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LABORATORY CORPORATION OF
13 AMERICA

14 UNITED STATES DISTRICT COURT
15 SOUTHERN DISTRICT OF CALIFORNIA
16

17
18 SANDY MARTINEZ, individually and
on behalf of similarly situated individuals,

19 Plaintiff,

20 v.

21 LABORATORY CORPORATION OF
22 AMERICA d/b/a Labcorp, a Delaware
corporation,

23 Defendants.
24

Case No. '22CV0631 BEN WVG

**NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. §
1332, 28 U.S.C. § 1441(a), 28
U.S.C. § 1446 (DIVERSITY
JURISDICTION) AND THE
CLASS ACTION FAIRNESS
ACT**

[Declaration of Todd Wauters Filed
Concurrently]

1 **TO THE CLERK OF THE ABOVE ENTITLED COURT AND TO**
2 **ALL PARTIES AND THEIR COUNSEL OF RECORD:**

3 **PLEASE TAKE NOTICE** that Defendant Laboratory Corporation of
4 America (“Labcorp”) hereby removes this action from the Superior Court of the
5 State of California, County of Imperial, to the United States District Court for the
6 Southern District of California.

7 In support of this removal, Labcorp states as follows:

8 1. This Court has removal jurisdiction pursuant to 28 U.S.C. §§ 1332,
9 1441(a), and the Class Action Fairness Act (“CAFA”), Pub. L. 109-2, 119 Stat. 4
10 (2005), codified at 28 U.S.C. § 1332(d).

11 2. Plaintiff Sandy Martinez filed a putative class action Complaint on
12 March 25, 2022 in the Superior Court for the State of California, Imperial County,
13 titled *Martinez v. Laboratory Corporation of America*, Case No. ECU002318.
14 Labcorp was served with the Complaint on April 8, 2022. Accordingly, this
15 removal is timely because it is being filed within 30 days after Labcorp first
16 received the Complaint through service. 28 U.S.C. §§ 1446(b)(1).

17 3. The allegations in the Complaint relate to a prenatal screening test
18 offered by Labcorp called “MaterniT 21”. Pursuant to 28 U.S.C. § 1446(a), true
19 and correct copies of the Complaint, summons, and other state court documents
20 served on Labcorp are attached as **Exhibit A**.

21 4. Labcorp reserves all defenses, which may be available to it and
22 reserves the right to amend or supplement this Notice of Removal.1

23 **I. THIS COURT HAS JURISDICTION UNDER CAFA**

24 5. Enacted to expand federal diversity jurisdiction over purported class

25 1 Nothing in this Notice of Removal or related documents shall be interpreted as a
26 waiver or relinquishment of Labcorp’s right to assert any defense or affirmative
27 matter in this proceeding. If any question arises as to the propriety of this removal,
28 Labcorp respectfully requests the opportunity to conduct discovery or brief any
disputed issues and to present oral argument in support of its position that this case
is property removable. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574
U.S. 81 (2014).

1 actions, CAFA provides that a class action may be removed in accordance with 28
2 U.S.C. § 1446 if: (a) membership in the class is not less than 100; (b) any member
3 of the plaintiff class is a citizen of a foreign country or a state different from any
4 defendant; and (c) the aggregate amount in controversy exceeds \$5,000,000. *See* 28
5 U.S.C. §§ 1453(b) and 1332(d).

6 **A. There Are More Than 100 Proposed Class Members.**

7 6. CAFA’s first requirement—that class membership be no less than 100
8 (28 U.S.C. § 1332(d)(5))—is satisfied here. This putative nationwide class action is
9 brought on behalf of:

10 “The Class:

11 All purchasers of Defendant’s MaterniT21[sic] testing
12 services, including consumers who paid out-of-pocket,
13 through health insurance, or through any other collateral
source.”

14 In addition, Plaintiff has alleged the existence of a California Subclass:

15 “The California Subclass:

16 All persons who within the state of California purchased
17 Defendant’s MaterniT21 testing services, including
18 consumers who paid out-of-pocket, through health
insurance, or through any other collateral source.”

19 Complaint (“Compl.”) ¶ 45. The alleged nationwide class and California Subclass
20 (together, the “Class”) is alleged to include “hundreds, if not thousands, of Class
21 members.” Compl. ¶ 50. 2

22 **B. Minimal Diversity Exists Between The Parties.**

23 7. CAFA’s second requirement—that any one member of the purported
24 class be a citizen of a state different from any defendant (28 U.S.C. §

25 _____
26 2 The Plaintiff’s Complaint inconsistently alleges in paragraph 1 that Plaintiff seeks to
27 represent all purchasers of not only MaterniT21 tests, but all Labcorp NIPT tests. But if Plaintiff
28 should amend paragraph 45 of the Complaint to include this broader class, the number of class
members and the amount in controversy simply would increase. Because, as discussed below,
Defendants easily satisfy the requirements for CAFA removal based solely on the MaterniT21
test, the discrepancy in Plaintiff’s complaint is irrelevant for present purposes.

1 1332(d)(2)(A)—is satisfied here. A natural person is a citizen of the state in which
2 he or she is domiciled. *Kantor v. Wellesley Galleries Ltd.*, 704 F.2d 1088, 1090 (9th
3 Cir. 1983). A corporation is a citizen of the state in which it is incorporated and of
4 the state in which it has its principal place of business. 28 U.S.C. § 1332(c)(1).
5 Labcorp is a Delaware corporation with its headquarters located in Burlington,
6 North Carolina. Compl. ¶ 13. Thus, Labcorp is not a citizen of the State of
7 California. Plaintiff is an individual residing in Riverside, California. Compl. ¶ 12.
8 Plaintiff purports to “fairly and adequately represent and protect the interest of
9 other members of the Class and Subclass (collectively, the “Class”).” Compl. ¶ 46.
10 As stated above, the Class includes “hundreds, if not thousands,” of California
11 residents, and plaintiff alleges that Labcorp’s MaterniT21 NIPT test “is used by
12 thousands of patients throughout California, and the country.” Compl. ¶¶ 25, 45,
13 50. The putative plaintiff class therefore includes citizens of the State of California
14 and of all of the United States, and thus minimal diversity exists.

15 **C. The Amount Plaintiff Places In Controversy Exceeds \$5 Million.**

16 8. CAFA’s amount in controversy requirement is satisfied when the
17 aggregate claims of the proposed class members exceed \$5 million. *See* 28 U.S.C.
18 § 1332(d)(6). Indeed, Congress intended CAFA to apply when “the value of the
19 matter in litigation exceeds \$5,000,000 . . . regardless of the type of relief sought
20 (e.g., damages, injunctive relief, or declaratory relief).” Senate Judiciary Report, S.
21 Rep. No. 109-14, at 42.

22 9. To meet CAFA’s amount-in-controversy requirement, a defendant
23 needs to plausibly show that it is reasonably possible that the potential liability
24 exceeds \$5 million. *Greene v. Harley-Davidson, Inc.*, 965 F.3d 767, 772 (9th Cir.
25 2020). A removing defendant need only establish the amount in controversy by a
26 preponderance of the evidence. *Dart Cherokee Basin Operating Co., LLC v.*
27 *Owens*, 574 U.S. 81, 86-88 (2014); *Rodriguez v. AT&T Mobility Servs. LLC*, 728
28 F.3d 975, 981-82 (9th Cir. 2013). “Said burden is not ‘daunting,’ as courts

1 recognize that under this standard, a removing defendant is not obligated to
2 ‘research, state, and prove the plaintiff’s claims for damages.’” *Korn v. Polo Ralph*
3 *Lauren Corp.*, 536 F. Supp. 2d 1199, 1204-05 (E.D. Cal 2008) (citation omitted).
4 The ultimate inquiry is what amount is put “in controversy” by the plaintiff’s
5 complaint, not what a defendant will actually owe. *Rippee v. Boston Market Corp.*,
6 408 F. Supp. 2d 982, 986 (S.D. Cal. 2005); *Scherer v. Equitable Life Assurance*
7 *Soc’ y of the United States*, 347 F.3d 394, 397-99 (2d Cir. 2003) (amount put in
8 controversy by plaintiff’s complaint determines amount in controversy for CAFA).

