would fail its own internal quality-
25 control checks—only then to change its quality-control standards so that they matched the data. Private
26 investigations undertaken by independent experts in laboratory science have also confirmed that
27 Theranos’s results are consistently flawed.

1 7. As a result of the federal investigation, Theranos currently faces sanctions up to and
2 including loss of the federally issued license that permits it to handle human samples, as well as a two-
3 year ban from the blood lab industry for Theranos’s founder and chief executive, Elizabeth Holmes. In
4 an attempt to dissuade regulators from issuing these sanctions, Theranos has voided the results of all
5 the tests it performed on its Edison devices in 2014 and 2015. Plaintiffs’ investigation has also
6 revealed that Theranos, without fanfare, has sent out corrected test results to doctors in the Phoenix
7 area, even as it continues to publicly claim that the problems the regulators found were confined to its
8 California lab.

9 8. Theranos’s partner, Walgreens, has been, at best, willfully indifferent to Theranos’s
10 shortcomings. Before it entered into its partnership with Theranos, Walgreens knew of, but ignored,
11 Theranos’s refusals to provide confirmation that its new, self-made devices actually worked.
12 Walgreens never insisted on inspecting Theranos’s labs or verifying Theranos’s claims. And when
13 Theranos refused to cooperate with the third-party experts that Walgreens hired to vet Theranos,
14 Walgreens went ahead with the partnership regardless. Despite months of public reporting on
15 Theranos’s unreliability, Walgreens decided to shut down its Theranos centers only a few days ago.
16 Even now, Walgreens has not disclosed to patients the risks of relying on Theranos tests previously
17 sold inside its stores. Walgreens reportedly failed to take stronger action to protect patients because it
18 feared that Theranos would sue for breach of contract.

19 9. Meanwhile, patients are the ones who have paid for Theranos and Walgreens’ conduct.
20 Media reports contain numerous accounts of inaccurate results for tests ranging from thyroid function
21 to potassium levels to prostate cancer. One Arizona doctor sent her patient to a Theranos testing site
22 for routine testing only for the results to come back so elevated that she immediately ordered her
23 patient to the emergency room—where further, non-Theranos testing showed that the patient’s results
24 were actually normal. That patient was fortunate to suffer nothing worse than an emergency room bill
25 of several thousand dollars. But Theranos and Walgreens, by foisting onto the public unreliable lab
26 tests and failing, even now, to provide appropriate disclosures, continue to cheat patients and expose
27 them to a risk of serious health consequences.

28

1 **THE PARTIES**

2 **I. Plaintiffs**

3 17. Plaintiffs are identified herein using their initials to preserve the confidentiality of their
4 personal medical information.

5 18. Plaintiff C.M. is a resident of Maricopa County, Arizona. She purchased blood testing
6 services from Theranos at a Walgreens wellness center located in Goodyear, Arizona in 2015.

7 19. Plaintiff S.G. is a resident of Maricopa County, Arizona. She purchased blood testing
8 services from Theranos at a Walgreens wellness center located in Glendale, Arizona in 2015.

9 **II. Defendants**

10 20. Defendant Walgreens Boots Alliance, Inc. (“Walgreens”) is a Delaware corporation
11 headquartered at 108 Wilmot Road in Deerfield, Illinois, and the product of a 2014 merger between
12 U.S.-based Walgreen Co. and Swiss-based Alliance Boots GmbH. Post-merger, Walgreens operates
13 over 8,100 drugstores in the United States, offering pharmacy services alongside groceries and dry
14 goods.

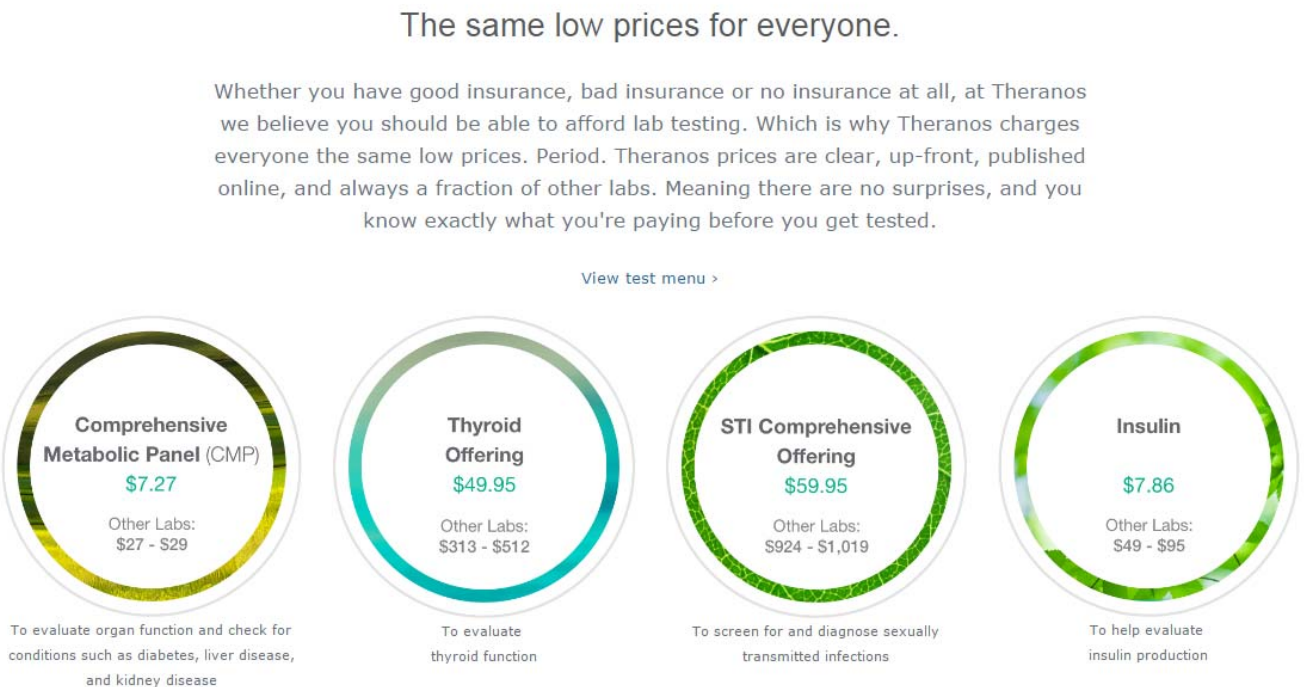
15 21. Defendant Theranos, Inc. (“Theranos”) is a Delaware corporation headquartered at 1701
16 Page Mill Road in Palo Alto, California. Throughout the period described in this Complaint and up to
17 the present, Theranos has held itself out as offering an innovative new approach to blood testing that is
18 less intrusive and faster than conventional testing but nevertheless highly accurate. Theranos’s
19 approach, as advertised, depends on proprietary blood collection, testing, and analysis devices that
20 Theranos designed and built, as well as proprietary software. However, Theranos has in fact used its
21 proprietary system for only a fraction of the tests it provides, and only up until mid-2015. Theranos has
22 instead secretly performed blood testing services on conventional lab equipment purchased from third
23 parties. Theranos sold these services, falsely marketed as Theranos’s proprietary services, to
24 consumers at more than 40 “wellness centers” located primarily in the Phoenix metropolitan area in
25 Arizona, with two in northern California. All but a few of the blood centers were located inside
26 Walgreens stores. Theranos collected samples at the wellness centers, but analyzed the samples at its
27 two off-site laboratories, one located in Newark, California, the other in Scottsdale, Arizona.

