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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

_____, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

FULGENT GENETICS, INC., MING
HSIEH, and PAUL KIM,

Defendants.

Case No.

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS

DEMAND FOR JURY TRIAL

Plaintiff _____ (“Plaintiff”), individually and on behalf of all others
similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint
against Defendants, alleges the following based upon personal knowledge as
to Plaintiff and Plaintiff’s own acts, and information and belief as to all other
matters, based upon, *inter alia*, the investigation conducted by and through
Plaintiff’s attorneys, which included, among other things, a review of the
Defendants’ public documents, conference calls and announcements made by
Defendants, United States

1 (“U.S.”) Securities and Exchange Commission (“SEC”) filings, wire and press
2 releases published by and regarding Fulgent Genetics, Inc. (“Fulgent” or the
3 “Company”), analysts’ reports and advisories about the Company, and information
4 readily obtainable on the Internet. Plaintiff believes that substantial additional
5 evidentiary support will exist for the allegations set forth herein after a reasonable
6 opportunity for discovery.
7
8

9 NATURE OF THE ACTION

10 1. This is a federal securities class action on behalf of a class consisting
11 of all persons and entities other than Defendants that purchased or otherwise
12 acquired Fulgent securities between March 22, 2019 and August 4, 2022, both dates
13 inclusive (the “Class Period”), seeking to recover damages caused by Defendants’
14 violations of the federal securities laws and to pursue remedies under Sections 10(b)
15 and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule
16 10b-5 promulgated thereunder, against the Company and certain of its top officials.
17
18

19 2. Fulgent, together with its subsidiaries, provides COVID-19, molecular
20 diagnostic, and genetic testing services to physicians and patients in the United
21 States and internationally. As a result, Fulgent must comply with the federal Anti-
22 Kickback Statute, which prohibits the knowing and willful payment of
23 “remuneration” to induce or reward patient referrals or the generation of business
24 involving any item or service payable by the Federal health care programs, as well
25 as the federal Stark Law, which prohibits a physician from making referrals for
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1 certain designated health services, including laboratory services, that are covered by
2 the Medicare program, to an entity with which the physician or an immediate family
3 member has a direct or indirect financial relationship.
4

5 3. Throughout the Class Period, Defendants made materially false and
6 misleading statements regarding the Company's business, operations, and
7 compliance policies. Specifically, Defendants made false and/or misleading
8 statements and/or failed to disclose that: (i) Fulgent had been conducting medically
9 unnecessary laboratory testing, engaging in improper billing practices in relation to
10 laboratory testing, and providing or receiving remuneration in violation of the Anti-
11 Kickback Statute and Stark Law; (ii) accordingly, Fulgent was likely to become
12 subject to enhanced legal and regulatory scrutiny; (iii) Fulgent's revenues, to the
13 extent they were derived from the foregoing unlawful conduct, were unsustainable;
14 (iv) the foregoing, once revealed, was likely to subject the Company to significant
15 financial and/or reputational harm; and (v) as a result, the Company's public
16 statements were materially false and misleading at all relevant times.
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21 4. On August 4, 2022, Fulgent released its second quarter 2022 financial
22 results, disclosing, among other items, that the SEC was conducting an investigation
23 into certain of the Company's reports filed with the SEC from 2018 through the first
24 quarter of 2020. The disclosure followed the Company's receipt of a civil
25 investigative demand issued by the U.S. Department of Justice "related to its
26 investigation of allegations of medically unnecessary laboratory testing, improper
27
28

1 billing for laboratory testing, and remuneration received or provided in violation of
2 the Anti-Kickback Statute and the Stark Law.”

3
4 5. On this news, Fulgent’s stock price fell \$11.02 per share, or 17.29%,
5 over the following two trading sessions, to close at \$52.72 per share on August 8,
6 2022.

7
8 6. As a result of Defendants’ wrongful acts and omissions, and the
9 precipitous decline in the market value of the Company’s securities, Plaintiff and
10 other Class members have suffered significant losses and damages.

11
12 **JURISDICTION AND VENUE**

13 7. The claims asserted herein arise under and pursuant to Sections 10(b)
14 and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5
15 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

16
17 8. This Court has jurisdiction over the subject matter of this action
18 pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act.

19
20 9. Venue is proper in this Judicial District pursuant to Section 27 of the
21 Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b). Fulgent is headquartered
22 in this Judicial District, Defendants conduct business in this Judicial District, and a
23 significant portion of Defendants’ activities took place within this Judicial District.

24
25 10. In connection with the acts alleged in this complaint, Defendants,
26 directly or indirectly, used the means and instrumentalities of interstate commerce,
27

1 including, but not limited to, the mails, interstate telephone communications, and the
2 facilities of the national securities markets.

3
4 **PARTIES**

5 11. Plaintiff, as set forth in the attached Certification, acquired Fulgent
6 securities at artificially inflated prices during the Class Period and was damaged
7 upon the revelation of the alleged corrective disclosures.
8

9 12. Defendant Fulgent is a Delaware corporation with principal executive
10 offices located at 4978 Santa Anita Avenue, Temple City, California 91780.
11 Fulgent's common stock trades in an efficient market on the Nasdaq Global Market
12 ("NASDAQ") under the trading symbol "FLGT".
13

14 13. Defendant Ming Hsieh ("Hsieh") has served as Fulgent's Chief
15 Executive Officer at all relevant times.
16

17 14. Defendant Paul Kim ("Kim") has served as Fulgent's Chief Financial
18 Officer at all relevant times.
19

20 15. Defendants Hsieh and Kim are sometimes referred to herein as the
21 "Individual Defendants."
22

23 16. The Individual Defendants possessed the power and authority to control
24 the contents of Fulgent's SEC filings, press releases, and other market
25 communications. The Individual Defendants were provided with copies of Fulgent's
26 SEC filings and press releases alleged herein to be misleading prior to or shortly
27 after their issuance and had the ability and opportunity to prevent their issuance or
28