9 10. To satisfy CAFA’s amount in controversy requirement, a defendant
10 “need include only a plausible allegation that the amount in controversy exceeds the
11 jurisdictional threshold.” *Dart*, 574 U.S. at 89. Estimates for the amount in
12 controversy may be calculated based upon the number of proposed class members
13 or class claims. *Korn*, 536 F. Supp. 2d at 1206. The number of proposed class
14 claims can then be multiplied by the damages alleged per claim to determine the
15 amount in controversy. *Id.* In *Korn*, for example, plaintiff brought a class action
16 alleging violations of California Civil Code section 1747.08, which carries a
17 maximum civil penalty of \$1,000 per claim. *Id.* at 1205. To establish the requisite
18 amount in controversy under CAFA, the defendant offered evidence that more than
19 5,000 potential claims (i.e., credit card transactions) occurred during the class
20 period. The court found this evidence sufficient to establish, by a preponderance of
21 the evidence, that multiplying the number of claims by the statutory penalty
22 satisfied CAFA’s amount in controversy threshold (i.e., 5,001 x \$1,000 =
23 \$5,001,000). *Id.* at 1206. The court noted that, in such a case, the “defendant need
24 only demonstrate that there are at least 5,001 putative class claims.” *Id.*
25 Accordingly, the district court denied plaintiff’s motion to remand.

26 11. Although Labcorp disputes that it owes any damages, attorneys’ fees,
27 or restitution; and it disputes each and every asserted remedy or theory of recovery,
28 whether based on asserted damages, restitution, or otherwise, including claims for

1 injunctive and declaratory relief, advanced in the Complaint, Labcorp files this
2 Notice of Removal in good faith and on a reasonable basis in law and fact that
3 CAFA’s third requirement—that the aggregate amount in controversy exceed
4 \$5,000,000 exclusive of interest and costs (28 U.S.C. § 1332(d)(2))—is satisfied.

5 12. As discussed, the putative class and sub-class in Plaintiff’s complaint
6 are defined to include all purchasers of “Defendant’s MaterniT21[sic] testing
7 services.” As demonstrated in the accompanying declaration of Todd Wauters
8 (“Wauters Decl.”), over the past four years, Labcorp has sold well in excess of
9 500,000 units of the MaterniT21 tests nationally, and over 60,000 of those sales
10 were tests that were sold in California. Wauters Decl., ¶ 3. Thus, based on the
11 allegations of the Complaint, and the number of sales of MaterniT21 tests, it
12 appears that the Complaint alleges a class with many more than 500,000 members
13 nationwide and a California subclass of many more than 60,000 members.

14 **1. Plaintiff’s Allegations Frame The Amount In Controversy.**

15 13. In her Complaint, Plaintiff asserts a claim for “all economic, monetary,
16 actual, consequential, compensatory, and punitive damages available at law,”
17 attorneys’ fees, costs, and other litigation expenses, and pre- and post-judgment
18 interest for alleged violations of (1) California Civil Code section 1750 et seq.
19 (CLRA); (2) Unjust Enrichment; and (3) Business & Professions Code section
20 17200 et seq. Although Plaintiff’s Complaint does not specify the amount of
21 money damages sought, the face of the Complaint demonstrates that the amount in
22 controversy exceeds \$5,000,000, exclusive of interest and costs.

23 a. The Complaint alleges that “the market for prenatal testing is
24 enormous, with estimates in the range of \$600 million to \$1 billion.” Compl.
25 ¶ 17.

26 b. The Complaint alleges that Labcorp is one of the largest
27 providers of NIPT tests with its MaterniT21 NIPT test used by thousands of
28 patients throughout California and the country. Compl. ¶ 25.

1 c. The Complaint alleges that Labcorp’s MaterniT21 test costs as
2 much as \$500.00 for patients who pay out-of-pocket, and as much as \$235.00
3 for those who have insurance coverage. Compl. ¶ 29.

4 d. The Complaint alleges that Labcorp “fails to disclose to
5 healthcare providers and patients that its MaterniT21 test has a high
6 frequency of false positive results.” Compl. ¶ 30.

7 e. The Complaint alleges that “Plaintiff, like other members of the
8 Class, suffered economic harm in the form of the purchase price of the test,
9 as well as emotional distress, stress, and anxiety as a result of Defendant’s
10 unreliable MaterniT21 tests.” Compl. ¶ 44.

11 f. The Complaint alleges that there are “hundreds, if not
12 thousands, of Class members.” Compl. ¶ 50.

13 g. The Complaint seeks, among other things, an award of “all
14 economic, monetary, actual, consequential, compensatory, and punitive
15 damages available at law,” “attorneys’ fees, costs, and other litigation
16 expenses,” and “pre- and post-judgment interest.” *Id* at Prayer.

17 Thus, assuming a nationwide class of at least 500,000 purchasers, and
18 a purchase price of \$235 (the lower purchase price alleged in the Complaint), the
19 amount in controversy based solely on the purchase price of the test alone would be
20 \$117,500,000. This amount easily satisfies CAFA’s jurisdictional threshold.

21 **2. The CLRA Includes A Statutory Minimum Amount of**
22 **\$1000 For Each Class Action Member.**

23 14. Under the CLRA, California Civil Code section 1780(a), litigants may
24 recover or obtain: (1) actual damages (statutory minimum for an award of damages
25 in a class action shall not be less than \$1,000 per class member). *See* Cal. Civ.
26 Code, § 1780, subd. (a)(1).

27 15. As noted, based on the declaration of Todd Wauters, the nationwide
28 class of “all purchasers” alleged in the Complaint would consist of at least 500,000

1 members. Wauters Decl., ¶ 3. The minimum award of statutory damages under
2 the CLRA for a class of 500,000 members therefore would be \$500 million
3 (500,000 members x \$1,000 per class member). This amount likewise easily
4 satisfies CAFA’s jurisdictional threshold, even without considering the
5 compensatory damages set forth above.

6 **3. Emotional Distress Damages Are Properly Considered In**
7 **Calculating The Amount In Controversy.**

8 16. Emotional distress damages may be considered when calculating the
9 amount in controversy even where not clearly pled in the complaint. *Simmons v.*
10 *PCR Tech.*, 209 F. Supp. 2d 1029, 1033-34 (N.D. Cal. 2002). “To establish
11 probable emotional distress damages, a defendant may introduce evidence of jury
12 verdicts from cases with analogous facts.” *Daley v. Walmart Stores, Inc.*, No. SA
13 CV 18-0518-DOC (GJSx), 2018 WL 3104630, at *5 (C.D. Cal. June 21, 2018)
14 (*citing Simmons*, 209 F. Supp. 2d at 1033). As noted, the Complaint alleges
15 damages for “emotional distress, stress, and anxiety.” Even if emotional distress
16 damages were only 10% of the purchase price, this would mean additional damages
17 of at least \$11 million. This amount also is far above CAFA’s jurisdictional
18 threshold, even without considering the damages alleged based on the purchase
19 price and CLRA penalties.

20 **4. Injunctive Relief Is Properly Considered In Calculating The**
21 **Amount In Controversy.**

22 17. Plaintiff seeks an injunction against Labcorp to (1) enjoin Labcorp
23 from “representing that its goods or services are of a particular standard, quality or
24 grade,” (Compl. ¶¶ 60-63) and (2) prevent its allegedly “unfair, unlawful, and
25 deceptive acts going forward.” Compl. ¶ 83.