SUBSTANTIVE ALLEGATIONS

I. Theranos Attempts to “Disrupt” the Established Blood Testing Industry.

22. Elizabeth Holmes was 19 years old and a sophomore at Stanford when, in 2003, she saw an opening into the United States’ multibillion-dollar lab testing market. Driven, she has said, by her phobia of needles, Holmes dropped out of Stanford and founded Theranos, a company that has sought to “disrupt” the established model of diagnostic blood sample collection and analysis by developing a less invasive alternative to conventional venipuncture.

23. By 2008, Theranos had developed the linchpin of its strategy, a technology it dubbed “Edison”: a machine that used samples of no more than a few drops, obtained with a finger prick and collected in tiny vials that Theranos branded “nanotainers.” Theranos boasted that Edison could perform hundreds of tests on each miniscule sample of blood (or, for some tests, urine), run them faster than standard tests, and deliver them for a fraction of the price. Theranos made a key selling point of the transparency of its pricing for its lab tests, which it posted on its website.¹



¹ Theranos.com, “Test Menu,” <https://www.theranos.com/test-menu> (last visited June 8, 2016).

1 24. But even as Theranos touted transparency to the marketplace, it enforced strict secrecy
2 around Edison. Theranos refused to submit the Edison device to inspection. Theranos likewise refused
3 to subject any of its other technology or processes to peer review. Theranos refused even to allow the
4 Edison device to be photographed. Theranos claimed it wanted to keep potential competitors from
5 learning how to replicate its technological breakthroughs.

6 25. Edison was not the only means by which Theranos sought to disrupt the lab testing
7 industry. Theranos also sought to disrupt the industry’s market structure. The lab testing market was
8 dominated by the “Big Two” of Quest Diagnostics Inc. (“Quest”) and Laboratory Corporation of
9 America (“LabCorp”). These and smaller companies like them sold lab testing services directly to
10 doctors, who in turn received results, interpreted them for patients, and prescribed appropriate therapies
11 (such as medication). The market for lab testing services, in other words, was between testing labs and
12 doctors.

13 26. Theranos, however, sought to sidestep doctors and their traditional gatekeeping function
14 by marketing, selling, and delivering its services directly to patients. Theranos even developed
15 smartphone apps to deliver test results, so that patients would receive (and have to interpret) test results
16 themselves.

17 27. To help achieve its goal of direct-to-patient testing, Theranos lobbied the Arizona
18 Legislature to make patient-ordered lab tests legal. Its efforts were successful, and in the April 2015
19 Arizona House Bill 2645 became law, authorizing patients to order lab tests directly. *See* Ariz. Rev.
20 Stat. § 36-468. As a result, Theranos could dispense with competing for doctors’ business against
21 Quest, LabCorp, and other established companies, and instead sell directly to Arizona patients.
22 Theranos used this access to draw patients away from the established companies and convert their
23 patients into Theranos patients.

24 **II. Theranos and Walgreens Partner to Bring Theranos’s Testing to the Public.**

25 28. As the next step in its plan to reach the broadest possible market of patients, Theranos
26 began to seek out partnerships with nationwide retailers.

27 29. At the same time, Walgreens was seeking opportunities to capture new revenue streams
28 by branching out beyond traditional drugstore offerings. For example, in 2009, following a severe flu

1 season, Walgreens and other pharmacy chains lobbied state legislatures to permit pharmacists to begin
2 administering injections of flu vaccine. By 2012, Walgreens was giving more than 6 and a half million
3 flu shots per year and reaping month-after-month revenue increases as a result.

4 30. Not satisfied with the success of its newly minted vaccination business, Walgreens
5 began to seek out partnerships with Silicon Valley companies who could help it strike even more
6 lucrative deals.

7 31. In 2010, Theranos's founder Holmes met an executive from Walgreens' newly created
8 healthcare innovation unit, Dr. Jay Rosan, at a healthcare technology conference. By early 2011,
9 Walgreens and Theranos were in talks to deliver direct-to-consumer blood-testing services in Theranos-
10 branded and operated wellness centers located within Walgreens stores.

11 32. By spring of 2011, the parties' talks had become serious. Walgreens started making
12 plans to vet Theranos. Walgreens, however, never followed through on its plans. Fearful that Theranos
13 would strike a deal with one of its competitors instead, Walgreens looked past Theranos's failure to
14 provide access to promised data and information, accepted incomplete information, and failed to
15 adequately test and inspect Theranos's equipment and capabilities.

16 33. For example, in May 2011, Walgreens hired the Johns Hopkins University to evaluate
17 prospective investments, including a contemplated investment in Theranos. Later that spring, as part of
18 this evaluation process, Holmes and other Theranos executives met with Johns Hopkins scientists.
19 Holmes brought with her an Edison device and binders of data that, she said, demonstrated Edison's
20 accuracy. Theranos promised at that meeting to provide an Edison device to Johns Hopkins for testing.
21 However, when Dr. Rosan of Walgreens later asked a Johns Hopkins representative whether Theranos
22 had provided the device, the representative informed him that Theranos had not.

23 34. Instead of insisting that Theranos keep its promise, Walgreens obtained a prototype of
24 the Edison device. And rather than providing this device to Johns Hopkins, Walgreens had its
25 employees set up the prototype in a cubicle and began trying to verify its accuracy themselves. They
26 discovered, however, that the test results delivered by the prototype could not be compared to those of
27 conventional labs, as the prototype reported results using values like "high" or "low" instead of the
28 numeric values that conventional labs use, and only performed unusual tests that conventional labs do

1 not offer. Despite these incomplete and inconclusive efforts, Walgreens did not halt the deal with
2 Theranos.

3 35. Similarly, Walgreens satisfied itself with its deal with Theranos without ever examining
4 Theranos's lab facilities. It sent executives and consultants on a junket to Theranos's headquarters but
5 allowed Theranos to sequester them in conference rooms and chaperone them if they ventured
6 elsewhere.

7 36. For example, in summer 2011, when Walgreens and Theranos had already signed an
8 initial letter of agreement, Walgreens sent consultants from a firm called Colaborate LLC, a laboratory
9 testing and evaluation firm, to Theranos's headquarters in Palo Alto. Accompanying the consultants
10 were Dr. Rosan, Wade Miquelon (Walgreens' former chief financial officer), and other Walgreens
11 employees. Throughout the visit, Theranos kept Colaborate and the Walgreens representatives in a
12 conference room. Theranos declined to show them the laboratory and even escorted them when they
13 visited the restroom. Neither did Theranos provide Colaborate with access to an Edison machine.
14 Colaborate eventually issued a report telling Walgreens that it lacked sufficient information to
15 consummate the Theranos deal, but Walgreens pushed ahead with it regardless.

16 37. Similarly, in October 2012, Walgreens sent two executives and a consultant, Paul Rust,
17 a retired Quest executive, to review quality-control data at Theranos. According to published reports,
18 Theranos provided Rust with data but did not confirm that it came from Edison devices. Neither would
19 Theranos permit Rust or the others into its laboratory. Later, when Rust sought to confirm that
20 Walgreens representatives had been inside Theranos's lab, he learned that they hadn't. Yet despite not
21 having properly inspected Theranos's laboratories or vetted its quality-control data, Walgreens moved
22 forward with its deal with Theranos.

23 38. Publicly available information alone should have led Walgreens to conclude that it
24 needed further confirmation of Theranos's reliability and accuracy entering into any deal that would
25 expose patients to Theranos's testing methods. For example, Walgreens should have known and
26 appreciated the importance of Theranos's improper staffing of its laboratories. The director of
27 Theranos's Scottsdale lab is Daniel Young, a mechanical engineer with no medical degree. The
28 director of Theranos's Newark lab was, until recently, Sunil Dhawan, a dermatologist with no degrees

1 or certification in pathology or laboratory science who worked for Theranos only part-time. It was
2 Dhawan's directorship of the Newark lab that constituted one of the five major violations at the Newark
3 lab identified by federal regulators and led to the threatened sanctions Theranos now faces. According
4 to public reports, Dhawan's name was listed on the Newark lab's license.

