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 10 PEOPLE OF THE STATE OF CALIFORNIA

[NO FEE - Govt. Code § 6103]

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 12 **COUNTY OF LOS ANGELES**

13 THE PEOPLE OF THE STATE OF  
 14 CALIFORNIA,

15 Plaintiff,

16 v.

17 YIKON GENOMICS, INC., a corporation,  
 18 d/b/a YIKON GLOBAL; BRANDON  
 19 RICHARD HENSINGER, an individual; and  
 20 DOES 1 through 25, inclusive,

21 Defendants.

Case No. 20STCV13169

**COMPLAINT FOR PERMANENT  
 INJUNCTION, CIVIL PENALTIES,  
 RESTITUTION, AND OTHER  
 EQUITABLE RELIEF**

[VERIFIED ANSWER REQUIRED  
 PURSUANT TO CODE OF CIVIL  
 PROCEDURE SECTION 446]

1 Plaintiff, the People of the State of California, appearing through their attorney, Michael  
2 N. Feuer, City Attorney for the City of Los Angeles, alleges the following on information and  
3 belief:

#### 4 INTRODUCTION

5 1. This civil law enforcement action involves test kits for the novel coronavirus SAR-  
6 COVID-2 (“COVID-19”) falsely advertised as “at-home” testing kits. There currently are no  
7 such Food and Drug Administration (“FDA”)-approved “at-home” test kits.

8 2. On March 4, 2020, the City of Los Angeles, the County of Los Angeles, and the  
9 State of California all declared a public health emergency related to COVID-19, to help protect  
10 public health from this serious pandemic. The COVID-19 virus can cause symptoms including  
11 high fever, sharp cough, and shortness of breath or breathing difficulty. In some cases, the virus  
12 quickly progresses to pneumonia, Acute Respiratory Distress Syndrome (ARDS), kidney  
13 failure, and other serious life-threatening complications. On March 11, 2020, the World Health  
14 Organization recognized the spread of COVID-19 as a global pandemic.

15 3. To date, the COVID-19 pandemic has been particularly dangerous—even deadly—  
16 for the elderly and those with other pre-existing conditions, although all age groups have been  
17 impacted.

18 4. The threat from COVID-19 is growing exponentially throughout the world,  
19 including in Los Angeles and other areas of California.<sup>1</sup>

20 5. The contagious transmission of COVID-19 is matched only by the infectious spread  
21 of confusion, misinformation, and consumer scams and frauds regarding this novel coronavirus.

22 6. Whenever consumers are motivated in part by fears, they are particularly vulnerable  
23 to fraudsters, scammers, and “snake oil” hucksters and charlatans who prey on those fears to  
24 persuade the consumers to seek “cures,” “treatments,” and other protections, such as tests.

25 \_\_\_\_\_  
26 <sup>1</sup> Sadly, these numbers change hourly. But to date, over 900,000 are sick worldwide, and  
27 44,000 have died. In the United States, which has emerged as the global epicenter of the  
28 pandemic, there are over 190,000 confirmed infections, and 4,000 have died. In California,  
there are over 8,700 cases, and 175 have died, including over 3,000 cases in Los Angeles  
County, with 54 deaths.

1           7. Among the chief public health protections available in the face of this pandemic is  
2 widespread testing. Countries such as South Korea and Germany have led the world in per  
3 capita testing rates and have had the most relative success in blunting the exponential growth, or  
4 “flattening the curve,” of COVID-19 cases in their countries.

5           8. Unfortunately, as this public health emergency has unfolded in the United States  
6 and California, COVID-19 testing has not been widely available, and due to the shortages, has  
7 been tightly restricted and rationed by public health authorities.

8           9. This lack of COVID-19 testing has had a devastating impact on public health, and a  
9 devastating impact on the nation’s economy, as widespread “stay at home” orders are put in  
10 place in cities and states (including Los Angeles and California), because public health  
11 authorities lack precise, testing-derived data on the scope of the spread of COVID-19.

12           10. In addition to the public health benefit of widespread testing, consumers also have  
13 important reasons to seek testing: consumers may have had a contact with someone diagnosed  
14 with COVID-19; consumers may have a symptom that could be consistent with COVID-19; or  
15 consumers may wish to put their minds at ease (or know to seek treatment). Consumers might  
16 also wish to confirm that they do not have COVID-19 in order to protect more vulnerable  
17 members of their families.