1 to cause them to be corrected. Because of their positions with Fulgent, and their
2 access to material information available to them but not to the public, the Individual
3 Defendants knew that the adverse facts specified herein had not been disclosed to
4 and were being concealed from the public, and that the positive representations being
5 made were then materially false and misleading. The Individual Defendants are
6 liable for the false statements and omissions pleaded herein.
7
8

9 **SUBSTANTIVE ALLEGATIONS**

10 **Background**

11
12 17. Fulgent, together with its subsidiaries, provides COVID-19, molecular
13 diagnostic, and genetic testing services to physicians and patients in the United
14 States and internationally. As a result, Fulgent must comply with the federal Anti-
15 Kickback Statute, which prohibits the knowing and willful payment of
16 “remuneration” to induce or reward patient referrals or the generation of business
17 involving any item or service payable by the Federal health care programs, as well
18 as the federal Stark Law, which prohibits a physician from making referrals for
19 certain designated health services, including laboratory services, that are covered by
20 the Medicare program, to an entity with which the physician or an immediate family
21 member has a direct or indirect financial relationship.
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25 **Materially False and Misleading Statements Issued During the Class Period**

26
27 18. The Class Period begins on March 22, 2019, when Fulgent filed an
28 Annual Report on Form 10-K with the SEC, reporting the Company’s financial and

1 operating results for the year ended December 31, 2018 (the “2018 10-K”). In
2 providing an overview of the Company, the 2018 10-K stated, in relevant part:
3

4 Fulgent is a growing technology company offering
5 comprehensive genetic testing and providing physicians with clinically
6 actionable diagnostic information they can use to improve the quality
7 of patient care. We have developed a proprietary technology platform
8 that allows us to offer a broad and flexible test menu and continually
9 expand and improve our proprietary genetic reference library, while
10 maintaining accessible pricing, high accuracy and competitive
11 turnaround times. Combining next generation sequencing, or NGS,
12 with our technology platform, we perform full-gene sequencing with
13 deletion/duplication analysis in single-gene tests; pre-established,
14 multi-gene, disease-specific panels; and customized panels that can be
15 tailored to meet specific customer needs. We believe our test menu
16 offers more genes for testing than our competitors in today’s market,
17 which enables us to provide expansive options for test customization
18 and clinically actionable results. After launching our first commercial
19 genetic tests in 2013, we have expanded our test menu to include
20 approximately 18,000 single-gene tests and more than 900 panels that
21 collectively test for approximately 7,600 genetic conditions, including
22 various cancers, cardiovascular diseases, neurological disorders and
23 pediatric conditions. A cornerstone of our business is our ability to
24 provide expansive options and flexibility for all clients’ unique genetic
25 testing needs.
26

27 Genetic testing offers the possibility of early identification of a
28 disease or a genetic predisposition to a disease and enhanced disease
treatment and prognosis. As a result, we believe widespread genetic
testing could enable significant health improvements and healthcare
cost reductions by providing patients and clinicians with more
advanced knowledge and options for personal health management
plans. Due to these and other potential benefits, genetic testing has
experienced significant growth in recent years. If this growth trend
continues, we believe genetic testing will become part of standard
medical care. The knowledge of a person’s unique genetic makeup
could then begin to play a more important role in the practice of
medicine. We believe this growth has been tempered in prior years,
however, because many tests are prohibitively expensive, are produced
through inefficient processes and often do not result in clinically

1 actionable data. Through our technology platform, we have developed
2 an offering that we believe addresses these industry challenges and
3 provides a sustainable competitive advantage, both in today's genetic
4 testing market and as we seek to implement new diagnostic tools in the
5 future.

6 Our technology platform, which integrates sophisticated data
7 comparison and suppression algorithms, adaptive learning software,
8 advanced genetic diagnostics tools and integrated laboratory processes,
9 allows us to offer a test menu with expansive genetic coverage. We
10 believe the comprehensive data output and high detection rates of our
11 tests, both made possible by this expansive genetic coverage, provide
12 physicians with information they can readily incorporate into treatment
13 decisions for their patients, which we refer to as clinical actionability.
14 In addition, our technology platform facilitates our ability to perform
15 customized genetic tests using our expansive library of genes, and we
16 believe this flexibility increases the utility of the genetic data we
17 produce. Further, our technology platform provides us with operating
18 efficiencies that help lower our internal costs, which allows us to offer
19 our tests at accessible price points. As a result, our efforts to build and
20 continually enhance our technology platform allow us to deliver
21 comprehensive, adaptable, clinically actionable and affordable genetic
22 analysis while maintaining a low cost per billable test, enabling us to
23 efficiently meet the needs of our growing base of customers. These
24 features of our offering have resulted in rapid volume growth since our
25 commercial launch, with 22,298 billable tests delivered in 2018, 16,578
26 billable tests delivered in 2017, and an aggregate of over 59,201 billable
27 tests delivered to approximately 980 customers from inception through
28 December 31, 2018.

Low Internal Cost per Billable Test

24 We have developed various proprietary technologies that
25 improve our laboratory efficiency and reduce the costs we incur to
26 perform our tests. This technology platform enables us to perform each
27 test and deliver its results at a lower internal cost than many of our
28 competitors, averaging approximately \$480 per billable test delivered
in 2018. This low cost per billable test allows us to maintain affordable
pricing for our customers, averaging approximately \$958 per billable

1 test delivered in 2018, which we believe encourages repeat ordering
2 from existing customers and attracts new customers. We believe our
3 low cost per billable test could also facilitate the process for
4 establishing coverage and reimbursement from third-party payors at a
level adequate for us to achieve profitability with this payor group.