26 18. To the extent Plaintiff is seeking corrective advertising of Labcorp’s
27 MaterniT21 tests nationwide, this also would require Labcorp to incur substantial
28 costs, since Labcorp advertises its MaterniT21 tests nationwide. Given the amount

1 of compensatory damages, emotional distress damages, and CLRA penalties
2 alleged in the Complaint, CAFA's jurisdictional threshold is easily reached even
3 without specifying the costs that Labcorp necessarily would need to incur in order
4 to comply with any injunction requiring it to change and correct its advertising.
5 Nevertheless, the fact that the costs of complying with injunctive relief properly
6 should be considered in assessing whether CAFA's amount in controversy
7 requirement is satisfied, provides further confirmation that the Complaint in this
8 case includes allegations that easily satisfy that test.

9 **5. Attorneys' Fees Are Properly Included In The Amount In**
10 **Controversy For CAFA Removal.**

11 19. The CLRA authorizes a mandatory award of attorney's fees to a
12 prevailing plaintiff. Cal. Civ. Code § 1780(e).

13 20. Attorneys' fees are properly included in determining the amount in
14 controversy for CAFA removal purposes. *Guglielmino v. McKee Foods Corp.*, 506
15 F.3d 696, 698 (9th Cir. 2007); *Sanchez v. Wal-Mart Stores, Inc.*, No. Civ. S-06-cv-
16 2573 DFL KJM, 2007 WL 1345706, at *2 (E.D. Cal. May 8, 2007) ("Attorney's
17 fees, if authorized by statute or contract, are also part of the calculation.").

18 Attorneys' fees are not limited to the amount incurred as of the time of removal. In
19 *Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029 (N.D. Cal. 2002), for example, the
20 court held that attorneys' fees "necessarily accrue until the action is resolved. Thus,
21 the Ninth Circuit [in *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir.
22 1998)] must have anticipated that district courts would project fees beyond
23 removal." 209 F. Supp. 2d at 1034-35. The *Simmons* court therefore held that the
24 "measure of [attorneys'] fees should be the amount that can reasonably be
25 anticipated at the time of removal, not merely those already incurred." *Id.* at 1035.

26 21. Here, given the amount of compensatory damages, emotional distress
27 damages, and CLRA penalties alleged in the Complaint, CAFA's jurisdictional
28 threshold is easily reached even without considering any specific amount of

1 attorney's fees. Nevertheless, the fact that attorney's fees should be considered in
2 assessing whether CAFA's amount in controversy requirement is satisfied, provides
3 further confirmation that the Complaint in this case includes allegations that easily
4 satisfy that test.

5 **6. Punitive Damages Are Properly Included In The Amount In**
6 **Controversy For CAFA Removal.**

7 22. The CLRA allows plaintiffs to recover punitive damages. Cal. Civ.
8 Code § 1780(a)(4).

9 23. A defendant satisfies the amount-in-controversy requirement under
10 CAFA if it is "reasonably possible" that it may be liable for the proffered punitive
11 damages amount. District courts have applied a 1 to 1 ratio for punitive damages in
12 calculating the amount in controversy in consumer class actions, especially where
13 there is evidence of jury verdicts including punitive damages. *Greene*, 965 F. 3d at
14 772 (9th Cir. 2020) (holding that defendant met that burden by citing four cases
15 where juries had awarded punitive damages at ratios higher than 1:1 for claims
16 based on the CLRA); *Sloan v. 1st Am. Auto. Sales Training*, Case No. 2:16-cv-
17 05341-ODW (SK), 2017 WL 1395479, at *3 (C.D. Cal. Apr. 17, 2017) (alleging
18 violation of the UCL and CLRA); *Tompkins v. Basic Research LL*, No. CIV. S-08-
19 244 LKK/DAD, 2008 WL 1808316, at *4 (E.D. Cal. Apr. 22, 2008) (applying 1 to
20 1 ratio to plaintiff's "likely restitution" under a UCL claim); *see also Guglielmino*,
21 506 F.3d at 698 (noting that the district court found the amount in controversy was
22 satisfied by applying what the district court described as a "conservative" 1 to 1
23 ratio of punitive damages to economic damages); *Rhinehart v. Genworth Life &*
24 *Annuity Ins. Co.*, 1:18-cv-01391-LJO-SAB, 2019 WL 295770, at *6 (E.D. Cal. Jan.
25 23, 2019) (interpreting *Guglielmino* to have "observed the district court's finding
26 that the 1:1 ratio was a 'conservative' estimate in the face of the evidence of jury
27 verdicts in analogous cases").

28 //

1 24. Given the amount of compensatory damages, emotional distress
2 damages, and CLRA penalties alleged in the Complaint, CAFA’s jurisdictional
3 threshold is easily reached even without specifying any amount of punitive
4 damages. Nevertheless, the fact that CAFA’s amount in controversy requirement is
5 satisfied even without considering punitive damages provides further confirmation
6 that the Complaint in this case includes allegations that easily satisfy that test.

7 **7. The aggregate of statutory damages, disgorgement,
8 emotional distress damages, injunctive relief, attorneys’ fees
9 and punitive damages surpasses the \$5,000,000 amount in
10 controversy.**

11 25. In light of the allegations of and remedies prayed for by Plaintiff,
12 including the statutory minimum award remedy for violations of the CLRA,
13 disgorgement, restitution, emotional distress, attorneys’ fees and punitive damages,
14 a reasonable reading of the Complaint supports the finding that more than \$5
million is in controversy in this action as follows:

- 15 a. Statutory damages: 500,000 class members x \$1,000 CLRA
16 minimum = \$500 million.
- 17 b. Attorneys’ fees (alleged but not even necessary to calculate given
18 that compensatory and statutory damages already substantially
19 exceed the CAFA threshold).
- 20 c. Conservative 1:1 ratio between compensatory and punitive
21 damages = \$117 million.
- 22 d. Emotional distress damages: \$11 million (alleged but not even
23 necessary to calculate in order to meet \$5,000,000 threshold).
- 24 e. Labcorp’s cost of compliance with injunction: (alleged, but not
25 even necessary to calculate in order to meet \$5,000,00 threshold).

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27 //

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1 **II. REMOVAL IS PROPER BECAUSE THIS COURT HAS DIVERSITY**
2 **JURISDICTION.**

3 26. Pursuant to 28 U.S.C. § 1332(a)(1), this Court has subject matter
4 jurisdiction also because complete diversity of citizenship exists between Plaintiff
5 and Labcorp and the amount in controversy in this matter exceeds the sum of
6 \$75,000, exclusive of costs and interests.

7 **A. There is Complete Diversity of Citizenship.**

8 27. A natural person is a citizen of the state in which he or she is
9 domiciled. *Kantor*, 704 F.2d at 1090. A corporation is a citizen of the state in
10 which it is incorporated and of the state in which it has its principal place of
11 business. 28 U.S.C. § 1332(c)(1).

12 28. As alleged in the Complaint, Plaintiff is a natural person residing in
13 Riverside, California. Compl. ¶ 12. Plaintiff is therefore a citizen of California for
14 diversity purposes.

15 29. As alleged in the Complaint, Labcorp is a corporation organized and
16 existing under the laws of the State of Delaware, with its headquarters in
17 Burlington, North Carolina. Compl. ¶ 13. Defendant Labcorp is, therefore, a
18 citizen of the states of Delaware and North Carolina, not California, for diversity
19 purposes.

20 **B. The Amount in Controversy is Satisfied.**

21 30. Labcorp files this Notice of Removal in good faith and on a reasonable
22 basis in law and fact that the requisite amount in controversy is satisfied in this
23 action.