18           11. The FDA has announced guidance to help rapidly increase the type and variety of  
19 testing available in this pandemic health emergency through emergency use authorizations and  
20 other policies.<sup>2</sup>

21           12. But to date, the FDA has not approved any COVID-19 tests for at-home testing, and  
22 in fact has warned consumers about the dangers of at-home testing.<sup>3</sup>

23           13. Nevertheless, the marketplace has seen a rise of companies making false claims to  
24

25 <sup>2</sup> See, e.g., [https://www.fda.gov/regulatory-information/search-fda-guidance-documents/policy-](https://www.fda.gov/regulatory-information/search-fda-guidance-documents/policy-diagnostic-tests-coronavirus-disease-2019-during-public-health-emergency)  
26 [diagnostic-tests-coronavirus-disease-2019-during-public-health-emergency](https://www.fda.gov/regulatory-information/search-fda-guidance-documents/policy-diagnostic-tests-coronavirus-disease-2019-during-public-health-emergency) (accessed April 1,  
2020).

27 <sup>3</sup> See, e.g., [https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-](https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-alerts-consumers-about-unauthorized-fraudulent-covid-19-test-kits)  
28 [fda-alerts-consumers-about-unauthorized-fraudulent-covid-19-test-kits](https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-alerts-consumers-about-unauthorized-fraudulent-covid-19-test-kits) (accessed April 1, 2020).

1 have COVID-19 test kits. “At-home” testing kits are particularly enticing to consumers in Los  
2 Angeles (and many other areas of the United States), who are under various “stay-at-home” or  
3 “safer-at-home” orders and guidance from the governor, the mayor, the County, and the federal  
4 Center for Disease Control (CDC).

5 14. Here, the Defendants have widely marketed “at-home” test kits on the internet and  
6 across social media platforms.

7 15. In this public health emergency, consumers require—and under California law are  
8 entitled to—accurate, reliable, and truthful information about COVID-19, including its testing,  
9 treatments, mitigations, and cures. The health, and even the lives, of California consumers  
10 depend on it.

### 11 **PARTIES**

12 16. Plaintiff, the People of the State of California (the “People”), is the sovereign power  
13 of the State of California (Gov. Code § 100), authorized to enforce Business and Professions  
14 Code section 17200 et seq. (“Unfair Competition Law” or “UCL”) and Business and Professions  
15 Code section 17500 et seq. (“False Advertising Law” or “FAL”) in civil law enforcement  
16 actions. The People have an interest in ensuring that the individuals and entities doing business  
17 in this state comply with all applicable laws. The People act here by and through Michael N.  
18 Feuer, Los Angeles City Attorney, under the authority granted to them by Business and  
19 Professions Code sections 17204, 17206, 17535, and 17536.

20 17. Defendant Yikon Genomics, Inc. (“Yikon”), is a California corporation,  
21 headquartered and with its principal place of business in Foster City, California. Yikon  
22 occasionally does business as Yikon Global. At all relevant times, Yikon has transacted  
23 business in California, including Los Angeles City and County. Yikon purports to be a genetic  
24 testing and in vitro fertilization testing company largely focused on sales to medical institutions  
25 in China, but has also marketed “at home” COVID-19 tests.

26 18. Defendant Brandon Richard Hensinger (“Hensinger”) is an individual and a resident  
27 of Allentown, Pennsylvania. At all relevant times, Hensinger has transacted business in  
28 California, including in Los Angeles City and County. Hensinger, is and at all relevant times

1 was, the CEO and/or Global VP of Yikon.

2 19. Defendants sued herein as Does 1 through 25, inclusive, are presently unknown to  
3 the People, who therefore sue these unknown Defendants by such fictitious names. When the  
4 true names and capacities of any unknown Defendants have been ascertained, the People will ask  
5 leave of the Court to amend this Complaint and to insert in lieu of such fictitious names the true  
6 names and capacities of any fictitiously named Defendants. The People are informed and  
7 believe that Does 1 through 25 participated in, and are responsible for, the wrongful conduct  
8 alleged in this Complaint.

9 20. Each Defendant is a "person" within the meaning of Business and Professions Code  
10 sections 17506 and 17201.