5 19. Appended to the 2018 10-K as an exhibit was a signed certification
6 pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) by the Individual Defendants,
7 attesting that “[t]he information contained in the [2018 10-K] fairly presents, in all
8 material respects, the financial condition and result of operations of the Company.”
9

10 20. On May 7, 2019, Fulgent issued a press release announcing the
11 Company’s Q1 2019 financial results. The press release stated, in relevant part:
12

13 Ming Hsieh, Chairman and Chief Executive Officer, said, “We had a
14 good start to the year with billable tests growing 63% year-over-year,
15 reaching a new quarterly high. Our business mix continues to diversify,
16 and we have continued to invest in our infrastructure in anticipation of
accelerating test volume in the coming quarters.”

17 Paul Kim, Chief Financial Officer, said, “We are pleased with our
18 growth this quarter, but at the same time we made investments in our
19 operations which impacted our gross and operating margins. Despite
20 these investments, we generated approximately \$1 million in cash flow
21 from operations. Looking at our pipeline of opportunities, we expect
22 to see further growth throughout the year, and I believe we are well
23 positioned to build on our momentum.”

24 21. That same day, Fulgent hosted an earnings call with investors and
25 analysts to discuss the Company’s Q1 2019 results (the “Q1 2019 Earnings Call”).
26 During the scripted portion of the Q1 2019 Earnings Call, Defendant Hsieh stated,
27 in relevant part:
28

1 We had a good start to the year and it demonstrates a solid year-over-
2 year growth in revenue and the test volume. Revenue grew 15% year-
3 over-year to \$5.4 million. We saw strong growth in billable test volume,
4 which increased 63% year-over-year to a new record high of almost
5 7,500. Our ASP was \$713, down 19% compared to the fourth quarter
6 of 2018 due to product mix.

7 ***

8 We have begun to see scale with growth test volume and we expect to
9 continue over the course of the year. We are confident our ability to
10 surpass 10,000 tests in the second quarter as we build on our momentum
11 in the area I have discussed.

12 22. On August 5, 2019, Fulgent issued a press release announcing the
13 Company's Q2 2019 financial results. The press release stated, in relevant part:

14 Ming Hsieh, Chairman and Chief Executive Officer, said, "We had a
15 very strong second quarter and achieved record quarterly results for
16 revenue, billable test volume and cost per test. The momentum we are
17 seeing is due to sustained strength across our business, including
18 traction in the reproductive health and oncology markets, as well as
19 growth in our sequencing as a service business. We also continue to
20 expand our customer reach with partnership agreements, such as our
21 collaboration with the Parkinson's Foundation announced last month.
22 We believe this recent success is a testament to our differentiated
23 technology capabilities that enable us to develop and deliver unique
24 genetic testing solutions to a diverse customer base."

25 Paul Kim, Chief Financial Officer, said, "We exceeded our guidance
26 and expectations in the second quarter and are very pleased with our
27 results. The investments we have made in our business are delivering
28 tangible returns, evidenced by the strong growth in revenue and billable
test volume that we demonstrated in the second quarter. At the same
time, our gross margin improved sequentially and year-over-year as we
are seeing the benefits of scale. We remain optimistic about our growth
potential in the quarters ahead, and as such, we are raising our revenue
outlook for the year."

1 Ming Hsieh, Chairman and Chief Executive Officer, said, “We
2 continued to build on our momentum in the third quarter and once again
3 posted very strong results. Revenue and billable test volume reached
4 new record highs in the third quarter, while cost per test continued to
5 improve. Our strong top line results have been driven by the growing
6 traction with our oncology and reproductive health businesses, as well
7 as our sequencing-as-service offering. Our established strategic
8 investments and partnerships are contributing to our ongoing
9 momentum, and we have been successful in meeting the growing
10 demand from our new commercial genomic customers. We believe our
11 superior test capabilities, extensive and flexible test menu, along with
12 our competitive pricing will continue to drive strong growth across our
13 business.”

14 25. That same day, Fulgent hosted an earnings call with investors and
15 analysts to discuss the Company’s Q3 2019 results (the “Q3 2019 Earnings Call”).
16 During the scripted portion of the Q3 2019 Earnings Call, Defendant Hsieh stated,
17 in relevant part:

18 The third quarter was another very strong quarter for us. We once again
19 achieved a record quarterly results for both test volume and the revenue,
20 while driving ongoing improvements in gross margin and the cost per
21 test. We once again achieved the GAAP profitability and a generally
22 strong cash flow, specifically, the revenue growth 84% year-over-year
23 to a record \$10.3 million.

24 Billable tests increased 272% year-over-year to a new record high of
25 20,697. Our ASP was \$500 essentially flat compared to the second
26 quarter of 2019. While our cost per test continue to improve, further
27 increased our gross margin, excluding stock-based compensation costs
28 per test improved to a record low of \$179 per test.

We are confident that with the cost among the lowest in the industry,
we have flexibility and the capability to drive a wider market. Aside
from this financial advantage, our technology platform provides an
even greater edge from the competitive and market position standpoint.

1 Years of experience in our traditional core areas of pediatric, rare
2 disease has provided the expertise to the inquiry and the interpretation
3 as well as help to establish scientific findings, which a treatment
4 guideline for a certain disease. An example of this is the work we have
5 done with the Parkinson Foundation which is leveraging our data and
6 expertise to develop a more efficient the treatment solutions for the
7 disease.

8 In addition, our software [Indiscernible] from our engineers has not
9 only provided a proprietary approach, but also our ability to develop
10 and to introduce quality test with each -- with a minimal financial
11 investment. This enables us to both introduce the test into the market
12 quickly, where we see a need or opportunity and to maintain to one of
13 the largest libraries of existing tests with no additional overheads.

14 ***

15 Overall, we have the opportunity to have success driving top line
16 growth and expanding our test offerings with legal incremental
17 overhead. We remain disciplined in our approach to spending, and
18 continue to see investments we have made paying off in growth.