5 39. The failure of a proposed deal between Theranos and a Walgreens competitor, the
6 grocery chain Safeway, also illustrates Walgreens' pursuit of profits over patient safety. As Walgreens
7 was courting Theranos, Theranos simultaneously was in talks with Safeway to provide lab testing
8 services in Theranos-dedicated clinics embedded within Safeway stores. Safeway invested \$10 million
9 in Theranos and sank \$350 million into constructing the clinics.

10 40. According to public reports, however, Safeway pulled out of its deal with Theranos after
11 its due diligence raised questions about the accuracy of the testing Theranos sought to offer. For
12 example, Safeway executives had their own blood tested by both Theranos and another, conventional
13 lab. The test results differed significantly. One executive's results from Theranos showed such highly
14 elevated quantities of prostate-specific antigen (PSA) as to suggest he had prostate cancer.
15 Conventional lab testing, however, confirmed that his PSA levels were normal. Easily discovered
16 discrepancies like these contributed to Safeway's reluctance to move forward with offering Theranos
17 testing to the public.

18 41. Safeway also was concerned because Theranos balked at placing its blood analyzers
19 inside Safeway stores, and instead insisted on having samples shipped to one of its off-site labs. This
20 allowed Theranos to use conventional testing machines and even outsource testing to third-party labs
21 rather than using the much-hyped Edison device, all while benefiting from advertising buzz around the
22 latter.

23 42. Safeway also grew concerned by Theranos's repeated failure to meet deadlines and to
24 deliver on promises to divulge information needed to verify Theranos's claims.

25 43. These failings on Theranos's part caused Safeway to walk away from its deal with
26 Theranos. Walgreens, exposed to nearly identical warning signs, instead invested \$50 million into
27 Theranos and joined Theranos in its plan to seize an outsized portion of the lucrative nationwide lab
28 testing industry and capture a nationwide market of patients.

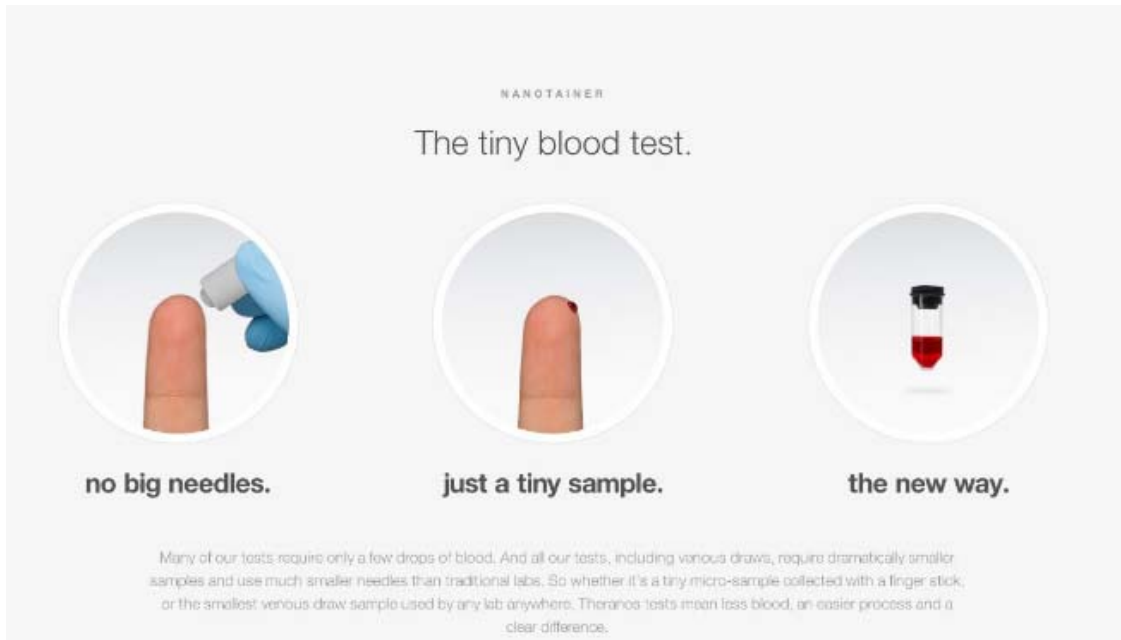
1 **III. Theranos and Walgreens Open Their Wellness Centers**

2 44. Theranos and Walgreens took the first major step of their long-range plan in September
3 2013, when they announced their partnership and opened the first of more than 40 wellness centers,
4 mostly clustered in the Phoenix metropolitan area and nearly all of which were inside Walgreens stores.



21 45. In the advertising for their new wellness centers, Theranos and Walgreens boasted of the
22 transformative, cutting-edge technology they offered the public.

23 46. Theranos and Walgreens emphasized that their testing would be less invasive than
24 conventional testing, with imagery that conveyed to patients that they would have a needle-free
25 experience. In a joint press release announcing their partnership, Theranos and Walgreens boasted that
26 their “less invasive” testing used samples “as small as a few drops, or 1/1,000 the size of a typical
27 blood draw” and claimed that Theranos’s finger-prick or venous microsamples “eliminat[ed] the need
28 for larger needles and numerous vials of blood required for most diagnostic lab testing.”



47. Similarly, the Walgreens website told consumers they could say “goodbye, big bad needle” because Theranos-trained technicians could “use a tiny finger stick or collect a microsample from a venous draw” instead of using a “huge needle.” Theranos boasted they could run over 200 different tests using these abnormally small samples, thanks to their revolutionary testing equipment.



Home > Pharmacy & Health

theranos

the lab test, reinvented.

Walgreens Partners with Theranos to Provide Lab Services.

Theranos is working to shape the future of lab testing. Now, for the first time, their high-complexity CLIA-certified laboratory can perform your tests quickly and accurately on samples as small as a single drop.¹

[Learn more at Theranos.com](#)



1 48. Theranos and Walgreens also claimed to offer industry-leading accuracy and speed with
2 their tests. Their joint press release boasted that Theranos’s “proprietary laboratory infrastructure”
3 would “minimize[] human error through extensive automation to produce high quality results,” and that
4 those results would be “available to physicians in a matter of hours, enabling fast diagnoses to help
5 informed treatment choices.”

6 49. Theranos’s website continues to claim “the highest levels of accuracy,” explaining that
7 “[a]ll our tests are developed and validated under and to the CLSI, FDA, Centers for Disease Control[,]
8 and World Health Organization guidelines.”

9 50. Theranos’s website also misleadingly boasts of its practice of submitting all of its
10 “Laboratory Developed Tests” to the Food and Drug Administration (“FDA”) for clearance and
11 approval. None of Theranos’s tests is FDA-approved except for one that tests for the herpes simplex 1
12 virus IgG (HSV-1). Moreover, the FDA has characterized Theranos’s nanotainers as an uncleared
13 medical device, forcing Theranos to cease to use the nanotainer device for all its tests but one. Further,
14 according to published reports, a former Theranos employee has disclosed that Theranos modified its
15 machines in the midst of the herpes tests that led to FDA approval and underreported to the FDA how
16 often the machines broke down during the study.

17 51. At the heart of all Theranos’s promises lay Theranos’s brand identity, that of an epoch-
18 making Silicon Valley revolutionary that had reinvented lab testing. This image is one Walgreens was
19 happy to promote and yoke itself to. Former Walgreens CFO Miquelon boasted of Theranos founder
20 Holmes’s “disruptive force,” stating that she had discovered how to do lab testing “much cheaper, more
21 accurately and in a shorter period of time. . . . She has made the process better.”