11 21. Whenever this Complaint refers to "Defendants," it includes any and all Defendants  
12 named in paragraphs 18 through 20 of this Complaint.

13 22. At all relevant times, some or all Defendants acted as the agent of the others, and all  
14 Defendants acted within the scope of their agency if acting as an agent of another.

15 23. At all relevant times, Defendants together comprised an "organization of persons"  
16 within the meaning of Business and Professions Code section 17201, in that they associated  
17 together for the common purpose of engaging in a course of unlawful, unfair, and fraudulent  
18 business acts and practices as alleged herein.

19 24. At all relevant times, each Defendant acted individually and jointly with every other  
20 Defendant in committing the acts alleged to have been committed by "Defendants" in this  
21 Complaint.

22 25. At all relevant times, each Defendant acted: (a) as a principal; (b) under express or  
23 implied agency; and/or (c) with actual or ostensible authority to perform the acts alleged in this  
24 Complaint on behalf of every other Defendant.

25 26. At all relevant times, each Defendant knew or realized, or should have known or  
26 realized, that the other Defendants were engaging in or planned to engage in the violations of law  
27 alleged in this Complaint. Knowing or realizing that the other Defendants were engaging in such  
28 unlawful conduct, each Defendant nevertheless facilitated the commission of those unlawful

1 acts. Each Defendant intended to and did encourage, facilitate, or assist in the commission of the  
2 unlawful acts, and thereby aided and abetted the other Defendants in the unlawful conduct.

3 27. Defendants have engaged in a conspiracy, common enterprise, and common course  
4 of conduct, the purpose of which was and is to engage in the violations of law alleged in this  
5 Complaint. The conspiracy, common enterprise, and common course of conduct continue to the  
6 present.

### 7 **JURISDICTION AND VENUE**

8 28. This Court has subject matter jurisdiction over this matter pursuant to Business and  
9 Professions Code sections 17203, 17204, 17206, 17500, 17508, 17535, and 17536.

10 29. This Court has personal jurisdiction over each of the Defendants pursuant to  
11 California Constitution, Article VI, section 10, and California Code of Civil Procedure section  
12 410.10 in that each Defendant that is a corporation is incorporated in California and/or does  
13 substantial business in California; the individual Defendant is an authorized agent of Yikon in  
14 California; all of the Defendants have purposely availed themselves of the benefits of doing  
15 business in this state; and Defendants' violations of law alleged herein occurred, in whole or in  
16 part, in this state.

17 30. The violations of law alleged in this Complaint occurred in Los Angeles City and  
18 County and throughout the State of California. Venue for this matter properly lies within Los  
19 Angeles County because the violations of law alleged in this Complaint occurred, in whole or in  
20 part, in Los Angeles County.

### 21 **STATUTORY BACKGROUND**

#### 22 **I. THE UNFAIR COMPETITION LAW**

23 31. Business and Professions Code ("B&P Code"), section 17200, ("Unfair Competition  
24 Law" or "UCL") provides that "unfair competition shall mean and include unlawful, unfair or  
25 fraudulent business practice."

26 32. Business and Professions Code, section 17203 provides that "(a)ny person  
27 performing or proposing to perform an act of unfair competition within this state may be  
28 enjoined in any court of competent jurisdiction." Section 17203 also permits recovery of any

1 “interest in money or property, real or personal” acquired by a violation of the Unfair  
2 Competition Law.

3 33. Business and Professions Code, section 17206, subdivision (a), provides that any  
4 person violating section 17200 “shall be liable for a civil penalty not to exceed two thousand five  
5 hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil  
6 action brought in the name of the people of the State of California . . . by any city attorney of a  
7 city having a population in excess of 750,000.”

8 34. Under Business and Professions Code, section 17205, these remedies and penalties  
9 are “cumulative to each other and to the remedies or penalties available under all other laws of  
10 this state.”

## 11 **II. THE FALSE ADVERTISING LAW**

12 35. Business and Professions Code, section 17500 (“False Advertising Law” or “FAL”)  
13 provides that it is unlawful for any person “with the intent directly or indirectly to dispose of real  
14 or personal property . . . to make or disseminate or cause to be made . . . any statement,  
15 concerning that real or personal property . . . which is untrue or misleading, and which is known,  
16 or which by the exercise of reasonable care should be known, to be untrue or misleading.”