19 26. On March 10, 2020, Fulgent issued a press release announcing the
20 Company's Q4 and full year 2019 financial results. The press release stated, in
21 relevant part:

22 Ming Hsieh, Chairman and Chief Executive Officer, said, "We had a
23 strong finish to the year, which was highlighted by revenue growth of
24 more than 50% and billable test volume growth of more than 160%,
25 year over year. We saw continued traction with our core oncology and
26 reproductive health businesses in the quarter, while we continued to
27 expand and diversify our customer base in both the clinical and research
28 markets. As we look ahead, we remain focused on driving growth in
our core test markets utilizing our technology platform while expanding
our reach through partnerships and licensing agreements. We also see
incremental opportunity to grow our international business, where we
are in the early stages of expanding our sales organization. We look
forward to providing updates on these initiatives in the year ahead."

1 similar descriptions of the Company and its billing practices as discussed, *supra*, in
2 ¶ 18.

3
4 29. Appended to the 2019 10-K as an exhibit was a signed certification
5 pursuant to SOX by the Individual Defendants, attesting that “[t]he information
6 contained in the [2019 10-K] fairly presents, in all material respects, the financial
7 condition and result of operations of the Company.”
8

9 30. On May 4, 2020, Fulgent issued a press release announcing the
10 Company’s Q1 2020 financial results. The press release stated, in relevant part:
11

12 Ming Hsieh, Chairman and Chief Executive Officer, said, “We had a
13 very good start to the year, which was impacted by the global
14 proliferation of the novel coronavirus, or COVID-19, that materialized
15 in the first quarter. While volume from our core rare disease, oncology
16 and reproductive health businesses has been challenged in this
17 unprecedented macro environment, particularly in March, we were
18 pleased to deliver strong year over year growth in both revenue and
19 billable test volume in the first quarter.[“]

20 31. That same day, Fulgent hosted an earnings call with investors and
21 analysts to discuss the Company’s Q1 2020 results (the “Q1 2020 Earnings Call”).
22 During the scripted portion of the Q1 2020 Earnings Call, Defendant Hsieh stated,
23 in relevant part:

24 Revenue was in line with our expectations for the first quarter growing
25 44% year-over-year to \$7.8 million. Billable test increased 75% year-
26 over-year to 13,163. Our ASP was a 589 essentially flat with what we
27 saw in Q4. While cost per test increased 18% from Q4.

28 Non-GAAP gross margins in the first quarter was 51% up
approximately 300 basis points from the first quarter last year and down
approximately 8 percentage points sequentially. This sequential decline

1 in gross margin was due to both test mix along with investment and
2 expenses related to rollout of our COVID-19 tests. Adjusted EBITDA
3 loss was \$506,000 in the first quarter.

4 32. On August 4, 2020, Fulgent issued a press release announcing the
5 Company's Q2 2020 financial results. The press release stated, in relevant part:

6 Ming Hsieh, Chairman and Chief Executive Officer, said, "The global
7 COVID-19 pandemic has tested who we are as a company, and now
8 more than ever we have demonstrated that Fulgent is a technology
9 company with a proprietary platform built for massive scale. Our
10 technology is the cornerstone for all facets of our business, including
11 cloud computing, pipeline services, record management, web portal
12 services, clinical workflow, sequencing as a service and automated lab
13 services. Our second quarter results illustrate how we quickly applied
14 our technology to the needs of today, organically developing and
15 launching multiple tests to detect COVID-19 with Emergency Use
16 Authorization from the FDA, including an at-home test offered through
17 Picture Genetics, our patient-initiated product. These offerings have
18 attracted major new customer accounts, resulting in an inflection point
19 in our business and outlook."

20 Paul Kim, Chief Financial Officer, said, "Our second quarter volume
21 increased over 1200% sequentially, and we see the opportunity for
22 continued momentum through the balance of the year. Our traditional
23 genetic testing orders rebounded in June and July and are on track for
24 growth in the second half of 2020. By aggressively applying our
25 technology platform, we democratized and made affordable the needs
26 of COVID-19 testing to the public, resulting in overall average selling
27 price of less than \$100 per test, while shortening our average
28 turnaround time to less than 24 hours from receipt of sample. We
expanded our customer base for the long term by winning large,
strategic governmental and commercial accounts. We will provide a
formal update on our guidance for the remainder of the year during our
investment community conference call to shortly follow the issuance of
this press release."

33. That same day, Fulgent hosted an earnings call with investors and
analysts to discuss the Company's Q2 2020 results (the "Q2 2020 Earnings Call").

1 During the scripted portion of the Q2 2020 Earnings Call, Defendant Hsieh stated,
2 in relevant part:

3
4 Our second quarter reported test volume increased approximately
5 1300% or 13 fold from our first quarter and we anticipate continued
6 accelerated growth for the second half of the year which Paul will go
over in detail on our guidance.

7 On our last call, we commented that, our traditional genetic testing
8 business might be down approximately 25% to 30% in Q2. However,
9 given the incremental business we saw on signing additional strategic
10 customers in the quarter and a record rebound from our existing
11 customers during the month of June, volumes ordered from our core
12 business in Q2 was flat with what we saw in Q1 even with the uncertain
13 regarding lockdowns throughout the various industries, our traditional
14 businesses continue to gain momentum in July and we anticipate
15 healthy growth in the second half of 2020.

16
17 34. On November 9, 2020, Fulgent issued a press release announcing the
18 Company's Q3 2020 financial results. The press release stated, in relevant part:

19 Ming Hsieh, Chairman and Chief Executive Officer, said, "I am very
20 pleased with our outstanding third quarter results, which demonstrate
21 the true scalability of our technology platform for genetic testing. As
22 the COVID-19 pandemic continues to threaten both our health and our
23 way of life, we have been relentless in scaling our testing capabilities
24 to offer fast, accurate and reliable COVID-19 testing solutions for
25 commercial organizations, municipalities, universities and individuals
26 across the country. Our recent momentum is a result of the investments
27 we have made in our business and technology platform over many
28 years. We expect to continue investing in our platform to expand our
capabilities as we look to capture share in the broader genetic testing
market in the future. In addition to our technology investments, we
believe the relationships we have built during this pandemic from both
a customer and reimbursement standpoint, along with the expansion of
our commercial capabilities which includes our at-home platform,
Picture Genetics, will help drive our business in the years ahead."