22 52. But while Theranos and Walgreens sold the public on Theranos’s revolutionary new
23 testing methods, in reality Theranos hardly used the Edison devices at the heart of its “disruptive”
24 testing model. Theranos has disclosed that its Scottsdale lab was equipped only with conventional
25 laboratory machines that Theranos bought from Siemens—not the Edison machines central to
26 Theranos’s brand. And while the Newark lab had Edison machines as well as conventional Siemens
27 machines, Theranos has disclosed that its Scottsdale lab conducted over 90 percent of its testing.
28 Theranos has further disclosed that it outsources “highly complex” tests to third-party, university-

1 affiliated labs, despite its public statements that it is able to run all of the over 200 tests it offers on its
2 Edison machines. Simply put, Theranos and Walgreens misrepresented the nature of the service
3 offered.

4 53. Walgreens allowed Theranos to control and obscure what went on inside the wellness
5 centers it hosted in its stores. The centers were staffed by Theranos employees. Theranos conducted
6 blood draws on site, but did not place its testing equipment on site; rather, it sent the samples it
7 collected to its Scottsdale or Newark labs. Additionally, Walgreens reportedly had no access to
8 Theranos's clinical data or financial records—a concession that reportedly is unusual for Walgreens to
9 make when investing in another company. Despite having surrendered to Theranos control over the
10 services Theranos offered in its stores, Walgreens promoted those services and helped Theranos draw
11 in patients.

12 **IV. Published Reports Undermine Theranos's Claims of Accurate, Reliable Testing.**

13 54. In October 2015, the *Wall Street Journal* issued the first of a series of articles revealing
14 that Theranos's claims of a revolution in accurate, reliable, speedy blood testing were at best
15 misleading and in many respects false.

16 55. Despite Theranos's having made Edison the centerpiece of its brand, by December 2014
17 Theranos reportedly was performing only 15 of the over 200 tests that it offered on Edison devices.
18 Following the October 2015 article, Holmes confirmed that Theranos was using Edison devices for just
19 one test.

20 56. Theranos changed its website during the period of the *Journal's* reporting to delete the
21 claim that “[m]any of our tests require only a few drops of blood,” as well as the claim that it usually
22 collected [only three tiny micro-vials . . . instead of the usual six or more large ones.” Theranos
23 admitted that these changes were made for “marketing accuracy.”

24 57. Moreover, Theranos has since revealed that it stopped using Edison for testing
25 altogether in June 2015, though it continued to advertise its finger stick collection methods and the
26 advantages of its testing solution, which were purportedly obtained through Edison.

27
28

1 58. Theranos employees have leaked to the press that Theranos diluted the “microsamples”
2 of blood that they took so that the samples would meet the minimum volume requirements of the
3 conventional machines Theranos used.

4 59. Notwithstanding Theranos’s claims of enhanced speed, numerous patients have publicly
5 reported delayed test results—one of the outcomes that Edison was supposed to prevent. For example,
6 a journalist reported having had his blood drawn at a wellness center and receiving results back 3 days
7 later, rather than the few hours that Theranos advertised.

8 **V. Published Reports and Government Investigations Undermine Theranos’s Claims of**
9 **Accurate, Reliable Testing.**

10 60. In January 2016, news reports revealed that the Centers for Medicare & Medicaid
11 Services (“CMS”), the federal regulator responsible for the integrity of laboratory testing, had inspected
12 Theranos’s Newark lab and found five major infractions, including one "likely to cause, at any time,
13 serious injury or harm, or death, to individuals served by the laboratory or to the health and safety of
14 the general public."

15 61. The CMS sent a letter and a report to Theranos, dated January 25, 2016, which outlined
16 the five major infractions, along with numerous other infractions. The five major infractions were
17 violations of the following federal regulations:

- 18 • 42 C.F.R. § 493.1215: The CMS observed that Theranos failed to conduct adequate
19 quality controls relating to hematology. This was the violation that the CMS identified
20 as likely to cause serious injury, harm, or death at any time. One observation
21 underpinning the CMS’s finding of inadequate quality controls related to PT/INR test
22 results. The PT/INR test measures how long blood takes to clot, and it is used to
23 monitor individuals being treated with the blood-thinner warfarin, sold under the trade
24 name Coumadin—a medication prescribed to help prevent heart attack and stroke in
25 especially vulnerable patients.
- 26 • 42 C.F.R. § 493.1250: This finding related to numerous failures in Theranos’s analytic
27 systems, including failures to perform required weekly maintenance on certain of its
28 testing machines and failures to keep freezers at the proper temperature.

- 1 • 42 C.F.R. § 493.1441: The CMS observed numerous failures relating to Theranos’s
2 failure to employ a qualified lab director. The CMS found, among other things, that the
3 director failed to ensure that required daily quality controls were performed, failed to
4 ensure that the results of quality control materials met the laboratory’s own criteria for
5 acceptability, and failed to ensure that laboratory personnel were properly trained.
- 6 • 42 C.F.R. § 493.1447: The CMS made numerous findings related to the inadequacy of
7 Theranos’s lab supervisors, for example, finding that two of the three supervisors failed
8 to meet federal minimum standards requiring four years of experience.
- 9 • 42 C.F.R. § 493.1487: The CMS found that some of the testing personnel employed in
10 the Newark lab lacked federally required degrees in the hard sciences (one, for example,
11 had a Liberal Studies degree) and had not received required training on the testing
12 machines they operated.

13 62. In addition to the major infractions above, the CMS report observed numerous other
14 problems at the Newark lab.

15 63. Notably, the CMS found that Theranos failed to meet even its own, internal quality
16 controls. While the publicly available version of the CMS report is redacted, published reports from
17 those who have seen an unredacted version of the report state, consistent with the redacted version, that
18 Edison failed 29 percent of quality-control checks in October 2014. Specific tests had similar or even
19 higher failure rates:

- 20 • Tests of a hormone that affects testosterone levels failed at an 87 percent rate;
- 21 • Tests of the hormone prolactin, which promotes lactation in women after childbirth,
22 failed at a 47 percent rate;
- 23 • Tests to measure PSA, the prostate-specific antigen used to help detect prostate cancer,
24 failed at a 22 percent rate.

25 64. According to the CMS, Theranos’s own data showed unacceptable discrepancies
26 between the measurements produced by Edison and conventional testing machines. For example,
27 Vitamin D measurements differed between 21 and 130 percent, thyroid function tests differed by 21 to
28

1 39 percent, and testosterone tests differed by 22 to 146 percent. But Theranos’s own internal guidelines
2 specified that they should differ no more than 20 percent.

3 65. The CMS report reflects that, rather than reveal these deficiencies or take steps to inform
4 the public, Theranos instead changed its standards to match its data. The CMS report faulted Theranos
5 for “chang[ing] the criteria for acceptability” for numerous tests but “maintain[ing] no mechanism to
6 assess the effectiveness of this corrective action.”

7 66. The CMS report also faulted Theranos for failing to promptly notify people who ordered
8 tests when it detected errors in the tests.

9 67. Finally, the CMS stated that its inspection of Theranos’s lab took “an overview of the
10 laboratory through random sampling” and observed that, due to its random nature, the inspection might
11 “not find every violation that the laboratory may have committed.”

12 68. The release of Theranos quality control data prompted one professor of pathology to
13 say: “This is the first time that we’ve actually seen data from the Theranos instrument, and it’s as bad
14 as one would have worried it would be.” He continued: “Based on this data, it’s hard for me to believe
15 that they went live with this instrument and tested patient specimens on it.”