17 36. Business and Professions Code, section 17535 authorizes “any city attorney” to seek  
18 an injunction to prevent such untrue or misleading statements, and to provide restitution for  
19 victims of such statements.

20 37. Business and Professions Code, section 17536 provides that any person violating  
21 section 17500 “shall be liable for a civil penalty not to exceed two thousand five hundred dollars  
22 (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the  
23 name of the people of the State of California . . . by any . . . city attorney.” These civil penalties  
24 are cumulative to those obtained under Section 17200.

## 25 **III. THE SHERMAN FOOD AND DRUG ACT**

26 38. Health and Safety Code (“H&S Code”), section 109875 et seq. (“Sherman Food,  
27 Drug, and Cosmetic Law” or “Sherman Law”) regulates the manufacture and sale of medical  
28 devices in California (including incorporation of relevant federal standards.)

1 39. Health and Safety Code, section 109920 defines “device” as “any instrument,  
2 apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related  
3 article, including any component, part, or accessory, that is . . . (b) Intended for use in the  
4 diagnosis of disease or other condition, or in the cure, mitigation, treatment, or prevention of  
5 disease in humans or any other animal.”

6 40. Health and Safety Code, section 109948.1 defines “home medical device,” in relevant  
7 part, as “a device intended for use in a home care setting including, but not limited to . . . (4)  
8 Respiratory disease management devices . . . (11) Disposable medical supplies [and] (12) In vitro  
9 diagnostic tests.”<sup>4</sup> (Health & Saf. Code, § 109948.1, subd. (b).)

10 41. It is unlawful to sell a home medical device in California that is misbranded (Health  
11 & Saf. Code, § 111330), and devices can only be sold if they comply with federal regulations  
12 (Health & Saf. Code, § 111550).

13 **THE FDA HAS NOT AUTHORIZED ANY AT-HOME TEST KITS**

14 42. The FDA is responsible for validating and authorizing drugs and medical  
15 devices, such as drug test kits.

16 43. As a result of the COVID-19 pandemic, the FDA has issued interim guidelines to  
17 accelerate the availability of COVID-19 testing (“Interim Guidelines”), while still retaining  
18 standards for reliability and validity of such devices.<sup>5</sup>

19 44. The Interim Guidelines emphasize the importance of FDA validation of all tests  
20 because “[i]n the context of a public health emergency involving pandemic infectious disease, it  
21 is critically important that tests are validated as false results can have broad public health impact  
22 beyond that to the individual patient.”<sup>6</sup>

23 45. The Interim Guidelines provide guidance in four different areas:  
24

25 <sup>4</sup> An “in vitro” test is test that takes place in a test tube, culture dish, or elsewhere outside a living  
26 organism.

27 <sup>5</sup> <https://www.fda.gov/media/135659/download> (accessed April 1, 2020).

28 <sup>6</sup> *Id.* at p. 3



- 1 A. Part A is directed to clinical labs developing tests and the process for received  
2 Emergency Use Authorization;
- 3 B. Part B is directed to States allowing them to set their own validation standards for  
4 testing;
- 5 C. Part C provides guidance to commercial manufacturers of diagnostic tests that are  
6 provided to laboratories or health care providers; and
- 7 D. Part D provides guidance to commercial manufacturers of diagnostic tests relying  
8 solely on blood;<sup>7</sup>

9 46. Importantly, none of the Interim Guidelines apply to at-home test kits. Parts C  
10 and D, which are directed to commercial manufacturers of Corona test kits, specifically state  
11 that “this policy does not apply to at home testing.”<sup>8</sup>

12 47. The FDA has updated its website with a “Frequently Asked Questions” page,  
13 where, in response to the question of, “[a]re there any tests that I can purchase to test myself at  
14 home for COVID-19?”, states: “[a]t this time, the FDA **has not authorized any test** that is  
15 available to purchase for testing yourself at home for COVID-19. The FDA sees the public  
16 health value in expanding the availability of COVID-19 testing through safe and accurate tests  
17 that may include home collection, and we are actively working with test developers in this  
18 space”<sup>9</sup>

19 **DEFENDANTS’ UNLAWFUL BUSINESS PRACTICES**

20 48. Defendant Yikon, founded in 2012 in Jiangsu Province, China, represents that it  
21 specializes in developing and providing genetic analytical products and services for in vitro  
22 diagnosis (IVD).<sup>10</sup> Yikon was incorporated in California in 2013.