24 31. Where, as here, a complaint seeks a monetary judgment but does not
25 specify the amount sought pursuant to state practice, removal is proper if the district
26 court finds, by a preponderance of the evidence, that the amount in controversy
27 exceeds \$75,000. *See* 28 U.S.C. § 1446(c)(2)(B); *see also Guglielmino*, 506 F.3d at
28 699 (in a case where “it is unclear or ambiguous from the face of a state-court

1 complaint whether the amount in controversy is plead, [courts] apply a
2 preponderance of the evidence standard”). A removing party’s burden of satisfying
3 the amount in controversy requirement is “easily met” if “it is facially apparent
4 from the allegations in the complaint that plaintiff’s claims exceed \$75,000.”
5 *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993,
6 1001 (C.D. Cal. 2002) (citing *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d,
7 373, 376 (9th Cir. 1997)). Further, the removing party need only include a “short
8 and plain statement” setting forth “a plausible allegation that the amount in
9 controversy exceeds the jurisdictional threshold.” *Dart*, 574 U.S. 87-89 (2014).

10 32. Though Plaintiff’s Complaint does not specify the amount of money
11 damages sought, the face of the Complaint demonstrates that the amount in
12 controversy exceeds \$75,000, exclusive of interest and costs.

13 33. Plaintiff alleges that she was never informed that Labcorp’s test results
14 “contain very low positive predictive value for Turner syndrome and other
15 chromosomal abnormalities, and that the false positive rate for Turner syndrome is
16 as high as 74%.” Compl. ¶ 37. Plaintiff alleges that as a result of the false positive
17 result and not being fully advised of the test’s positive predictive value, “Plaintiff
18 suffered extreme stress and anxiety regarding the health of her unborn child
19 throughout the rest of her pregnancy and felt that the joy that she otherwise wished
20 to experience during her first and only pregnancy was instead replaced with
21 constant fear.” Compl. ¶ 41. She further alleges that Labcorp’s test results “led to
22 numerous additional doctor’s appointments and considering whether or not to
23 terminate her pregnancy.” *Id.* Plaintiff contends that she suffered economic harm
24 in the form of the purchase price of the test, as well as emotional distress, stress,
25 and anxiety as a result of Labcorp’s test. Compl. ¶ 44. As demonstrated above,
26 Plaintiff seeks compensatory damages, emotional distress damages, punitive
27 damages, injunctive relief, pre- and post-judgment interest, and attorneys’ fees.

28 //

1 34. Based on any reasonable reading of the Complaint, the severity of the
2 emotional distress pleaded and the breadth of damages sought as a result thereof
3 lead to the inevitable conclusion that Plaintiff will seek damages exceeding
4 \$75,000.00. First, Plaintiff filed this action in California Superior Court, which is a
5 general jurisdiction court that has the ability to hear cases where the alleged
6 damages are over \$25,000. Second, assuming a 1:1 ratio of punitive damages to
7 compensatory damages in CLRA cases, it is reasonable to assume that the amount
8 of punitive damages sought would also amount to \$25,000. Third, it also would be
9 reasonable to apply a 1:1 ratio for emotional distress damages, which would add an
10 additional \$25,000 to Plaintiff's claim. *See, e.g., Garfias v. Team Indus. Servs.,*
11 *Inc.*, Case No. LA CV17-04282 JAK (AGRx), 2017 WL 4512444, at *5 (C.D. Cal.
12 Oct. 10, 2017) (holding that, in light of defendant's failure to demonstrate factual
13 similarities with other cases, and plaintiff's failure to provide any reasonable
14 estimate of emotional distress damages, "it is reasonable to apply a 1:1 ratio to
15 emotional distress and economic damages" to determine removal jurisdiction). And
16 fourth, attorneys' fees would add an additional substantial amount to Plaintiff's
17 recovery. These sums, which exclude Labcorp's costs to comply with injunctive
18 relief and pre- and post-judgment interest – and assume that Plaintiff alleges
19 compensatory damages of only \$25,000 -- meet the minimum \$75,000 threshold for
20 removal.

21 35. Accordingly, the jurisdictional amount in controversy requirement is
22 satisfied here.

23 **III. DEFENDANT HAS MET THE PROCEDURAL REQUIREMENTS**
24 **FOR REMOVAL**

25 36. This Notice of Removal is properly filed in the Southern District of
26 California pursuant to 28 U.S.C. § 1446(a).

27 37. Venue is property in this Court because the United States District
28 Court for the Southern District of California embraces the county in which the state

1 court action is now pending (Imperial County). *See* 28 U.S.C. §§1441(a), 84(d).

2 38. On April 8, 2022, Plaintiff served Labcorp with the Summons and
3 Complaint. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely filed
4 within thirty (30) days of service of the Summons and Complaint.

5 39. No party has previously sought to remove this action.

6 40. Labcorp will give written notice of the filing of this Notice of Removal
7 as required by 28 U.S.C. § 1446(d). Attached hereto as **Exhibit B** is a copy of the
8 Notice to Clerk of the Superior Court of Imperial County and to Adverse Party of
9 Removal to Federal Court, which will be served promptly upon Plaintiff and filed
10 with the Clerk of the Superior Court of the State of California, County of Los
11 Angeles. 28 U.S.C. § 1446(a), (d).

12
13 **WHEREFORE**, for the reasons described above, Labcorp respectfully
14 submits that Plaintiff’s claims are properly removal because: (i) that this Court has
15 diversity jurisdiction under 28 U.S.C. §§ 1332, 1441, 1446, and 1453; and (ii) that
16 the procedural requirements under 28 U.S.C. § 1446 are met.

17 Date: May 4, 2022

HOGAN LOVELLS US LLP

18
19
20 By: /s/ Michael M. Maddigan
21 Michael M. Maddigan
22 Poopak Nourafchan
23 Alicia Matarese
24 Attorneys for Defendant
25 LABORATORY CORPORATION
26 OF AMERICA
27
28

EXHIBIT A



Notice of Service of Process

Transmittal Number: 24755183
Date Processed: 04/12/2022

Primary Contact: Kristina Cates
Laboratory Corporation of America Holdings
531 S Spring St
Burlington, NC 27215-5866

Electronic copy provided to: Anetta Outlaw
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Mary Beth Maines

Entity: Laboratory Corporation of America
Entity ID Number 0035873

Entity Served: Laboratory Corporation of America

Title of Action: Sandy Martinez vs. Laboratory Corporation of America d/b/a Labcorp

Matter Name/ID: Sandy Martinez vs. Laboratory Corporation of America d/b/a Labcorp (12184210)

Document(s) Type: Summons/Complaint

Nature of Action: Class Action

Court/Agency: Imperial County Superior Court, CA

Case/Reference No: ECU002318

Jurisdiction Served: California

Date Served on CSC: 04/08/2022

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SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

Laboratory Corporation of America c/o Corporation Service Company, 2170 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Sandy Martinez

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

03/25/2022

SUPERIOR COURT
COUNTY OF IMPERIAL
CLERK OF THE COURT

BY Joselyn Pradis DEPUTY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of California, County of Imperial
939 W. Main Street, El Centro, CA 92243

CASE NUMBER: (Número del Caso):
ECU002318

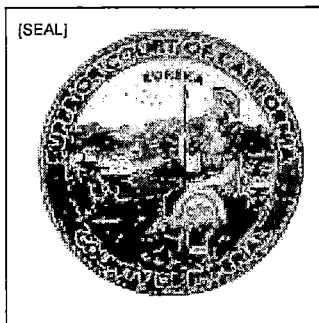
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Eugene Y. Turin, SBN: 342413, McGuire Law, P.C. 55 W. Wacker Dr., 9th Fl., Chicago, IL 60601, (312) 893-7002

DATE: 3/25/2022
(Fecha)

Clerk, by Maria Rhinehart / Clerk of Court, Deputy
(Secretario) Joselyn Pradis (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): Laboratory Corporation
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

CLASS ACTION COMPLAINT

1
2 Plaintiff Sandy Martinez (“Plaintiff”), by and through her undersigned
3 counsel, brings this Class Action Complaint against Laboratory Corporation of
4 America d/b/a Labcorp (“Labcorp” or “Defendant”), on behalf of herself and all
5 others similarly situated, and allege upon personal knowledge as to her own actions,
6 and upon information and belief as to counsel’s investigations and all other matters,
7 as follows:

8 **NATURE OF THE CASE**

9 1. This is an action brought by Plaintiff on her own behalf and on behalf
10 of other similarly situated individuals for the unlawful, deceptive, and misleading
11 trade practices engaged in by Defendant, who operates one of the largest clinical
12 laboratory testing networks in the world. Plaintiff seeks to represent a Class of
13 individuals who purchased Defendant’s non-invasive prenatal test (NIPT).