16 69. Independent researchers have confirmed the infirmity of Theranos’s results. In March
17 2016, the Journal of Clinical Investigation published the results of a study of 60 healthy adults that
18 compared test results they received from Theranos with those they received from Quest and LabCorp
19 using samples taken the same day. The study found Theranos was 60 percent more likely to report
20 results outside of normal ranges. For example, Theranos’s cholesterol tests were an average of 9.3
21 percent lower than those of the other labs—a fact which, the report said, could lead health care
22 providers to “either inappropriately initiate or fail to appropriately initiate statin therapy.”

23 70. Had Theranos or Walgreens divulged data reflecting the nature and quality of the tests
24 they offered, patients who relied on their assurances of high-quality, accurate testing would have had
25 the opportunity to make an informed decision about whether to use their services.
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1 **VI. Walgreens Takes Pains to Protect Itself, Rather than Its Patients, After Theranos's**
2 **Problems Become Public.**

3 71. The CMS report became a matter of public knowledge on January 27, 2016 when the
4 *Wall Street Journal* divulged its existence and summarized its major findings. Walgreens executives
5 reportedly held a conference call with Theranos founder Holmes the following day. At that meeting,
6 Walgreens reportedly told Holmes that it would only continue to work with Theranos if it suspended all
7 testing until the issues identified by the CMS report were resolved.

8 72. Holmes reportedly refused that condition, and threatened to sue Walgreens for even
9 suggesting a suspension.

10 73. Walgreens then, instead of insisting on a suspension of testing to protect patient health,
11 opted to give Theranos 30 more days to resolve the problems identified at the Newark lab and closed
12 only a single wellness center, the one in Palo Alto, California. It continued to permit the remaining
13 forty wellness centers in Arizona to stay open.

14 74. Plaintiffs' investigation has uncovered no indication that Walgreens required Theranos
15 to verify the reliability and accuracy of results issuing from its Scottsdale lab.

16 75. Neither has Plaintiffs' investigation uncovered any indication that Walgreens has sent
17 direct notification to patients who received test results from its wellness centers, posted a general
18 notification in its stores, or made any oral or written disclosure to prospective patients concerning the
19 problems with Theranos's testing.

20 76. As a result of Walgreens' refusal to suspend operations at its wellness centers or even to
21 notify patients of the risks of relying on a Theranos-administered lab test, Walgreens continued to profit
22 from exposing the public to Theranos's unsafe and unreliable blood tests.

23 **VII. The Federal Government Threatens Sanctions Against Theranos.**

24 77. On March 18, 2016, the CMS sent Theranos a letter proposing to sanction it for failing
25 to adequately address the five major infractions identified in its January 25, 2016 letter and report.
26 Among the sanctions proposed are:
27
28

- 1 • Revocation of the Newark laboratory’s certification under the Clinical Laboratory
2 Improvements Amendment of 1988 (“CLIA”), which is the certification that permits
3 laboratories to accept human samples for diagnostic testing;
- 4 • Upon revocation of Theranos’s CLIA certification, a two-year ban on Holmes or the
5 laboratory director owning, operating, or directing a laboratory for two years;
- 6 • Monetary penalties of \$10,000 per day, along with suspension and cancellation of the
7 laboratory’s approval to receive Medicare payments; and
- 8 • Provision to the CMS of “a list of the names and addresses of all physicians and other
9 clients who have used some or all of the laboratory’s services from January 2014 to the
10 present date.” The CMS would use the list to notify doctors and patients of, among
11 other things, the nature of Theranos’s non-compliance with federal regulations.

12 78. On April 18, 2016, public reports revealed that the U.S. Attorney’s office in San
13 Francisco, with assistance from the Federal Bureau of Investigation and the U.S Postal Inspection
14 Service, has opened a criminal investigation into Theranos and subpoenaed documents from
15 Walgreens, as well as the New York State Department of Health. The report also indicated that the
16 Securities and Exchange Commission has begun to scrutinize whether Theranos was truthful when
17 soliciting funding from private investors.

18 **VIII. Theranos Retracts Results from Both Its Newark and Its Scottsdale Labs, But Does Not**
19 **Notify Patients.**

20 79. In May 2016, Theranos disclosed that it had withdrawn all of the Edison test results it
21 produced in 2014 and 2015. Theranos ran approximately 890,000 tests per year during that period.
22 Theranos told CMS that it had reissued “tens of thousands” of blood-test reports, either voiding results
23 or correcting them. Theranos’s notification efforts, then, reached roughly 1 to 5 percent of patients who
24 received unreliable blood tests from Theranos and Walgreens.²

25 ² Assuming Theranos delivered 890,000 tests in 2014 and 2015, it delivered approximately 1.8
26 million tests. Assuming that Theranos’s notification of “tens of thousands” of patients means it notified
27 between 20,000 and 90,000, Theranos notified between 1.1 and 5.0 percent of the 1.8 million test
28 recipients, approximately.

1 80. Theranos has emphasized in its public statements regarding the CMS report that the
2 problems the CMS identified were inapplicable to its Scottsdale lab. For example, the current director
3 of Theranos’s Newark lab told the media that “the CMS report is about people and processes in one
4 Theranos lab in the past”

5 81. Plaintiffs’ investigation, however, has uncovered that Theranos has sent corrected test
6 reports to doctors in the Phoenix area, including reports pertaining to one of the very same tests
7 identified by the CMS report in finding that the Newark lab posed an immediate threat of serious harm
8 or death.

9 82. Specifically, on April 13, 2016, the director of the Scottsdale lab sent a form letter
10 addressed “Dear Valued Client” to an as-yet-unknown number of doctors in Arizona. Plaintiffs’
11 counsel procured a copy of one such letter. The letter states that Theranos is correcting the results of
12 PT/INR tests “performed at Theranos’ clinical laboratory in Arizona.”

13 83. As explained above, lack of quality control for PT/INR was one of the observations
14 underpinning the CMS’s finding that conditions in the Newark lab posed an immediate danger of
15 serious harm or death. Doctors use PT/INR tests to prescribe blood-thinning medications to patients
16 especially vulnerable to clotting, such as those who have received heart valve replacements or suffered
17 an ischemic event like heart attack or stroke.

18 84. The April 13, 2016 letter offers the doctor the option of having complimentary retesting
19 performed. The letter does not offer, however, any way of contacting the patients, and it gives no
20 indication that Theranos itself has sought to contact them.

21 85. Only in June 2016, months after news of Theranos’s problems became public, did
22 Walgreens decide to shut down its Theranos centers. Theranos and Walgreens still have not disclosed
23 to patients the health risks of relying on Theranos tests.

24 **IX. Plaintiffs’ Experiences**

25 **1. C.M.**

26 86. Plaintiff C.M. suffers from Hashimoto’s disease, an autoimmune disorder in which the
27 immune system attacks the thyroid gland. As part of her treatment, C.M. undergoes regular blood
28 testing.

1 87. In the summer of 2015, C.M. decided to try Theranos. She had several tests done at a
2 Theranos-run wellness center located within a Walgreens in Goodyear, Arizona. As a result of her
3 Theranos test results, her endocrinologist took her off medication used to treat her thyroid condition.

4 88. C.M. has never received notice of the problems with Theranos's labs and tests from
5 Theranos or from Walgreens.

6 89. Had C.M. known that Theranos's blood tests were inaccurate or that Theranos violated
7 federal regulations, she would not have purchased a Theranos blood test or would have paid
8 significantly less for it.

9 **2. S.G.**

10 90. Plaintiff S.G. undergoes thyroid hormone replacement therapy, and must get her blood
11 tested regularly.