23  
24 <sup>7</sup> *Id.*

25 <sup>8</sup> *Id.*

26 <sup>9</sup> <https://www.fda.gov/medical-devices/emergency-situations-medical-devices/faqs-diagnostic-testing-sars-cov-2> (emphasis added) (accessed April 1, 2020).

27 <sup>10</sup> See <http://old.yikongenomics.com/en/index.php/History/> (accessed April 1, 2020).

1           49. Defendant Hensinger has been the Global VP of Sales of defendant Yikon since  
2 September 2017.

3 **I. DEFENDANTS' WEBSITE**

4           50. Defendants registered the domain "thecoronavirustestkit.com" ("Corona Kit  
5 Website") on March 11, 2020.

6           51. On the Corona Kit Website, Defendants advertised a SARS-COV-2 IgG/IgM At-  
7 Home Screening Kit ("Yikon At-Home Test Kit"). Selling the kits for \$39.00, as of March 28,  
8 2020, Defendants claimed that:

- 9                   • "The screening test uses a simple finger stick procedure to  
10                   test the presence of the aforementioned antibodies in the  
11                   blood stream, making it possible to detect current or recent  
12                   viral infections of COVID-19. The kit is available for  
13                   individual purchase or for bulk orders.
- 14                   • With a sensitivity of 95.04% and a specificity of 100%, this  
15                   Kit can be used to confidently screen for the antibodies.  
16                   The validation results indicate that the test kits can  
17                   accurately assist with the diagnosis of new coronavirus  
18                   infections and are not affected by hepatitis B virus (HBV),  
19                   influenza A (Flu A), influenza B virus (Flu B), and  
20                   respiratory syncytial virus (RSV).
- 21                   • CE Marked and Fully Validated, this test answers the  
22                   problem of the lack of testing globally!"<sup>11</sup>

23           52. The Yikon At-Home Test Kit is thus a "device" and a "home medical device"  
24 under Health and Safety Code, sections 109920 and 109948.1, because, among other reasons, it  
25

26 <sup>11</sup> [https://www.thecoronavirustestkit.com/test-kits/sars-cov-2-iggigm-at-home-screening-kit-](https://www.thecoronavirustestkit.com/test-kits/sars-cov-2-iggigm-at-home-screening-kit-x28en)  
27 [x28en](https://www.thecoronavirustestkit.com/test-kits/sars-cov-2-iggigm-at-home-screening-kit-x28en) (accessed March 28, 2020). CE Marked applies only to goods in the European Union  
28 and is not the same as receiving approval from the FDA. Obtaining FDA approval is a separate  
process.

1 is designed for the diagnosis of a disease or other condition, and intended for home use as an in  
2 vitro diagnostic test related to a respiratory disease or condition.

3 53. On March 12, 2020, the Twitter account @Yikon\_Genomics (“Yikon Twitter”),  
4 operated on information and belief by Defendants, tweeted a link to the Corona Kit Website  
5 with the statement “[w]e are accepting individual orders for \$39/kit, or you can buy boxes of  
6 100 kits for \$2,000 USD (a 50% discount).”<sup>12</sup>

7 54. The Contact Us Section of the Corona Kit Website directs people to Mr.  
8 Hensinger’s email address, LinkedIn page, and a phone number.

9 **II. FALSELY ADVERTISING “AT-HOME” TEST KITS**

10 55. On the same day as the registration of the Corona Kit website, Yikon Twitter  
11 tweeted that “[s]tarting next week we will be able to globally provide at-home Coronavirus Test  
12 kits. This product detects the presence of IgM and/or IgG antibody to SARS-CoV-2 by using a  
13 fingerpick. If you want one, please let me know. The price will be \$39.”<sup>13</sup>

14 56. On March 12, 2020, Yikon Twitter tweeted a link to the Corona Kit Website  
15 with the statement, “[w]e are accepting individual orders for \$39/kit, or you can buy boxes of  
16 100 kits for \$2,000 USD (a 50% discount).”<sup>14</sup>

