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14 Attorneys for Plaintiff, the People of the State of California [NO FEE - Gov. Code § 6103]

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

17 THE PEOPLE OF THE STATE OF)
18 CALIFORNIA,)

19 Plaintiff,)

20 vs.)

21 YIKON GENOMICS, INC., a)
22 corporation, d/b/a/ YIKON GLOBAL;)
23 BRANDON RICHARD HENSINGER,)
24 an individual; and DOES 1 through 25,)
25 inclusive,)

26 Defendants.)

27 Case No.: 20STCV13169

28)
29) **STIPULATION FOR ENTRY OF FINAL**
30) **JUDGMENT AND PERMANENT**
31) **INJUNCTION; EXHIBIT A:**
32) **[PROPOSED] FINAL JUDGMENT AND**
33) **PERMANENT INJUNCTION**

34)
35)
36) Complaint Filed: April 3, 2020
37) Trial: None set.
38)

1 WHEREAS, the Parties stipulate that the Court retains continuing jurisdiction both as
2 authorized by California Code of Civil Procedure 664.6 and under the Court’s inherent authority
3 to enforce this Stipulation and the Final Judgment;

4 **NOW, THEREFORE**, in consideration of the covenants and agreements contained in this
5 Stipulation, the Parties agree as follows:

6 1. The Final Judgment is a reasonable compromise of the issues between the Parties
7 as reflected in the Complaint, negotiated at arm’s length and with the opportunity for all Parties to
8 avail themselves of the assistance of counsel.

9 2. The Final Judgment is a final and binding resolution and settlement of all known
10 claims, violations, and causes of action arising from the allegations set forth in the Complaint that
11 the People could assert against Defendants, including their parents, subsidiaries, affiliates, agents,
12 representatives, directors, officers and employees, up to the date of entry of the Final Judgment
13 (“Covered Matters”). Any claim, violation, or cause of action that is not a Covered Matter is a
14 “Reserved Claim.” Nothing in the Final Judgment shall prohibit the People of the State of
15 California from bringing any Reserved Claim, including but not limited to, any criminal or civil
16 law enforcement prosecution or administrative process related to a Reserved Claim.

17 3. This Court may enter the Final Judgment before the taking of any proof and
18 without further briefing, argument, trial, or adjudication of any fact or law.

19 4. Defendants and their officers, directors, employees, agents, representatives,
20 partners, successors and assigns, and all persons, corporations, subsequent purchasers, or other
21 entities, acting by, through, under, in concert, on behalf of, or in participation with or for them,
22 waive all rights to challenge, contest, or set aside the validity of the Final Judgment, including
23 through any collateral attack, and further waive their right to appeal from the Final Judgment.
24 Defendants and their successors and assigns further waive and release any claim they may have
25 against the People, their attorneys, employees, representatives or agents arising out of the
26 commencement or conduct of the Enforcement Action.

1 **DEFENDANTS' COSTS**

2 9. Defendants shall bear their own attorneys' fees, costs, and any other expenses
3 related to this Enforcement Action.

4 **ALLEGATIONS**

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

15 **INJUNCTIVE RELIEF**

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

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

1 misleading statements about any COVID-19 testing kit, including but not limited
2 to at <http://www.thecoronavirustestkit.com>; and

3 c. Violating any federal, California, Los Angeles County, or Los Angeles City law,
4 ordinance, or regulation.

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

10 13. This injunction shall terminate immediately if Defendants meet the following
11 conditions:

12 a. Defendants achieve appropriate FDA regulatory approvals to market and sell
13 their Yikon At-Home Test Kit or any similar "at-home" COVID-19 testing kit at
14 any non-POC locations, that is, at consumer's homes or at locations that are not
15 POC locations;

16 b. Defendants comply with all California law requirements to market and sell
17 medical devices in California;

18 c. Defendants provide notice under penalty of perjury to the People that they have
19 met all FDA and California law requirements to market and sell their Yikon At-
20 Home Test Kit or any similar "at-home" COVID-19 testing kit at non-POC
21 locations. In recognition of the current COVID-19 pandemic, notice under this
22 sub-paragraph shall be provided via email to:

23 Christina V. Tusan
24 Supervising Deputy City Attorney
25 Los Angeles City Attorney's Office
26 Christina.Tusan@lacity.org

27 and

28 William R. Pletcher

1 Deputy City Attorney
2 Los Angeles City Attorney's Office
3 William.Pletcher@lacity.org

4 **RETENTION OF JURISDICTION AND ENFORCEMENT**

5 14. Pursuant to California Code of Civil Procedure section 664.6 and the Court's
6 inherent authority, the Court shall retain jurisdiction over this Enforcement Action to entertain
7 such further proceedings and enter such further orders as may be necessary or appropriate to
8 enforce the Final Judgment. The People shall retain exclusive jurisdiction to enforce the terms of
9 the Final Judgment.

10 15. Defendants shall be jointly and severally liable for reasonable attorneys' fees and
11 costs incurred by the People for the enforcement of any violation of the injunction set forth in the
12 Final Judgment.

13
14 **STIPULATED AND AGREED TO BY:**

15 Dated: April 3, 2020, 2020

16 **THE PEOPLE OF THE STATE OF CALIFORNIA**

17 By: Christina V. Tusan
18 Christina V. Tusan, Supervising Deputy City Attorney
19 Los Angeles City Attorney's Office
20 Attorney for Plaintiff, THE PEOPLE OF THE STATE
OF CALIFORNIA

21 Dated: April 2, 2020, 2020

22 **YIKON GENOMICS, INC**

23 By: [Signature]

24 Dated: April 2, 2020, 2020

25 **BRANDON HENSINGER**

26 By: [Signature]
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APPROVED AS TO FORM

Dated: April 2, 2020

Alicia DeJauris

By: _____
Attorneys for Defendants, YIKON GENOMICS, INC.
and BRANDON HENSINGER

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.

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
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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
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Christina.Tusan@lacity.org

24 and

25 William R. Pletcher
26 Deputy City Attorney
27 Los Angeles City Attorney's Office
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1 **RETENTION OF JURISDICTION AND ENFORCEMENT**

2 9. Pursuant to California Code of Civil Procedure section 664.6 and the Court’s
3 inherent authority, the Court shall retain jurisdiction over this Enforcement Action to entertain
4 such further proceedings and enter such further orders as may be necessary or appropriate to
5 enforce the Final Judgment. The People shall retain exclusive jurisdiction to enforce the terms of
6 the Final Judgment.

7 10. Defendants shall be jointly and severally liable for reasonable attorneys’ fees and
8 costs incurred by the People for the enforcement of any violation of the injunction set forth in the
9 Final Judgment.

10
11 **IT IS SO ORDERED** this ___ day of April ___, 2020.

12
13 _____
14 HONORABLE JUDGE OF THE SUPERIOR COURT