12 91. In April 2015, S.G. decided to try Theranos. She had a blood test done at a Theranos-
13 run wellness center located within a Walgreens in Glendale, Arizona.

14 92. S.G. has never received notice of the problems with Theranos's labs and tests from
15 Theranos or from Walgreens.

16 93. Had S.G. known that Theranos's blood tests were inaccurate or that Theranos violated
17 federal regulations, she would not have purchased a Theranos blood test or would have paid
18 significantly less for it.

19 **COLLECTIVE AND CLASS ACTION ALLEGATIONS**

20 94. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this action
21 on behalf of themselves and the following proposed classes and sub-classes, defined as follows:

22 A. Nationwide Walgreens Class: *All persons who purchased a Theranos lab test from*
23 *Walgreens in the United States between September 1, 2013, and the present.*

24 i. Arizona Walgreens Subclass: *All persons who purchased a Theranos lab test*
25 *from Walgreens in Arizona between September 1, 2013, and the present.*

26 B. Nationwide Theranos Class: *All persons who purchased a Theranos lab test from*
27 *Theranos in the United States between September 1, 2013, and the present.*

1 i. Arizona Theranos Subclass: *All persons who purchased a Theranos lab test from*
2 *Theranos in Arizona between September 1, 2013, and the present.*

3 95. Excluded from the proposed classes are Theranos and Walgreens; any affiliate, parent,
4 or subsidiary of Theranos or Walgreens; any entity in which Theranos or Walgreens has a controlling
5 interest; any officer, director, or employee of Theranos or Walgreens; any successor or assign of
6 Theranos or Walgreens; anyone employed by counsel in this action; and any judge to whom this case is
7 assigned, his or her spouse, and members of the judge's staff.

8 96. **Numerosity**. Theranos, through the wellness centers it operated with Walgreens and on
9 its own, sold well over one million blood tests. Members of the proposed classes are thus too numerous
10 to practically join in a single action. Class members may be notified of the pendency of this action by
11 mail, supplemented by published notice (if deemed necessary or appropriate by the Court).

12 97. **Commonality and Predominance**. Common questions of law and fact exist as to all
13 proposed class members and predominate over questions affecting only individual class members.

14 These common questions include whether:

- 15 A. A reasonable consumer would consider the flaws in Theranos's lab testing to be
16 important;
- 17 B. Theranos knew its lab tests were inaccurate, and if so, when it discovered this;
- 18 C. Walgreens knew that Theranos's lab tests were inaccurate, and if so, when it discovered
19 this;
- 20 D. Theranos and Walgreens misrepresented to potential customers the lab tests' propensity
21 for inaccuracy;
- 22 E. Theranos and Walgreens are obligated to provide notice of inaccurate test results to the
23 patient whose blood or other samples was tested;
- 24 F. Theranos and Walgreens' conduct violates the Racketeer Influenced and Corrupt
25 Organizations Act; and
- 26 G. Theranos and Walgreens' conduct violates various consumer protection statutes.
- 27
- 28

1 98. Typicality. Plaintiffs' claims are typical of the claims of the proposed classes.
2 Plaintiffs and the members of the proposed classes all purchased blood tests from Theranos and/or
3 Walgreens during the Class Period, giving rise to substantially the same claims.

4 99. Adequacy. Plaintiffs are adequate representatives of the proposed classes because their
5 interests do not conflict with the interests of the members of the classes they seek to represent.
6 Plaintiffs have retained counsel competent and experienced in complex class action litigation, and will
7 prosecute this action vigorously on class members' behalf.

8 100. Superiority. A class action is superior to other available means for the fair and efficient
9 adjudication of this dispute. The injury suffered by each class member, while meaningful on an
10 individual basis, is not of such magnitude as to make the prosecution of individual actions against
11 Theranos and Walgreens economically feasible. Even if class members themselves could afford such
12 individualized litigation, the court system could not. In addition to the burden and expense of
13 managing many actions arising from the faulty blood tests at issue here, individualized litigation
14 presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the
15 delay and expense to all parties and the court system presented by the legal and factual issues of the
16 case. By contrast, a class action presents far fewer management difficulties and provides the benefits of
17 single adjudication, economy of scale, and comprehensive supervision by a single court.

18 101. In the alternative, the proposed classes may be certified because:

19 102. The prosecution of separate actions by the individual members of the proposed class
20 would create a risk of inconsistent adjudications, which could establish incompatible standards of
21 conduct for Theranos and Walgreens;

22 103. The prosecution of individual actions could result in adjudications, which as a practical
23 matter, would be dispositive of the interests of non-party class members or which would substantially
24 impair their ability to protect their interests; and

25 104. Theranos and Walgreens have acted or refused to act on grounds generally applicable to
26 the proposed classes, thereby making appropriate final and injunctive relief with respect to the members
27 of the proposed classes as a whole.

28

1 **COUNT I**

2 **California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.***

3 **(on behalf of Plaintiff S.G., the Nationwide Theranos Class, and the Nationwide Walgreens Class)**

4 105. Plaintiffs incorporate the above allegations by reference.

5 106. Theranos and Walgreens have violated and continue to violate California's Unfair
6 Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, which prohibits unlawful, unfair, or
7 fraudulent business acts or practices.

8 107. Theranos and Walgreens' acts and practices, as alleged in this complaint, constitute
9 unlawful, unfair, and fraudulent business practices, in violation of the Unfair Competition Law. In
10 connection with the sale of lab tests to Plaintiff S.G. and class members, Theranos and Walgreens
11 misrepresented the nature of the testing provided, claiming it was a revolutionary new method when in
12 fact it was not materially different than conventional testing. Theranos and Walgreens also
13 misrepresented the reliability and accuracy of the testing. These misrepresentations were important to
14 Plaintiff S.G. and would be important to a reasonable consumer. Theranos and, until days ago,
15 Walgreens sold the lab tests while claiming they are highly accurate and reliable.

16 108. Theranos and Walgreens' business acts and practices are unlawful in that they violate
17 the federal Racketeer Influenced and Corrupt Organization Act and California's Consumers Legal
18 Remedies Act, as discussed in the causes of action that follow

19 109. Theranos and Walgreens' business acts and practices are also unlawful in that they
20 violate federal regulations implementing the Clinical Laboratory Improvements Amendments of 1988,
21 including 42 C.F.R. §§ 493.1215, 493.1250, 493.1441, 493.1447, and 493.1487 and other regulations
22 identified in the CMS's report of January 25, 2016, by, for example, failing to implement compliant
23 quality-control procedures, failing to maintain and calibrate equipment properly, and failing to staff
24 testing laboratories with qualified directors, supervisors, and personnel.

25 110. Theranos and Walgreens' acts and practices also constitute fraudulent practices in that
26 they are likely to deceive a reasonable consumer. As described above, Theranos and Walgreens
27 misrepresented the nature of the testing provided, claiming it was a revolutionary new method when in
28 fact it was not materially different than conventional testing. Theranos and Walgreens also

1 misrepresented the reliability and accuracy of the testing. Had Theranos or Walgreens accurately
2 represented these facts, Plaintiffs and the proposed class members would not have purchased these
3 blood tests or would have paid significantly less for them.

4 111. Theranos and Walgreens' conduct also constitutes unfair business practices in that:

- 5 A. The gravity of harm to Plaintiff S.G. and the proposed class members from Theranos
6 and Walgreens' acts and practices far outweighs any legitimate utility of that conduct;
7 B. Theranos and Walgreens' conduct is immoral, unethical, oppressive, unscrupulous, or
8 substantially injurious to Plaintiffs and the proposed class members; and
9 C. Theranos and Walgreens' conduct undermines or violates the stated policies underlying
10 California's Consumers Legal Remedies Act, which seeks to protect consumers against
11 unfair and sharp business practices and to promote a basic level of honesty and
12 reliability in the marketplace, as well as federal regulations implementing the Clinical
13 Laboratory Improvements Amendments of 1988, which seek to ensure valid and reliable
14 laboratory examinations.