1 35. That same day, Fulgent hosted an earnings call with investors and
2 analysts to discuss the Company’s Q3 2020 results (the “Q3 2020 Earnings Call”).
3
4 During the scripted portion of the Q3 2020 Earnings Call, Defendant Hsieh stated,
5 in relevant part:

6 With a modest level of investment in the infrastructure and higher
7 comp, we’re able to grow our test volume almost 50 times or 5,000%
8 over that in the third quarter of last year and by more than five-tenths
9 or 500% over that in the second quarter of this year.

10 At the same time, our gross margin improved by 19 percentage points
11 sequentially with the operating expense only roughly doubling on a
12 GAAP basis, which translates into operating income of \$63.5 million
13 and the record adjusted EBITDA of \$67.4 million. This growth and
14 profitability were made possible by the efficiencies we have created
15 across our business from our live observation and our information
16 management and the reporting system to have our own property
17 biochemistry and the reagents.

18 Through our enhanced reimbursement capabilities and our system will
19 have covered a significant amount of the ground and signing a number
20 of substantial agreements, securing large volume of tests in the quarter
21 ahead.

22 36. On March 4, 2021, Fulgent hosted an earnings call with investors and
23 analysts to discuss the Company’s Q4 2020 results (the “Q4 2020 Earnings Call”).
24 During the scripted portion of the Q4 2020 Earnings Call, Defendant Hsieh stated,
25 in relevant part:

26 Our results in the fourth quarter were truly outstanding. Our fourth
27 quarter revenue of \$295 million is almost 3 times the revenue we
28 generated in the third quarter of this year and more than 35 times our
fourth quarter revenue of last year. We did more than 3 million tests in
the quarter and over 4.4 million tests in the year compared to about
60,000 tests in all of 2019.

1 At the same time, we demonstrate incredible leverage and generated
2 more than \$6 per share in non-GAAP income in the fourth quarter and
3 more than \$9 per share in non-GAAP income in the full year and \$105.5
4 million in free cash flow. Paul will cover financial details, but I want to
5 emphasize that this leveraged scale will not have been possible without
6 our fundamental genetic testing technology, our proprietary lab
7 operations and reporting system, our ability to rapidly secure multiple
8 reimbursement agreements and the execution capabilities of our sales
9 and the lab team.

10 37. On March 8, 2021, Fulgent filed an Annual Report on Form 10-K with
11 the SEC, reporting the Company's financial and operating results for the year ended
12 December 31, 2020 (the "2020 10-K"). The 2020 10-K contained substantively
13 similar descriptions of the Company and its billing practices as discussed, *supra*, in
14 ¶ 18.

15 38. Appended to the 2020 10-K as an exhibit was a signed certification
16 pursuant to SOX by the Individual Defendants, attesting that "[t]he information
17 contained in the [2020 10-K] fairly presents, in all material respects, the financial
18 condition and result of operations of the Company."

19 39. On May 6, 2021, Fulgent issued a press release announcing the
20 Company's Q1 2021 financial results. The press release stated, in relevant part:
21

22 Ming Hsieh, Chairman and Chief Executive Officer, said, "We had a
23 very strong start to the year which resulted in record first quarter results.
24 We continued to see strong demand for our RT-PCR based tests for
25 COVID-19, while our NGS test volumes both for COVID and non-
26 COVID testing ramped nicely in the quarter. We were particularly
27 pleased in the first quarter to announce a contract win from the Center
28 for Disease Control ("CDC") for our NGS testing for COVID-19. We
look forward to supporting the CDC in their ongoing study of variants
of the SARS-CoV-2 virus and national surveillance. We are also

1 excited to welcome Dr. Larry Weiss to Fulgent to help expand our
2 presence in molecular diagnostics. We believe that with his expertise in
3 molecular science and pathology, and our scalable technology platform,
4 we can grow into exciting new areas of oncologic testing efficiently.
5 We remain confident in our ability to continue driving momentum in
6 our NGS business as RT-PCR testing begins to scale back with the
7 vaccine rollout.”

8 40. That same day, Fulgent hosted an earnings call with investors and
9 analysts to discuss the Company’s Q1 2021 results (the “Q1 2021 Earnings Call”).
10 During the scripted portion of the Q1 2021 Earnings Call, Defendant Hsieh stated,
11 in relevant part:

12 I will elaborate on these areas of the focus in a moment, but we’ll first
13 touch on the highlights from the first quarter. We had a record quarter
14 start for the year with Q1 revenue totaling \$359 million, more than 46x
15 of the revenue in Q1 last year and the increase of almost 22% compared
16 to the first quarter. We delivered approximately 3.8 million tests in the
17 quarter, and increased roughly 19% compared to first quarter and
18 almost 290x the volume of the Q1 last year.

19 ***

20 We have built a genetic testing business on a strong technology
21 foundation and that is scalable into new areas with minimum overhead
22 and investment, and we believe this positions us extremely well for
23 substantial growth and allow us to become a leader in the very broad
24 genomic diagnostic market.

25 41. On August 9, 2021, Fulgent hosted an earnings call with investors and
26 analysts to discuss the Company’s Q2 2021 results (the “Q2 2021 Earnings Call”).
27 During the scripted portion of the Q2 2021 Earnings Call, Defendant Kim stated, in
28 relevant part, “[t]he revenue in the second quarter totaled \$154 million, an increase
of 790% compared to the second quarter of 2020. Billable tests in the quarter totaled

1 almost 1.6 million growing almost 9 times the volume of Q2 last year. While the
2 majority of this revenue was related to the COVID-19 in our core business, our core
3 revenue which we previously called NGS revenue was up 296% year-over-year and
4 54%.”