17 57. The next day, the Twitter account @bhensinger (“Hensinger Twitter”), operated  
18 on information and belief by Mr. Hensinger, tweeted out a link to the Corona Kit Website with  
19 text substantially similar to the March 12 tweet from Yikon.<sup>15</sup>

20 58. On March 15 and March 17, 2020, an account registered to Mr. Hensinger  
21 published two press releases touting the availability and effectiveness of the Yikon At-Home  
22 Test Kit.<sup>16</sup>

23 \_\_\_\_\_  
24 <sup>12</sup> [https://twitter.com/Yikon\\_Genomics/status/1238223352436842496](https://twitter.com/Yikon_Genomics/status/1238223352436842496) (accessed April 1, 2020).

25 <sup>13</sup> [https://twitter.com/Yikon\\_Genomics/status/1237859631025786880](https://twitter.com/Yikon_Genomics/status/1237859631025786880) (accessed April 1, 2020).

26 <sup>14</sup> [https://twitter.com/Yikon\\_Genomics/status/1238223352436842496](https://twitter.com/Yikon_Genomics/status/1238223352436842496) (accessed April 1, 2020).

27 <sup>15</sup> <https://twitter.com/bhensinger/status/1238447259991314434> (accessed April 1, 2020).

28 <sup>16</sup> <https://www.expertclick.com/NewsRelease/AtHome-Corona-Virus-Test-Kit-NOW-Test-Results-in-15-Minutes,2020229062.aspx>

1 59. On March 18, 2020, the Yikon Twitter tweeted a link to a *Wall Street Journal*  
2 article and stated “Our COVID-19 Test Kit is now FDA Approved”.<sup>17</sup> Yikon Twitter replied to  
3 its own tweet with a link to the Corona Kit Website.

4 60. *The Wall Street Journal* article linked to by Yikon Twitter does not reference  
5 any FDA approval for the Yikon At-Home Test Kit.<sup>18</sup>

6 **FIRST CAUSE OF ACTION:**  
7 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17500**  
8 **(UNTRUE OR MISLEADING REPRESENTATIONS)**  
9 **(Against All Defendants)**

10 61. The People restate and incorporate herein each and every allegation set forth in  
11 paragraphs 1–60 above, as though fully alleged herein.

12 62. Beginning no later than March 12, 2020, and continuing to the present,  
13 Defendants, and each of them, with each other or with other unknown persons, have engaged in  
14 and continue to engage in, aided and abetted and continue to aid and abet, and conspired to and  
15 continue to conspire to violate Business and Professions Code, section 17500 by making or  
16 disseminating untrue or misleading statements, or causing untrue or misleading statements to be  
17 made in the in the City and County of Los Angeles, with the intent to induce the purchase of at-  
18 home test kits, when they knew or by the exercise of reasonable care should have known the  
19 statements were untrue, misleading, and unsubstantiated. Defendants’ untrue or misleading  
20 representations include, but are not limited to, the following:

21 Representing that Defendant’s One Step Rapid Test Kit can lawfully be sold or used as an at-  
22 home testing kit.

23  
24 (accessed April 1, 2020); <https://www.expertclick.com/NewsRelease/AtHome-Corona-Virus-Test-Kit-AVAILABLE-NOW-Test-Results-in-15-Minutes,2020229132.aspx> (accessed April 1,  
25 2020).

26 <sup>17</sup> [https://twitter.com/Yikon\\_Genomics/status/1240337248156913666](https://twitter.com/Yikon_Genomics/status/1240337248156913666) (accessed April 1, 2020).

27 <sup>18</sup> <https://www.wsj.com/articles/fda-to-allow-private-companies-to-market-coronavirus-test-kits-without-prior-approval-11584407046> (accessed April 1, 2020).  
28



1 similar conduct, are *unfair* under section 17200;

2 C. Violating Business and Professions Code, section 17200, because  
3 Defendants' business acts and practices, as described above, as well as  
4 similar conduct, are *fraudulent* under section 17200;

5 D. Violating Business and Professions Code, section 17200, because  
6 Defendants' actions as described above, as well as similar conduct, are  
7 unfair, deceptive, untrue, or misleading advertising under section 17200;

8 E. Violating Business and Professions Code, section 17500, by making or  
9 disseminating, or causing to be made or disseminated, statements before the  
10 public with respect to the effectiveness that Defendants knew were untrue  
11 and misleading and which were and are known by Defendants to be untrue  
12 and misleading, as described above;

13 F. Violating Health and Safety Code, section 111330, as described above, by  
14 selling or offering for sale a home medical device in California that is  
15 misbranded; and

16 G. Violating Health and Safety Code, section 111550, as described above, by  
17 selling or offering for sale a new device that has not been approved under the  
18 Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 355.