15 112. As a direct and proximate result of Theranos and Walgreens' business practices,
16 Plaintiff S.G. and the proposed class members suffered injury in fact and lost money or property,
17 because they purchased blood tests that they otherwise would not have, or in the alternative, would
18 have paid less for. Meanwhile, Theranos and Walgreens have sold more blood tests than they
19 otherwise could have and charged inflated prices for the blood tests, unjustly enriching itself thereby.

20 113. Plaintiff S.G. and the proposed class members are entitled to equitable relief including
21 an order requiring Theranos and Walgreens to adequately disclose the inaccuracy of the blood tests and
22 to report all incorrect results to persons whose blood was tested, as well as restitution of the sums paid
23 to Theranos or Walgreens as a result of their unfair, deceptive, and fraudulent practices.

24 **COUNT II**

25 **California's Consumers Legal Remedies Act, Cal. Civ. Code § 1750, et seq.**

26 **(on behalf of Plaintiff S.G., the Nationwide Walgreens Class, and the Nationwide Theranos Class)**

27 114. Plaintiffs incorporate the above allegations by reference.
28

1 115. Theranos and Walgreens are, each of them, a “person” within the meaning of Civil Code
2 §§ 1761(c) and 1770, and have provided “services” within the meaning of Civil Code §§ 1761(b) and
3 1770.

4 116. Plaintiff S.G. and members of the proposed classes are “consumers” within the meaning
5 of Civil Code §§ 1761(d) and 1770, and have engaged in a “transaction” within the meaning of Civil
6 Code §§ 1761(e) and 1770.

7 117. Theranos and Walgreens have violated the Consumers Legal Remedies Act (CLRA),
8 California Civil Code sections 1770(a),(5),(7), and (9) by engaging in unfair methods of competition
9 and unfair and deceptive acts and practices in connection with transactions—namely, the sale of lab
10 tests to Plaintiffs and class members—that are intended to result and have resulted in the sale and lease
11 of goods or services to consumers.

12 118. Theranos and Walgreens misrepresented that the lab tests Plaintiff S.G. and the class
13 purchased were accurate and reliable, when in fact they were not.

14 119. Theranos and Walgreens misrepresented that the lab tests Plaintiff S.G. and the class
15 purchased were performed using innovative new techniques and devices, when in fact they were not.

16 120. Theranos and Walgreens advertised to Plaintiff S.G. and the class that the lab tests
17 offered were accurate, reliable, and performed using innovative new techniques and devices, but
18 Theranos and Walgreens did not intend to sell tests with those characteristics.

19 121. Further, Theranos did not inform and has never informed Plaintiff S.G. or class members
20 that the tests provided were conducted in laboratories staffed by unqualified personnel, under
21 inadequate supervision, on improperly calibrated and quality-controlled machinery, using inadequately
22 quality-controlled processes.

23 122. Walgreens did not inform and has never informed Plaintiff S.G. and class members that
24 the tests provided at its stores were not adequately vetted by Walgreens and were conducted in
25 laboratories staffed by unqualified personnel, under inadequate supervision, on improperly calibrated
26 and quality-controlled machinery, using inadequately quality-controlled processes.

27 123. The undisclosed information is material to a reasonable consumers’ decision of whether
28 or not to purchase a lab test from Theranos or Walgreens.

1 124. Theranos and Walgreens had a duty to disclose these facts because they had exclusive
2 knowledge of the condition, management, and staffing at Theranos's laboratories and of Walgreens'
3 vetting of Theranos.

4 125. Theranos and Walgreens also had a duty to disclose these facts because they actively
5 concealed the condition, management, and staffing at Theranos's laboratories, as well as Walgreens'
6 vetting process, from Plaintiffs and the class.

7 126. As a result of Theranos's and Walgreens' violations of the CLRA, Plaintiff S.G. has
8 suffered damages. Plaintiff S.G. spent money on at least one blood test that she would not have
9 ordered were it not for Theranos and Walgreens' practices. Plaintiff S.G. incurred out-of-pocket
10 damages in the form of a co-pay.

11 127. Plaintiff S.G. and class members are entitled to equitable relief, including an order
12 requiring Theranos and Walgreens to provide notice of the unreliability of Theranos-provided test
13 results to all persons who received test results at a Walgreens wellness center in the form of written and
14 oral disclosures.

15 128. Pursuant to California Civil Code § 1780, Plaintiff S.G. seeks an order enjoining
16 Theranos and Walgreens from the unlawful practices described above, a declaration that Theranos and
17 Walgreens' conduct violates the Consumers Legal Remedies Act, restitution, and reasonable attorneys'
18 fees and costs of litigation.

19 129. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiff S.G. will send notice
20 letters to Theranos and Walgreens to provide them with the opportunity to correct their business
21 practices. If they do not thereafter correct their business practices, Plaintiffs will amend (or seek leave
22 to amend) the complaint to add claims for actual damages under the Consumers Legal Remedies Act.

23 **COUNT III**

24 **Arizona's Consumer Fraud Act, A.R.S. § 44-1521, et seq.**

25 **(on behalf of Plaintiffs, the Arizona Walgreens Subclass, and the Arizona Theranos Subclass)**

26 130. Plaintiffs incorporate the above allegations by reference.

27 131. Defendants Theranos and Walgreens, operating in Arizona, engaged in deceptive and
28 unfair acts and practices, misrepresentation, and the concealment, suppression, and omission of

1 material facts in connection with the sale and advertisement of “merchandise” (as defined in the
2 Arizona Consumer Fraud Act, A.R.S. §44-1521(5)), in violation of A.R.S. §44-1522(A), including but
3 not limited to the following:

4 132. Defendants Theranos and Walgreens misrepresented material facts to Plaintiffs and class
5 members, in connection with the sale of lab tests, by representing that the tests were reliable, accurate,
6 performed on innovative equipment, and complied with all federal and state laws and regulations;

7 133. Defendants Theranos and Walgreens omitted, suppressed, and concealed the material
8 fact of the inadequacy of the blood tests’ reliability, accuracy, and integrity, with the intent that others
9 rely on the omission, suppression, and concealment;

10 134. Defendants Theranos and Walgreens engaged in unfair acts and practices, in connection
11 with the sale of blood tests, by misrepresenting the accuracy and reliability of the lab tests they sell and
12 by knowingly concealing and failing to disclose that the lab tests they sell are flawed and unreliable.
13 These unfair acts and practices violated duties imposed by laws including the Clinical Laboratory
14 Improvement Amendments of 1988 and related regulations; and

15 135. Defendants Theranos and Walgreens engaged in unfair acts and practices with respect to
16 the sale of blood tests by failing to take proper action to notify Plaintiffs and class members of the
17 potential inaccuracy of their test results.

18 136. The above unfair and deceptive practices and acts by Defendants Theranos and
19 Walgreens were immoral, unethical, oppressive, and unscrupulous. These acts caused substantial injury
20 to consumers that the consumers could not reasonably avoid; this substantial injury outweighed any
21 benefits to consumers or to competition.

22 137. Defendants Theranos and Walgreens knew or should have known that the blood tests
23 they sold were unreliable and prone to inaccuracy, and that risk of a patient or doctor relying on
24 inaccurate test results was highly likely. Defendants’ actions in engaging in the above-named unfair
25 practices and deceptive acts were negligent, knowing and willful, and wanton and reckless with respect
26 to the rights of Plaintiffs and class members.