6 42. On November 9, 2021, Fulgent hosted an earnings call with investors
7 and analysts to discuss the Company’s Q3 2021 results (the “Q3 2021 Earnings
8 Call”). During the scripted portion of the Q3 2021 Earnings Call, Defendant Hsieh
9 stated, in relevant part, “[t]ake a look at our third quarter results: Revenue total of
10 \$228 million, 124% compared to third quarter of 2020 and up of 48% sequentially.
11 We delivered approximately 2.2 million tests in the quarter, more than doubled the
12 volume of our third quarter last year.”

13 43. On February 23, 2022, Fulgent hosted an earnings call with investors
14 and analysts to discuss the Company’s Q4 2021 results (the “Q4 2021 Earnings
15 Call”). During the scripted portion of the Q4 2021 Earnings Call, Defendant Hsieh
16 stated, in relevant part:

17 Take a look at our fourth quarter results, which exceeded our guidance
18 in both core and COVID revenue. Revenue totaled at \$252 million,
19 compared \$295 million in the fourth quarter last year, and up 10%
20 compared to third quarter in 2021. We delivered approximately 2.5
21 million tests in the quarter, up 13% compared third quarter 2021 and
22 through down – and though down from 3.2 million in the fourth quarter
23 last year.

24 ***

1 Our strategy to expand and grow our core business is playing off nicely
2 as the access with our organizations all performed well. We believe
3 there is a meaningful opportunity to expand into different area in
4 genomic testing and to build a partnership that establish our as go-to
5 one-stop-shop for genomic testing needs for the future strategy --
6 strategic move.

7 44. On February 28, 2022, Fulgent filed an Annual Report on Form 10-K
8 with the SEC, reporting the Company's financial and operating results for the year
9 ended December 31, 2021 (the "2021 10-K"). The 2021 10-K contained
10 substantively similar descriptions of the Company and its billing practices as
11 discussed, *supra*, in ¶ 18.

12 45. Appended to the 2021 10-K as an exhibit was a signed certification
13 pursuant to SOX by the Individual Defendants, attesting that "[t]he information
14 contained in the [2021 10-K] fairly presents, in all material respects, the financial
15 condition and result of operations of the Company."

16 46. On May 3, 2022, Fulgent hosted an earnings call with investors and
17 analysts to discuss the Company's Q1 2022 results (the "Q1 2022 Earnings Call").
18 During the scripted portion of the Q1 2022 Earnings Call, Defendant Hsieh stated,
19 in relevant part:
20
21

22 Taking a look at our first quarter results, which again exceeded our
23 guidance for both core and COVID revenue. Revenue totaled at \$320
24 million, down 11% versus \$359 million in the first quarter last year and
25 up 27% compared to fourth quarter of 2021. We've delivered
26 approximately 3.2 million tests in the quarter, up about 31% compared
27 to the fourth quarter of 2021. Though down from 3.8 million in the
28 fourth quarter of last year.

1 ***

2 We look forward to scaling on capabilities that cause cancer testing to
3 our west coast customer base. Dr. Weiss, who has been always seen the
4 integration of CSI, into Fulgent, we are also oversee the operation of
5 this lab. These announcements, notable steps forward in our strategy to
6 drive long-term sustainable growth in our core genetic testing business.
7 A key element of success of this strategy is a team of experienced
8 leaders, within Fulgent who are executing on this vision every day, we
9 helped build a relatively lean, but extremely knowledgeable group of
10 executives, and [indiscernible], who have become instrumental to our
11 success for execution.

12 47. The statements referenced in ¶¶ 18-46 were materially false and
13 misleading because Defendants made false and/or misleading statements, as well as
14 failed to disclose material adverse facts about the Company's business, operations,
15 and compliance policies. Specifically, Defendants made false and/or misleading
16 statements and/or failed to disclose that: (i) Fulgent had been conducting medically
17 unnecessary laboratory testing, engaging in improper billing practices in relation to
18 laboratory testing, and providing or receiving remuneration in violation of the Anti-
19 Kickback Statute and Stark Law; (ii) accordingly, Fulgent was likely to become
20 subject to enhanced legal and regulatory scrutiny; (iii) Fulgent's revenues, to the
21 extent they were derived from the foregoing unlawful conduct, were unsustainable;
22 (iv) the foregoing, once revealed, was likely to subject the Company to significant
23 financial and/or reputational harm; and (v) as a result, the Company's public
24 statements were materially false and misleading at all relevant times.
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1 **The Truth Emerges**

2 48. On August 4, 2022, post-market, Fulgent released its second quarter
3 2022 financial results, disclosing, among other items, that the SEC is conducting an
4 investigation into certain reports for 2018 through the first quarter of 2020.
5 Specifically, the Company advised, in relevant part:
6

7
8 The Company has received a Civil Investigative Demand, or
9 CID, issued by the U.S. Department of Justice pursuant to the False
10 Claims Act related to its investigation of allegations of medically
11 unnecessary laboratory testing, improper billing for laboratory testing,
12 and remuneration received or provided in violation of the Anti-
13 Kickback Statute and the Stark Law. This CID requests information and
14 records relating to certain of the Company’s customers named in the
15 CID, which represent a small portion of the Company’s revenues. The
16 Company is fully cooperating with the U.S. Department of Justice to
17 promptly respond to the requests for information in this CID, and does
18 not presently expect this CID or resulting investigation to have a
19 material adverse impact. However, the Company cannot predict when
20 the investigation will be resolved, the outcome of the investigation or
21 its potential impact, which may ultimately be greater than the Company
22 currently expects.

23 49. On this news, Fulgent’s stock price fell \$11.02 per share, or 17.29%,
24 over the following two trading sessions, to close at \$52.72 per share on August 8,
25 2022.

26 50. As a result of Defendants’ wrongful acts and omissions, and the
27 precipitous decline in the market value of the Company’s securities, Plaintiff and
28 other Class members have suffered significant losses and damages.