14 2. NIPTs, such as Defendant’s MaterniT 21 Plus test (“MaterniT 21”), are
15 blood drawn tests for pregnant women that can screen for certain chromosomal
16 abnormalities that could affect a baby’s health and development. These disorders
17 include Down syndrome, Turner syndrome, and many other serious conditions that
18 can be detrimental to a baby’s health. While NIPT is one of many forms of prenatal
19 testing, companies, such as Defendant, have capitalized on technological advances
20 in noninvasive prenatal testing to offer a product to expecting mothers that is
21 affordable and purportedly accurate.

22 3. Specifically, traditionally parents could only screen for genetic
23 conditions only later in the pregnancy through invasive procedures such as
24 amniocentesis that required a needle to be inserted through the stomach and piercing
25 the amniotic sac surrounding the baby to draw fluid that directly surrounds the baby
26 and contains its genetic material. These procedures invariably carried a very small,
27 but existent risk of miscarriage. NIPTs have been marketed and heralded as a
28

מסמך זה נבחר באופן אוטומטי על ידי מערכת המידע המשפטית של בית דין פדרלי. אין זה מהווה ייעוץ משפטי.

1 solution to the trade-off between knowing if a baby has a severe genetic abnormality
2 and the risk of miscarriage by instead testing the small amount of the baby’s genetic
3 material that is present in the mother’s blood without having to draw directly from
4 the amniotic fluid surrounding the baby.

5 4. However, despite these representations, an investigation by the New
6 York Times recently revealed that positive tests results from NIPTs for some genetic
7 conditions are incorrect about 85 percent of the time, or more, producing a high
8 frequency of false positive results from NIPTs.

9 5. False positive results in prenatal testing carry severe consequences.
10 Many times, expecting parents, and specifically pregnant mothers, are subject to
11 invasive diagnostic prenatal testing and significant additional medical diagnosis and
12 care as their pregnancy may be labeled as a “high risk” pregnancy. This is not to
13 mention the severe anxiety and stress about the health of their child that false positive
14 NIPT results cause soon-to-be parents.

15 6. Defendant is one of the largest providers of NIPT testing and represents
16 that its MaterniT 21 NIPT test is an accurate and non-invasive means to test for
17 genetic abnormalities during pregnancy even though its MaterniT 21 test also has
18 very high rates of false positives. In addition, even though NIPTs are meant to be
19 screening tests only that lack the same precision as more invasive genetic testing
20 such as that which is performed by amniocentesis, Defendant fails to directly inform
21 the patients who order its MaterniT 21 test prior to taking the test that they need to
22 undergo genetic counseling before and after the test to understand the results and
23 their predictive value, and most importantly, does not inform the doctors who
24 recommend its MaterniT 21 test to their patients, nor the patients themselves, that a
25 positive test result is highly likely to be a false positive that is not actually a cause
26 for concern.

המאמר מתפרסם באתר דעת והוא מוגן על ידי זכויות יוצרים. כל הזכויות שמורות. אין להעתיק או לשכפל את המאמר ללא אישור מפורש.

1 7. As such, Defendant’s customers are misled into purchasing its genetic
2 test under a false or at best incomplete understanding of what it provides such that
3 Plaintiff and the other members of the putative class she seeks to represent would
4 not have purchased Defendant’s testing services, or would have paid less for them.

5 8. Plaintiff brings this class action lawsuit on behalf of herself and all
6 others similarly situated individuals and seeks damages, restitution, declaratory and
7 injunctive relief.

8 **JURISDICTION AND VENUE**

9 9. This Court has subject-matter jurisdiction over this action pursuant to
10 Cal. Code Civ. Proc. § 410.10 and Article VI, § 10 of the California Constitution.

11 10. Plaintiff has standing to bring this action pursuant to the California
12 Consumers Legal Remedies Act, Civil Code Section 1750 *et seq.*; California Unfair
13 Competition Law, Business & Professions Code Section 17200, *et seq.*; and the
14 common law.

15 11. This Court has personal jurisdiction over Defendant and venue is proper
16 in this Court because a substantial part of the events giving rise to the claims asserted
17 herein occurred in this County, as Plaintiff and a significant number of putative class
18 members, reside in this County and were subject to Defendant’s unlawful conduct in
19 this County.

20 **PARTIES**

21 12. Plaintiff Sandy Martinez is a natural person and resident of Riverside,
22 California.

23 13. Defendant Laboratory Corporation of America is a Delaware
24 corporation with its headquarters located in Burlington, North Carolina, and has
25 regularly engaged in business throughout the state of California. Upon information
26 and belief, Defendant directs the marketing and sale of its products to consumers in
27 this County.

מסמך זה מוגש בפרוטוקול מכתב ראשון, ויש להקפיד על כללי ההגנה. מסמך זה הוא העתק ממוחשב של המסמך המקורי, ואין להאמין בו כעדויות.

1 14. At all times relevant to this action, Defendant, in the ordinary course of
2 business, engaged in acts or practices affecting commerce within the meaning of
3 California consumer protection laws, and Defendant’s deceptive and unfair trade
4 practices alleged herein have affected thousands of consumers within California.

5 **COMMON FACTUAL ALLEGATIONS**

6 15. Prenatal testing has been used for decades to help identify during the
7 pregnancy whether the fetus is more or less likely to have any birth defects as a result
8 of any genetic disorders.

9 16. Prenatal testing provides valuable information to expecting mothers in
10 aiding their decision whether or not to continue the pregnancy in light of the risks
11 associated with any particular genetic disorder.

12 17. Given that extremely valuable information that prenatal testing can
13 provide, the market for prenatal tests is enormous, with estimates in the range of
14 \$600 million to \$1 billion.¹

15 18. Prenatal testing exists both in the form of diagnostic testing and
16 screening testing. Traditionally, prenatal testing was only available primarily as an
17 invasive diagnostic test that involved amniocentesis, a procedure where a needle is
18 inserted through the stomach and into the amniotic sac surrounding the baby to draw
19 a sample of the amniotic fluid surrounding the baby that contains the baby’s genetic
20 material. While amniocentesis is very accurate because it draws genetic material
21 directly from the baby, it carries a small, but not non-existent risk of miscarriage due
22 to its invasive nature.

23 19. In the past decade, medical technology companies have invented non-
24 invasive prenatal testing (NIPT) which instead of using amniotic fluid directly from
25 the uterus, relies on a simple regular blood sample taken from the mother which is
26 then screened for pieces of the baby’s genetic material that circulates in the mother’s
27

28 ¹ <https://nytimes.com/2022/01/01/upshot/pregnancy-birth-genetic-testing.html>.

הודעה לפרסום באתר המשפטים מיום 05/04/22 שם הדocket 00631-22

1 blood stream. Unlike traditional amniocentesis, NIPT carries no risk of miscarriage
2 to the baby because it relies on a regular blood draw, rather than a needle being
3 inserted into the amniotic sac that the baby is within.