27 138. As a direct and proximate result of Defendants’ unlawful practices, Plaintiffs and class
28 members suffered injury and damages.

1 Walgreens perpetrated this scheme with the specific intent to deceive and defraud Plaintiffs and
2 members of the Nationwide Classes, and Theranos and Walgreens did deceive and defraud Plaintiffs
3 and the members of that class.

4 146. Theranos and Walgreens committed a continuous series of predicate acts of wire fraud
5 (18 U.S.C. § 1343) in furtherance of this scheme. Among these predicate acts are the advertisements
6 and statements made on Theranos' and Walgreens' websites.

7 147. The predicate acts alleged in this complaint constitute a pattern of racketeering activity
8 within the meaning of 18 U.S.C. § 1962(c). Theranos and Walgreens' conduct, including the predicate
9 acts and pattern of racketeering activity, amount to and pose a threat of continued criminal conduct.

10 148. As a direct and proximate result of Theranos and Walgreens' wrongdoing, they caused
11 injury to Plaintiff S.G.'s property, in the form of payment for blood tests she would not have bought or
12 would have paid less for had Defendants been truthful about their accuracy, and to all class members.
13 Under the provisions of RICO, Plaintiff S.G. and members of the Nationwide Classes are entitled to
14 recover treble damages, costs of suit, and attorneys' fees.

15 COUNT V

16 **Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(d)**

17 **(on behalf of Plaintiff S.G., the Nationwide Theranos Class, and the Nationwide Walgreens Class)**

18 149. Plaintiffs incorporate the above allegations by reference.

19 150. In violation of 18 U.S.C. 1962(d), Theranos and Walgreens objectively manifested an
20 agreement to participate, directly or indirectly, in the scheme to defraud and the RICO enterprise
21 alleged in this complaint and thereby conspired with one another to commit the conduct alleged in this
22 complaint.

23 151. Theranos and Walgreens objectively manifested an agreement on the common purpose
24 of this enterprise, deliberately selling unreliable and worthless lab tests to consumers through wellness
25 centers.

26 152. Further, Theranos and Walgreens objectively manifested an agreement to perpetrate this
27 scheme through predicate acts amounting to a pattern of racketeering activity. Theranos and Walgreens
28 agreed to commit predicate crimes and to aid and abet the commission of predicate crimes by other

1 members of the enterprise. They further agreed that some members of the enterprise would commit the
2 predicate acts for the benefit of all members or the enterprise.

3 153. As a direct and proximate result of Defendants' wrongful conduct, Defendants caused
4 harm and injury to the individual Plaintiffs and the class in the form of payments tendered for
5 unreliable and worthless blood tests. Plaintiffs and the class are entitled to recover treble damages,
6 costs of suit, and attorneys' fees.

7 **COUNT VI**

8 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

9 **(on behalf of Plaintiffs, the Nationwide Theranos Class, and the Nationwide Walgreens Class)**

10 154. Plaintiffs incorporate the above allegations by reference.

11 155. Plaintiffs entered into agreements with Theranos or Walgreens to purchase accurate,
12 reliable lab tests using Theranos's secret, proprietary system in exchange for payment, tendered either
13 directly from Plaintiffs or through their insurance.

14 156. Plaintiffs did all the things required of them to do, including tendering payment or
15 insurance information and submitting to testing.

16 157. Plaintiffs' acts satisfied all the conditions required for Theranos and Walgreens to
17 perform.

18 158. Theranos and Walgreens unfairly interfered with Plaintiffs' rights to receive the benefit
19 of their agreements by (1) failing to timely notify them of the lab tests' unreliability and propensity for
20 inaccuracy, as well as of any actual inaccuracies, and (2) by failing to state clearly that, notwithstanding
21 Theranos and Walgreens' advertisement of revolutionary new testing technology and procedures, the
22 blood tests they provided often were no different than other blood tests on the market.

23 159. As a direct and proximate cause of Theranos and Walgreens' breaches, Plaintiffs and the
24 class were damaged in an amount that will be proven by paying for worthless tests, as well as
25 consequential damages.
26
27
28

1 **COUNT VII**

2 **Unjust Enrichment**

3 **(on behalf of Plaintiffs, the Nationwide Theranos Class, and the Nationwide Walgreens Class)**

4 160. Plaintiffs incorporate the above allegations by reference.

5 161. As described above, Theranos and Walgreens sold lab tests to Plaintiffs and the class
6 even though they knew or should have known those tests to be worthless.

7 162. These sales enriched Theranos and Walgreens at the expense of Plaintiffs and the class,
8 who, without knowledge of the unreliability of the lab tests, purchased testing that was, in fact,
9 worthless.

10 163. It would be inequitable and unjust for Theranos or Walgreens to retain these wrongfully
11 obtained profits.

12 164. Plaintiffs and the class are entitled to restitution of the profits unjustly obtained, plus
13 interest.

14 **COUNT VIII**

15 **Negligent Misrepresentation**

16 **(on behalf of Plaintiffs, the Nationwide Theranos Class, and the Nationwide Walgreens Class)**

17 165. Plaintiffs incorporate the above allegations by reference.

18 166. Theranos and Walgreens provided false information to Plaintiffs and the class, for
19 example, that the lab tests they sold were highly accurate and reliable, when in fact the blood tests were
20 not.

21 167. Theranos and Walgreens intended for Plaintiffs and the class to rely on their
22 representations of accuracy and reliability.

23 168. Theranos and Walgreens failed to exercise reasonable care in obtaining and
24 communicating the information concerning the accuracy of their blood tests.

25 169. Plaintiffs and the class actually and justifiably relied on the representations made to
26 them by Theranos, a corporation in the business of supplying purportedly advanced blood testing
27 services, and Walgreens, a company of long standing and nationwide reach known for providing
28 pharmacy care.

1 control, in laboratories that did not meet federal standards for staffing, on inadequately maintained and
2 calibrated equipment.

3 179. Walgreens substantially assisted and encouraged Theranos in the breach by agreeing
4 with Theranos to open wellness centers within its stores by which Theranos could offer Plaintiffs and
5 the class unreliable and inaccurate lab tests.

6 180. Walgreens' assistance and encouragement caused Theranos's breach by permitting
7 Theranos to reach an expanded market of consumers and by giving Theranos, a relatively unknown
8 company, the implicit approval of Walgreens, a longstanding company.

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for the
12 following relief against Theranos and Walgreens, jointly and severally, as follows:

- 13 A. An order certifying the proposed class(es), and appointing Plaintiffs' counsel to
14 represent the class(es);
- 15 B. An order awarding Plaintiffs and the class members, except as to their CLRA claim,
16 their actual damages, treble damages, punitive damages, and any other form of monetary
17 relief provided by law;
- 18 C. An order awarding Plaintiffs and the class(es) restitution, disgorgement, and other
19 equitable relief as the Court deems proper;
- 20 D. An order requiring Walgreens to adequately disclose to past recipients of Theranos
21 testing that their test results may be inaccurate and the nature of and reasons for the
22 sanctions faced by Theranos;
- 23 E. An order awarding Plaintiffs and the class(es) pre-judgment and post-judgment interest
24 as allowed under the law;
- 25 F. An order awarding Plaintiffs and the class(es) reasonable attorneys' fees and costs of
26 suit, including expert witness fees; and
- 27 G. An order awarding such other and further relief as this Court may deem just and proper.
28

1 **JURY DEMAND**

2 Plaintiffs demand a trial by jury.

3
4 DATED: June 15, 2016

Respectfully submitted,

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