1 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

2 51. Plaintiff brings this action as a class action pursuant to Federal Rule of
3 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who
4 purchased or otherwise acquired Fulgent securities during the Class Period (the
5 “Class”); and were damaged upon the revelation of the alleged corrective
6 disclosures. Excluded from the Class are Defendants herein, the officers and
7 directors of the Company, at all relevant times, members of their immediate families
8 and their legal representatives, heirs, successors or assigns and any entity in which
9 Defendants have or had a controlling interest.
10
11
12

13 52. The members of the Class are so numerous that joinder of all members
14 is impracticable. Throughout the Class Period, Fulgent securities were actively
15 traded on the NASDAQ exchange. While the exact number of Class members is
16 unknown to Plaintiff at this time and can be ascertained only through appropriate
17 discovery, Plaintiff believes that there are hundreds or thousands of members in the
18 proposed Class. Record owners and other members of the Class may be identified
19 from records maintained by Fulgent or its transfer agent and may be notified of the
20 pendency of this action by mail, using the form of notice similar to that customarily
21 used in securities class actions.
22
23
24

25 53. Plaintiff’s claims are typical of the claims of the members of the Class
26 as all members of the Class are similarly affected by Defendants’ wrongful conduct
27 in violation of federal law that is complained of herein.
28

1 54. Plaintiff will fairly and adequately protect the interests of the members
2 of the Class and has retained counsel competent and experienced in class and
3 securities litigation. Plaintiff has no interests antagonistic to or in conflict with those
4 of the Class.
5

6 55. Common questions of law and fact exist as to all members of the Class
7 and predominate over any questions solely affecting individual members of the
8 Class. Among the questions of law and fact common to the Class are:
9

- 10 • whether the federal securities laws were violated by Defendants' acts
11 as alleged herein;
- 12 • whether statements made by Defendants to the investing public
13 during the Class Period misrepresented material facts about the
14 business, operations and management of Fulgent;
- 15 • whether the Individual Defendants caused Fulgent to issue false and
16 misleading financial statements during the Class Period;
- 17 • whether Defendants acted knowingly or recklessly in issuing false
18 and misleading financial statements;
- 19 • whether the prices of Fulgent securities during the Class Period were
20 artificially inflated because of the Defendants' conduct complained of
21 herein; and
- 22 • whether the members of the Class have sustained damages and, if so,
23 what is the proper measure of damages.

24 56. A class action is superior to all other available methods for the fair and
25 efficient adjudication of this controversy since joinder of all members is
26 impracticable. Furthermore, as the damages suffered by individual Class members
27
28

1 may be relatively small, the expense and burden of individual litigation make it
2 impossible for members of the Class to individually redress the wrongs done to them.

3
4 There will be no difficulty in the management of this action as a class action.

5 57. Plaintiff will rely, in part, upon the presumption of reliance established
6 by the fraud-on-the-market doctrine in that:

- 7 • Defendants made public misrepresentations or failed to disclose
8 material facts during the Class Period;
- 9 • the omissions and misrepresentations were material;
- 10 • Fulgent securities are traded in an efficient market;
- 11 • the Company's shares were liquid and traded with moderate to heavy
12 volume during the Class Period;
- 13 • the Company traded on the NASDAQ exchange and was covered by
14 multiple analysts;
- 15 • the misrepresentations and omissions alleged would tend to induce a
16 reasonable investor to misjudge the value of the Company's
17 securities; and
- 18 • Plaintiff and members of the Class purchased, acquired and/or sold
19 Fulgent securities between the time the Defendants failed to disclose
20 or misrepresented material facts and the time the true facts were
21 disclosed, without knowledge of the omitted or misrepresented facts.
22

23 58. Based upon the foregoing, Plaintiff and the members of the Class are
24 entitled to a presumption of reliance upon the integrity of the market.

25 59. Alternatively, Plaintiff and the members of the Class are entitled to the
26 presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens*
27

1 *of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as
2 Defendants omitted material information in their Class Period statements in violation
3
4 of a duty to disclose such information, as detailed above.

5 **COUNT I**

6 **(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated**
7 **Thereunder Against All Defendants**

8 60. Plaintiff repeats and re-alleges each and every allegation contained
9
10 above as if fully set forth herein.

11 61. This Count is asserted against Defendants and is based upon Section
12
13 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated
14 thereunder by the SEC.

15 62. During the Class Period, Defendants engaged in a plan, scheme,
16
17 conspiracy and course of conduct, pursuant to which they knowingly or recklessly
18 engaged in acts, transactions, practices and courses of business which operated as a
19 fraud and deceit upon Plaintiff and the other members of the Class; made various
20 untrue statements of material facts and omitted to state material facts necessary in
21
22 order to make the statements made, in light of the circumstances under which they
23 were made, not misleading; and employed devices, schemes and artifices to defraud
24
25 in connection with the purchase and sale of securities. Such scheme was intended
26 to, and, throughout the Class Period, did: (i) deceive the investing public, including
27 Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and
28

1 maintain the market price of Fulgent securities; and (iii) cause Plaintiff and other
2 members of the Class to purchase or otherwise acquire Fulgent securities and options
3 at artificially inflated prices. In furtherance of this unlawful scheme, plan and course
4 of conduct, Defendants, and each of them, took the actions set forth herein.
5

6 63. Pursuant to the above plan, scheme, conspiracy and course of conduct,
7 each of the Defendants participated directly or indirectly in the preparation and/or
8 issuance of the quarterly and annual reports, SEC filings, press releases and other
9 statements and documents described above, including statements made to securities
10 analysts and the media that were designed to influence the market for Fulgent
11 securities. Such reports, filings, releases and statements were materially false and
12 misleading in that they failed to disclose material adverse information and
13 misrepresented the truth about Fulgent's finances and business prospects.
14
15
16

17 64. By virtue of their positions at Fulgent, Defendants had actual
18 knowledge of the materially false and misleading statements and material omissions
19 alleged herein and intended thereby to deceive Plaintiff and the other members of
20 the Class, or, in the alternative, Defendants acted with reckless disregard for the truth
21 in that they failed or refused to ascertain and disclose such facts as would reveal the
22 materially false and misleading nature of the statements made, although such facts
23 were readily available to Defendants. Said acts and omissions of Defendants were
24 committed willfully or with reckless disregard for the truth. In addition, each
25
26
27
28

1 Defendant knew or recklessly disregarded that material facts were being
2 misrepresented or omitted as described above.