4 20. Given that NIPT testing can be safely performed without any risks it
5 has attracted significant interest. However, unbeknownst to the vast majority of
6 patients who choose to use NIPT testing, NIPT testing can be far less accurate than
7 other prenatal diagnostic tests because NIPT is able to evaluate only the small pieces
8 of the baby’s DNA that happen to make their way into the mother’s bloodstream
9 rather than obtaining the baby’s DNA directly from the amniotic fluid surrounding
10 it.

11 21. Recently, in January 2022, a New York Times investigation reported on
12 the accuracy of NIPT tests. That published investigation reported that NIPT
13 screening for rare chromosomal disorders are inaccurate approximately 85% of the
14 time.² And even for more common chromosomal disorders such as Turner’s
15 syndrome they can give false positive results as much as 74% of the time.

16 22. Further, the report investigated companies offering NIPT, such as
17 Defendant, and the fact that they misrepresent the accuracy of their tests. “The Times
18 reviewed 17 patient and doctor brochures from eight of the testing companies,
19 including . . . Labcorp . . . Ten of the brochures never mentioned that a false positive
20 can happen. Only one mentioned how often each test gets positive results wrong.”³

21 23. Surprisingly, the Food and Drug Administration does not regulate NIPT
22 screening exams. Thus, patients and the doctors advising them are highly susceptible
23 to being deceived by misrepresentations made by companies that sell NIPT tests.

24 24. False positive test results from NIPT testing have extreme
25 consequences to the patient and consumers that are relying on the results.
26 For example, parents can be led to fear that there is a high risk for the unborn child

27 ² *Id.*

28 ³ *Id.*

המסמך מוגן בזכויות יוצרים © 2022

מסמך זה נמצא באתר האינטרנט של בית דין המחוזי של ניו יורק

1 to be born with significant health problems, causing severe anxiety to the parents.
2 There can also be significant economic consequences including paying for further
3 genetic testing and paying for doctors that specialize in prenatal screening. As
4 reported by the New York Times, “Patients who receive a positive result are
5 supposed to pursue follow-up testing, which often requires a drawing of amniotic
6 fluid or a sample of placental tissue. Those tests can cost thousands of dollars, come
7 with a small risk of miscarriage and can’t be performed until later in pregnancy- in
8 some states, past the point where abortions are legal.”⁴ Further, in some instances
9 patients even choose to terminate their pregnancy based on the false positive results
10 of an NIPT.

11 25. Defendant is one of the largest providers of NIPT tests with its
12 MaterniT21 NIPT test that is used by thousands of patients throughout California,
13 and the country.

14 26. Defendant markets its MaterniT21 test as a more clinically complete
15 solution than other NIPTs on the market.⁵ Defendant boasts its comprehensive
16 screening panel, high reportable results rate, and low frequency of patient blood
17 redraws that may result from not obtaining enough fetal genetic material.⁶

18 27. Defendant also advertises that its MaterniT 21 test is highly accurate.
19 Specifically, Defendant represents that its NIPT provides patients with “more
20 information earlier in [the] pregnancy” by screening for chromosomal abnormalities
21 which have profound health consequences in the life and health of the parent’s child.⁷
22 Defendant also states that its MaterniT 21 test has higher detection rates than serum
23 screening, which has a 97.9% positive predictive value for trisomy 21.⁸ Further,
24 Defendant states that its MaterniT21 test “delivers clear positive or negative results

25 ⁴ *Id.*
26 ⁵ <https://womenshealth.labcorp.com/sites/default/files/2021-10/rep-1035-v5-1019.pdf>
27 ⁶ *Id.*
28 ⁷ *Id.*
⁸ <https://www.labcorp.com/pregnancy/maternit21-plus>

1 for well-known chromosomal abnormalities, such as trisomy 21 (Down
2 syndrome).”⁹

3 28. Defendant markets and advertises that its MaterniT 21 test can
4 accurately detect the following chromosomal abnormalities: Trisomy 21, Trisomy
5 18, Trisomy 13, Trisomy 16, Trisomy 22, 45 X (Turner Syndrome), 47 XXY, 47
6 XXX, 47 XYY, 22q, 5p, 1p36, 15q, 11q, 8q, and 4p all representing various health
7 risks for unborn children.¹⁰

8 29. Defendant’s MaterniT 21 test costs as much as \$500.00 for patients who
9 pay out-of-pocket, and even for those who have insurance coverage as much as
10 \$235.00.¹¹

11 30. However, despite the above-mentioned representations, Defendant fails
12 to disclose to healthcare providers and patients that its MaterniT 21 test has a high
13 frequency of false positive results. In fact, Defendant specifically states that most
14 women will screen negative for chromosomal abnormalities and will not require
15 further testing without mentioning the overwhelmingly likelihood that any positive
16 result is wrong.¹²

17 31. These misrepresentations are significant as healthcare providers and
18 their patients rely on Defendant’s advertising and disclosures regarding the accuracy
19 and diagnostic value of its MaterniT 21 test in order to properly evaluate the value
20 of the testing and the significance of any results that are returned—especially and
21 most importantly any positive result.

22 32. Thus, Defendant misrepresents the quality and accuracy of its MaterniT
23 21 test to the healthcare providers who advise their patients and patients themselves,
24 and deceiving patients into obtaining a test whose diagnostic value is not nearly as
25 significant as Defendant may make it appear.

26 ⁹ *Id.*
27 ¹⁰ *Id.*
28 ¹¹ <https://khn.org/news/prenatal-blood-tests/>
¹² <https://www.labcorp.com/pregnancy/maternit21-plus>

מסמך זה מכיל מידע רפואי. אין להשתמש בו לטיפול רפואי. ייעוץ רפואי ניתן על ידי רופא המטפל בלבד.

1 33. Just one of many examples of the consequences of Defendant’s failure
2 to accurately market its MaterniT 21 test and provide patients and their healthcare
3 providers with sufficient information before providing them results is what occurred
4 to Plaintiff during her pregnancy.

5 34. Based on the information and advertising provided by Defendant, in
6 May 2020 Plaintiff’s healthcare provider recommended that Plaintiff undergo
7 prenatal screening using Defendant’s MaterniT 21 test to find out if her baby had
8 any potential genetic abnormalities.

9 35. Based on the information provided by Defendant through her healthcare
10 care provider that Defendant’s MaterniT 21 test was an accurate way to test for any
11 genetic abnormalities, and having no knowledge about the extremely high rate of
12 false positives that it generates, Plaintiff decided to purchase Defendant’s MaterniT
13 21 testing and have it performed.

14 36. However, prior to ever receiving her test report from Defendant,
15 Plaintiff was contacted by her doctor and informed that her baby had tested positive
16 for Turner syndrome. Turner syndrome is a serious genetic disorder that causes a
17 range of medical issues including short height, heart abnormalities, and lack of
18 formation of reproductive organs. Plaintiff was asked by her provider if she wished
19 to continue with her pregnancy.

20 37. Plaintiff was never informed that Defendant’s test results contain very
21 low positive predictive value for Turner syndrome and other chromosomal
22 abnormalities, and that the false positive rate for Turner syndrome is as high as 74%.

23 38. Nor did Defendant take the necessary steps to ensure that Plaintiff and
24 her provider were fully informed before she even took its test, or before she received
25 the results, that the test is meant to be a screening test only that has significant
26 limitations in predictive value when it comes to any positive test result.
27
28

מסמך זה נכנס לתוקף ב-10.05.2022 על-פי החלטת בית דין

1 44. Plaintiff, like other members of the Class, suffered economic harm in
2 the form of the purchase price of the test, as well as emotional distress, stress and
3 anxiety as a result of Defendant’s unreliable MaterniT 21 tests.