19 69. By committing the acts alleged above, at all times material to this complaint, each  
20 Defendant has engaged in unlawful business practices that constitute unfair competition within  
21 the meaning of Business and Professions Code, section 17200.

22 70. By committing the acts alleged above, Defendants are liable to the People for civil  
23 penalties of up to \$2,500 for each violation.

24 71. Defendants' unlawful, unfair, and fraudulent business acts or practices, as  
25 described above, present a continuing threat to members of the public.

26 72. Defendants' conduct was in continuing violation of the Unfair Competition Law,  
27 beginning at a time unknown to the People but no later than March 12, 2020, and continuing to  
28 within four years of the filing of this Complaint.

**PRAYER FOR RELIEF**

Wherefore, the People pray for judgment as follows:

73. That pursuant to Business and Professions Code, sections 17203 and 17204 and the equitable powers of the Court, Defendants, and their successors, agents, representatives, employees, and all persons who act in concert with Defendants be permanently enjoined from engaging in unfair competition as defined in Business and Professions Code, section 17200 et seq., including, but not limited to, the acts and practices alleged in this Complaint, specifically including an order that Defendants cease all advertising for “at-home” coronavirus test kits and cease selling such kits directly to consumers without proper FDA approval.

74. That pursuant to Business and Professions Code, section 17206, Defendants be assessed a civil penalty of \$2,500 for each violation of Business and Professions Code, section 17200 et seq. that they committed, caused, aided and abetted or conspired to commit, as proved at trial.

75. That pursuant to Business and Professions Code, section 17535, Defendants, their successors, agents, representatives, employees, and all persons who act in concert with Defendants be permanently enjoined from making any untrue or misleading statements in violation of Business and Professions Code, section 17500 et seq., including but not limited to, the untrue or misleading statements alleged in the Complaint, specifically including an order that Defendants cease all advertising for “at-home” coronavirus test kits and cease selling such kits directly to consumers without proper FDA approval.

76. That pursuant to Business and Professions Code, section 17536, Defendants be assessed a civil penalty of \$2,500 for each violation of Business and Professions Code, sections 17500 et seq. that they committed, caused, aided and abetted, or conspired to commit, as proved at trial.

77. That Defendants be ordered to make direct restitution of any money or other property that may have been acquired by the violations of Business and Professions Code, sections 17200 et seq. and 17500 et seq.

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1           78.    Such other relief that the Court deems just and proper.

2 Dated: April 3, 2020

Respectfully Submitted,

3  
4 MICHAEL N. FEUER  
Los Angeles City Attorney

5 By: *William R. Fletcher*  
6 WILLIAM R. PLETCHER  
7 Deputy City Attorney  
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# **EXHIBIT A**



1 **IT IS HEREBY ORDERED, ADJUDGED, and DECREED** as follows:

2 **JURISDICTION AND STANDING**

- 3 1. The Court has jurisdiction over Defendants and the subject matter of this action.  
4 2. The Los Angeles City Attorney's Office has standing to bring this action in the  
5 name of the People of the State of California.

6 **DEFINITIONS**

- 7 3. The following definitions shall apply to this Judgment:  
8 a. "City" refers to the City of Los Angeles, both geographically and as a  
9 municipal corporation.  
10 b. "City Attorney's Office" refers to the Los Angeles City Attorney's Office.  
11 c. "Defendants" means Defendants Yikon Genomics Inc., d/b/a Yikon Global  
12 ("Yikon"), and Brandon Richard Hensinger ("Hensinger").  
13 d. "Enforcement Action" refers to this civil law enforcement action, entitled  
14 *People v. Yikon Genomics, Inc., et al.*  
15 e. FDA means the federal Food and Drug Administration.  
16 f. "People" refers to the People of the State of California. (Gov. Code, § 100.)  
17 g. POC means point-of-care, that is, a medical facility or medical practice under  
18 supervision of a doctor or appropriate medical professional.  
19 h. "At-home" means a private residence or dwelling and any other location that is  
20 not a POC.  
21 i. "Yikon At-Home Test Kit" refers to the SARS-COV-2 IgG/IgM At-Home  
22 Screening Kit advertised and previously sold by Defendants, including at  
23 <http://www.thecoronavirustestkit.com>.