3
4 65. Information showing that Defendants acted knowingly or with reckless
5 disregard for the truth is peculiarly within Defendants' knowledge and control. As
6 the senior managers and/or directors of Fulgent, the Individual Defendants had
7 knowledge of the details of Fulgent's internal affairs.
8

9 66. The Individual Defendants are liable both directly and indirectly for the
10 wrongs complained of herein. Because of their positions of control and authority,
11 the Individual Defendants were able to and did, directly or indirectly, control the
12 content of the statements of Fulgent. As officers and/or directors of a publicly-held
13 company, the Individual Defendants had a duty to disseminate timely, accurate, and
14 truthful information with respect to Fulgent's businesses, operations, future financial
15 condition and future prospects. As a result of the dissemination of the
16 aforementioned false and misleading reports, releases and public statements, the
17 market price of Fulgent securities was artificially inflated throughout the Class
18 Period. In ignorance of the adverse facts concerning Fulgent's business and
19 financial condition which were concealed by Defendants, Plaintiff and the other
20 members of the Class purchased or otherwise acquired Fulgent securities at
21 artificially inflated prices and relied upon the price of the securities, the integrity of
22 the market for the securities and/or upon statements disseminated by Defendants,
23 and were damaged thereby.
24
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1 67. During the Class Period, Fulgent securities were traded on an active and
2 efficient market. Plaintiff and the other members of the Class, relying on the
3 materially false and misleading statements described herein, which the Defendants
4 made, issued or caused to be disseminated, or relying upon the integrity of the
5 market, purchased or otherwise acquired shares of Fulgent securities at prices
6 artificially inflated by Defendants' wrongful conduct. Had Plaintiff and the other
7 members of the Class known the truth, they would not have purchased or otherwise
8 acquired said securities, or would not have purchased or otherwise acquired them at
9 the inflated prices that were paid. At the time of the purchases and/or acquisitions
10 by Plaintiff and the Class, the true value of Fulgent securities was substantially lower
11 than the prices paid by Plaintiff and the other members of the Class. The market
12 price of Fulgent securities declined sharply upon public disclosure of the facts
13 alleged herein to the injury of Plaintiff and Class members.

14
15
16
17
18 68. By reason of the conduct alleged herein, Defendants knowingly or
19 recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act
20 and Rule 10b-5 promulgated thereunder.

21
22 69. As a direct and proximate result of Defendants' wrongful conduct,
23 Plaintiff and the other members of the Class suffered damages in connection with
24 their respective purchases, acquisitions and sales of the Company's securities during
25 the Class Period, upon the disclosure that the Company had been disseminating
26 misrepresented financial statements to the investing public.
27
28

1 **COUNT II**

2 **(Violations of Section 20(a) of the Exchange Act Against the Individual**
3 **Defendants)**

4 70. Plaintiff repeats and re-alleges each and every allegation contained in
5 the foregoing paragraphs as if fully set forth herein.
6

7 71. During the Class Period, the Individual Defendants participated in the
8 operation and management of Fulgent, and conducted and participated, directly and
9 indirectly, in the conduct of Fulgent's business affairs. Because of their senior
10 positions, they knew the adverse non-public information about Fulgent's
11 misstatement of income and expenses and false financial statements.
12

13 72. As officers and/or directors of a publicly owned company, the
14 Individual Defendants had a duty to disseminate accurate and truthful information
15 with respect to Fulgent's financial condition and results of operations, and to correct
16 promptly any public statements issued by Fulgent which had become materially false
17 or misleading.
18

19 73. Because of their positions of control and authority as senior officers,
20 the Individual Defendants were able to, and did, control the contents of the various
21 reports, press releases and public filings which Fulgent disseminated in the
22 marketplace during the Class Period concerning Fulgent's results of operations.
23 Throughout the Class Period, the Individual Defendants exercised their power and
24 authority to cause Fulgent to engage in the wrongful acts complained of herein. The
25
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1 Individual Defendants, therefore, were “controlling persons” of Fulgent within the
2 meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in
3 the unlawful conduct alleged which artificially inflated the market price of Fulgent
4 securities.
5

6 74. Each of the Individual Defendants, therefore, acted as a controlling
7 person of Fulgent. By reason of their senior management positions and/or being
8 directors of Fulgent, each of the Individual Defendants had the power to direct the
9 actions of, and exercised the same to cause, Fulgent to engage in the unlawful acts
10 and conduct complained of herein. Each of the Individual Defendants exercised
11 control over the general operations of Fulgent and possessed the power to control
12 the specific activities which comprise the primary violations about which Plaintiff
13 and the other members of the Class complain.
14
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16

17 75. By reason of the above conduct, the Individual Defendants are liable
18 pursuant to Section 20(a) of the Exchange Act for the violations committed by
19 Fulgent.
20

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff demands judgment against Defendants as follows:
23

24 A. Determining that the instant action may be maintained as a class action
25 under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the
26 Class representative;
27
28

1 B. Requiring Defendants to pay damages sustained by Plaintiff and the
2 Class by reason of the acts and transactions alleged herein;

3
4 C. Awarding Plaintiff and the other members of the Class prejudgment and
5 post-judgment interest, as well as their reasonable attorneys' fees, expert fees and
6 other costs; and

7
8 D. Awarding such other and further relief as this Court may deem just and
9 proper.

10 **DEMAND FOR TRIAL BY JURY**

11
12 Plaintiff hereby demands a trial by jury.