4 **CLASS ALLEGATIONS**

5 45. Plaintiff brings this action on her own behalf and on behalf of a Class
6 and Subclass, pursuant to Cal. Code Civ. Proc. § 382, Cal. Civ. Code § 1781, and
7 Cal. Bus. & Prof. Code § 17203, defined as follows:

8
9 The Class:

10 All purchasers of Defendant’s MaterinT 21 testing services, including
11 consumers who paid out-of-pocket, through health insurance, or
12 through any other collateral source.

13 The California Subclass:

14 All persons who within the state of California purchased Defendant’s
15 MaterniT 21 testing services, including consumers who paid out-of-
16 pocket, through health insurance, or through any other collateral source.

17 46. **Adequacy.** Plaintiff will fairly and adequately represent and protect the
18 interests of the other members of the Class and Subclass (collectively, the “Class”).
19 Plaintiff has retained counsel with substantial experience in prosecuting complex
20 litigation and class actions. Plaintiff and her counsel are committed to vigorously
21 prosecuting this action on behalf of the other Class members, and have the financial
22 resources to do so. Neither Plaintiff nor her counsel have any interest adverse to those
23 of the other members of the Class.

24 47. **Predominance & Superiority.** Absent a class action, most Class
25 members would find the cost of litigating their claims to be prohibitive and would
26 have no effective remedy. The class treatment of common questions of law and fact
27 is superior to multiple individual actions or piecemeal litigation in that it conserves
28

מסמך זה נכונותו אינו מבטיח את תוצאות ההליכה המשפטית.

1 CLRA, and were undertaken by Defendant in transactions intended to result in, and
2 which resulted in, the sale of goods to consumers; namely, the sale of Defendant’s
3 MaterniT 21 test by Defendant to Plaintiff and Subclass members.

4 59. The CLRA prohibits “unfair methods of competition and unfair or
5 deceptive acts or practices” in connection with the sale of goods.

6 60. Specifically, the CLRA prohibits, in part:

7 (a)(7) representing that goods or services are of a particular standard, quality,
8 or grade . . . if they are of another; and

9 (a)(9) advertising goods or services with intent not to sell them as advertised.

10 61. By engaging in the conduct described herein, Defendant has violated
11 subdivision (a)(5) and (a)(9) of California Civil Code § 1770.

12 62. Defendant has violated the CLRA and has caused substantial injury to
13 consumers, including Plaintiff, by its deceptive and misleading advertising and
14 disclosures regarding the accuracy and diagnostic value of its MaterniT 21 test.

15 63. Pursuant to § 1782(d) of the California Civil Code, Plaintiff and the
16 Subclass seek a court order enjoining the above-described wrongful acts and
17 practices of Defendant and for restitution and disgorgement.

18 64. If Defendant fails to rectify or agree to rectify the violations detailed
19 above and give notice to all affected consumers within 30 days of receipt of this
20 notice of violations, Plaintiff will amend this complaint to add claims for actual,
21 punitive and statutory damages, as appropriate.

22
23 **SECOND CAUSE OF ACTION**

24 **Unjust Enrichment**

25 **(On behalf of Plaintiff and the Class)**

26 65. Plaintiff hereby incorporates the above allegations by reference as
27 though fully set forth herein.

מסמך זה נעשה זמין לציבור באמצעות אתר האינטרנט של בית דין השלום והמשפט, תל אביב-יפו, תשפ"ב

1 66. Plaintiff and the other Class members conferred an economic benefit on
 2 Defendant through purchases of Defendant’s MaterniT 21 test.

3 67. It is inequitable and unjust for Defendant to retain the revenue obtained
 4 from purchases made by Plaintiff and the other Class members due to the deceptive
 5 nature of Defendant’s advertisements regarding the accuracy and diagnostic value of
 6 the tests and due to Defendant’s failure to provide accurate and complete information
 7 regarding the limited diagnostic value of its test to Plaintiff and the other Class
 8 members and their healthcare providers.

9 68. Accordingly, because Defendant will be unjustly enriched if it is
 10 allowed to retain such funds, Defendant must pay restitution to Plaintiff and the other
 11 Class members in the amount which Defendant was unjustly enriched by each of
 12 their test purchases.

13 **THIRD CAUSE OF ACTION**

14 **Unlawful and Unfair Business Practices in Violation of the California Unfair
 15 Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, et seq.
 (On behalf of Plaintiff and the Subclass)**

16 69. Plaintiff hereby incorporates the above allegations by reference as
 17 though fully set forth herein.

18 70. Plaintiff and Defendant are “persons” within the meaning of the UCL
 19 Cal. Bus. & Prof. Code § 17201.

20 71. California’s Unfair Competition Law, Business & Professions Code, §
 21 17200, *et seq.* (“UCL”), prohibits deceptive acts and practices in the sale of consumer
 22 products and services, such as Defendant’s MaterniT 21 test.

23 72. Defendant’s conduct as alleged herein occurred in the course of trade
 24 or commerce.

25 73. Plaintiff brings this claim individually and on behalf of other persons
 26 similarly situated pursuant to the UCL.

RECEIVED U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA MAY 5 2022

1 81. Defendant’s conduct constitutes unfair methods of competition and
2 unfair or deceptive acts or practices through the misrepresentations and deceptive
3 representations described herein this complaint, and therefore is “unlawful” under
4 the UCL via its violation of the CLRA.

5 82. As a direct and proximate cause of Defendant’s deceptive, unfair, and
6 unlawful trade practices, Plaintiff and the other members of the Subclass suffered
7 actual damages, including monetary losses.

8 83. Plaintiff and the other members of the Subclass are entitled damages in
9 an amount to be proven at trial, reasonable attorney’s fees, injunctive relief
10 prohibiting Defendant’s unfair, unlawful, and deceptive acts going forward, and any
11 other penalties or awards that may be appropriate under applicable law.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff respectfully request, on her own behalf and on behalf
14 of all others similarly situated, the following relief:

- 15 1. For an order certifying this action as a class action, defining the Class
16 and Subclass as requested herein, appointing Plaintiff as a class
17 representative and her counsel as class counsel;
- 18 2. Awarding Plaintiff all economic, monetary, actual, consequential,
19 compensatory, and punitive damages available at law;
- 20 3. Awarding Plaintiff reasonable attorneys' fees, costs, and other litigation
21 expenses;
- 22 4. Awarding pre- and post-judgment interest, as allowable by law; and
- 23 5. Awarding such further and other relief as the Court deems just and
24 equitable.

25 **DEMAND FOR JURY TRIAL**

26 Plaintiff requests trial by jury of all claims that can be so tried.

רוחב תוכן המסמך יוצג בצורה זו על מנת להבטיח את תאריך הגשת המסמך לכתב דוא"ר

DATED: March 25, 2022

Respectfully submitted,

SANDY MARTINEZ, individually
and on behalf of similarly situated
individuals

By: /s/ Eugene Y. Turin
Eugene Y. Turin (SB # 324413)
MCGUIRE LAW, P.C.
55 W. Wacker Dr., 9th Fl.
Chicago, IL 60601
Tel: (312) 893-7002 Ex. 3
Fax: 312-275-7895
eturin@mcgpc.com

*Counsel for Plaintiff and the
Putative Class Members*

דואר אלקטרוני

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF IMPERIAL**
939 Main Street
El Centro, California 92243

FILED
Superior Court of California,
County of Imperial
03/29/2022 at 03:27:51 PM
By: Joselyn Pradis, Deputy Clerk

Sandy Martinez)	Case No. ECU002318
Plaintiff/Petitioner,)	
)	Notice of:
vs.)	
)	Case Management Conference
Laboratory Corporation of America)	
Defendant/Respondent.)	
)	

TO ALL PARTIES AND/OR ATTORNEYS OF RECORD:

1. Notice is given that a **CASE MANAGEMENT CONFERENCE** has been scheduled as follows:
Case Management Conference: September 26, 2022 at 8:30 AM in El Centro Dept. 7.
2. You must file and serve a completed Case Management Conference Statement at least fifteen (15) days before the case management conference.
3. You must be familiar with the case and be fully prepared to participate effectively in the case management conference.
4. At the case management conference the court may make pretrial orders, including the following:
 - a) An order establishing a discovery schedule.
 - b) An order referring the case to arbitration.
 - c) An order dismissing fictitious defendants.
 - d) An order scheduling exchange of expert witness information.
 - e) An order setting subsequent conferences and the trial date.
 - f) Other orders to achieve the goals of the Trial Court Delay Reduction Act (Gov. Code § 68600 et seq.).
5. Parties wishing to appear by telephone must comply with CRC 3.670 and Local Rule 3.8.6.
6. **SANCTIONS:** If you do not file the Case Management Conference Statement required by CRC 3.725, or attend the case management conference or participate effectively in the conference, the Court may impose sanctions (including dismissal of the case, striking of the answer, and payment of money).