24 **DEFENDANTS' COSTS**

- 25 4. Defendants shall bear their own attorneys' fees, costs, and any other expenses  
26 related to this Enforcement Action.  
27  
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1 **ALLEGATIONS**

2 5. The People’s Complaint alleges that, through marketing, advertising, distributing,  
3 and selling the Yikon At-Home Test Kit to California consumers, Defendants have engaged in  
4 unfair competition in violation of Business and Professions Code section 17200 et seq. and false  
5 or misleading advertising in violation of Business and Professions Code section 17500 et seq. by  
6 selling or offering for sale or making and disseminating untrue or misleading statements about  
7 availability of FDA-approved, at-home test kits for COVID-19, and selling the Yikon At-Home  
8 Test Kit in violation of California Health and Safety Code, section 109875 et seq. (known as the  
9 “Sherman Food, Drug, and Cosmetic Law” or “Sherman Law”), which regulates the manufacture  
10 and sale of medical devices in California, including through incorporation of relevant federal  
11 standards.

12 **INJUNCTIVE RELIEF**

13 6. Pursuant to Business and Professions Code sections 17203, 17204, 17535, and the  
14 Court’s inherent equitable powers, Defendants, and each of their agents, employees, officers,  
15 representatives, partners and any person acting in concert or in participation with them, agree that,  
16 immediately upon entry of the Final Judgment in this action (the “Effective Date”), they will be  
17 permanently enjoined, subject to the injunction termination provisions in Paragraph 8, from:

- 18 a. Violating California Business and Professions Code section 17200 et seq. by  
19 engaging in unlawful business practices related to false or misleading advertising  
20 or sale of Defendants’ Yikon At-Home Test Kit or any other “at-home” COVID-  
21 19 testing kit, including not limited to selling or offering for sale any medical  
22 devices such as the Yikon At-Home Test Kit that are not FDA-approved or  
23 subject to exemption; and
- 24 b. Violating California Business and Professions Code section 17500 et seq. by  
25 making or disseminating, or causing to be made or disseminated, any untrue or  
26 misleading statements about any COVID-19 testing kit, including but not limited  
27 to at <http://www.thecoronavirustestkit.com>; and  
28

1 c. Violating any federal, California, Los Angeles County, or Los Angeles City law,  
2 ordinance, or regulation.

3 7. Pursuant to Business and Professions Code sections 17203, 17204, 17535, and the  
4 Court's inherent equitable powers, Defendants, and each of their agents, employees, officers,  
5 representatives, partners and any person acting in concert or in participation with them, further  
6 agree that they will refund directly to consumers any monies collected by Defendants in exchange  
7 for their sale of any Yikon At-Home Test Kit they have sold.

8 8. This injunction shall terminate immediately if Defendants meet the following  
9 conditions:

- 10 a. Defendants achieve appropriate FDA regulatory approvals to market and sell  
11 their Yikon At-Home Test Kit or any similar "at-home" COVID-19 testing kit at  
12 any non-POC locations, that is, at consumer's homes or at locations that are not  
13 POC locations;
- 14 b. Defendants comply with all California law requirements to market and sell  
15 medical devices in California;
- 16 c. Defendants provide notice under penalty of perjury to the People that they have  
17 met all FDA and California law requirements to market and sell their Yikon At-  
18 Home Test Kit or any similar "at-home" COVID-19 testing kit at non-POC  
19 locations. In recognition of the current COVID-19 pandemic, notice under this  
20 sub-paragraph shall be provided via email to:

21 Christina V. Tusan  
22 Supervising Deputy City Attorney  
23 Los Angeles City Attorney's Office  
[Christina.Tusan@lacity.org](mailto:Christina.Tusan@lacity.org)

24 and

25 William R. Pletcher  
26 Deputy City Attorney  
27 Los Angeles City Attorney's Office  
[William.Pletcher@lacity.org](mailto:William.Pletcher@lacity.org)

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