Date: 03/29/2022

Maria Rhinehart, Court Executive Officer

By: J. Pradis
J. PRADIS, Deputy Clerk

**Superior Court of California
County of Imperial
Alternative Dispute Resolution Information**

NOTICE: In all general civil cases, plaintiff and cross-complaints are required to serve this form on each defendant or new party to the action.

Alternative Dispute Resolution (ADR) may help resolve disputes without trial. ADR is usually less expensive, less formal and less time consuming than a trial. ADR can also be less adversarial and may provide parties with the opportunity for more creative and/or flexible outcomes than can be achieved in trial. Since various ADR methods may or may not be appropriate in any particular case, it is advisable to consult with an attorney about options available.

Mediation

An impartial person called a "mediator" helps the parties try to reach a mutually agreeable resolution of the dispute. The outcome is decided only by the parties. If the parties do not reach an agreement, the mediator does not make any decisions or recommendations to the court. Mediation is useful when the parties have a relationship they wish to preserve. Mediation may not be as useful if one of the parties is unwilling to compromise, or if one party has significant power over the other. The only court sponsored mediation service available in the Superior Court is for child custody and visitation.

Arbitration

An impartial person called an "arbitrator" listens to evidence and argument from both sides and then decides the outcome. Arbitration is less formal than a trial, and the rules of evidence may be relaxed. Pursuant to Imperial Superior Court Local Rules, Division 5 - Arbitration, Rule 3.5.0, all non-exempt unlimited civil cases where the amount in controversy does not exceed \$50,000 as to any plaintiff, and all limited civil cases shall be submitted to arbitration under CCP 1141.10 et seq.

Settlement Conference

The parties and their attorneys meet with a judicial officer to discuss possible settlement of the dispute. The judicial officer assists the parties in evaluating the strengths and weaknesses of the case, but does not make any decision. Settlement conferences are scheduled upon request of the parties and order of the judge assigned to the case.

Additional Information

For information on Superior Court of California, County of Imperial's arbitration process see the Local Rules at www.imperialcourts.ca.gov and Stipulation to Use of Alternative Dispute Resolution Process, Local Form GN-02.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF IMPERIAL 939 W. Main Street El Centro, CA 92243	
PETITIONER: RESPONDENT:	
STIPULATION TO USE OF ALTERNATIVE DISPUTE RESOLUTION PROCESS (California Rules of Court 3.221)	CASE NUMBER: _____

The parties and/or their attorneys stipulate that the matter is at issue and that this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management timelines.

- Court Ordered Non-Binding Arbitration (Cases valued at \$50,000 or less)
- Private Mediation
- Private Binding Arbitration
- Other (specify): _____

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral:

Date: _____

Date: _____

 Name of Plaintiff/Petitioner

 Name of Defendant/Respondent

 Signature of Plaintiff/Petitioner

 Signature of Defendant/Respondent

 Name of Plaintiff's Attorney

 Name of Defendant's Attorney

 Signature of Attorney

 Signature of Attorney

ATTORNEY FOR PARTY WITHOUT A COUNSEL (Name, State Bar number, and Address) Eugene Y. Turin (SBN 342413) McGuire Law, P.C., 55 W. Wacker Dr., Chicago, IL 60601 TELEPHONE NO.: (312) 893-7002 FAX NO. (Optional): E-MAIL ADDRESS: eturin@mcgpc.com ATTORNEY FOR (Name):

FOR COURT USE ONLY FILED SUPERIOR COURT COUNTY OF IMPERIAL CLERK OF THE COURT BY: Joselyn Pradis, DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF IMPERIAL STREET ADDRESS: 939 W. Main Street MAILING ADDRESS: CITY AND ZIP CODE: El Centro, CA 92243 BRANCH NAME: El Centro Courthouse

CASE NAME: Sandy Martinez v. Laboratory Corporation of America

CIVIL CASE COVER SHEET [x] Unlimited (Amount demanded exceeds \$25,000) [] Limited (Amount demanded is \$25,000 or less) Complex Case Designation [] Counter [] Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: ECU002318 JUDGE: ROZOUYAN, POU DEPT: 1

Items 1-6 below must be completed (see instructions on page 2).

- 1. Check one box below for the case type that best describes this case: Auto Tort, Contract, Provisionally Complex Civil Litigation, Other PI/PD/WD, Real Property, Non-PI/PD/WD, Unlawful Detainer, Judicial Review, Enforcement of Judgment, Miscellaneous Civil Complaint, Miscellaneous Civil Petition.

- 2. This case [x] is [] is not complex under rule 3.400 of the California Rules of Court. Remedies sought (check all that apply): a. [x] monetary b. [x] nonmonetary; declaratory or injunctive relief c. [] punitive

Date: 03/25/2022 Eugene Y. Turin

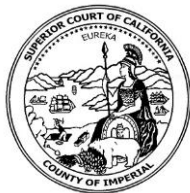
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). File this cover sheet in addition to any cover sheet required by local court rule.

Imperial Superior Court Accepted through eDelivery submitted 03-25-2022 at 10:32:02 AM

CASE #ECU002318 RECEIPT #: 1220329D9855 DATE PAID : 03/29/22 3:42 PM TOTAL : 435.00 TYPE : EFT



Superior Court of California
County of Imperial

939 West Main Street ♦ El Centro, CA 92243
Telephone (760) 482-4217 ♦ Fax (760) 482-4219

PLEASE RETURN THIS FORM WITH CORRECTIONS

To: Sandy Martinez

Re: Sandy Martinez vs. Laboratory Corporation of America
Case No. ECU002318

The Court is unable to process the enclosed paper(s) for the reason(s) indicated below:

_____ Answer/Response or other pleadings filed on _____.

_____ Name discrepancy on written instrument.

XX **Incorrect fee tendered. Amount required: \$1,000.00.**

_____ Wrong court. _____ Wrong case number/name. _____ No case number/name.

_____ Wrong judgment date; date should be _____.

_____ Writ of Execution issued on _____ still outstanding.

_____ Document(s) not signed.

_____ We do not accept documents with "White-Out". Please note when making corrections.

XX **Other: The Court's electronic filing system inadvertently failed to charge the required \$1,000.00 complex case fee due upon filing of the Complaint on 03/29/2022, in the above case. Please submit the required payment within 10 days of the below date.**

Payment can be made mailed to the Court at the above address, or by phone via credit card.

Date: March 29, 2022

Superior Court, County of Imperial

_____ J. Pradis _____

J. PRADIS, Court Services Assistant
Civil Department

cc: Court File

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Labcorp's MaterniT 21 Genetic Tests Have 'Very High' Rate of False Positives](#)
