

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA**

\_\_\_\_\_, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

NEOGENOMICS, INC., MARK  
MALLON, LYNN A. TETRAULT,  
KATHRYN B. MCKENZIE, and  
WILLIAM BONELLO,

Defendants.

Case No. DRAFT

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS**

**JURY TRIAL DEMANDED**

Plaintiff \_\_\_\_\_ (“Plaintiff”), individually and on behalf of all others similarly situated, by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and belief is based upon, among other things, his counsel’s investigation, which includes without limitation: (a) review and analysis of regulatory filings made by NeoGenomics, Inc. (“NeoGenomics” or the “Company”) with the United States (“U.S.”) Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases and media reports issued by and disseminated by NeoGenomics; and (c) review of other publicly available information concerning NeoGenomics.

### **NATURE OF THE ACTION AND OVERVIEW**

1. This is a class action on behalf of persons and entities that purchased or otherwise acquired NeoGenomics securities between November 4, 2021 and April 27, 2022, inclusive (the “Class Period”). Plaintiff pursues claims against the Defendants under the Securities Exchange Act of 1934 (the “Exchange Act”).

2. NeoGenomics is a clinical laboratory that specializes in cancer genetics diagnostic testing. NeoGenomics provides services throughout the United States to pathologists, oncologists, urologists, hospitals, and various other laboratories. The Company has two reporting segments: Clinical and Pharma. Clinical customers include community-based pathology practices, hospital pathology labs, reference labs, and academic centers, and Pharma customers include pharmaceutical companies that use NeoGenomics to support their research studies and clinical trials. As of fiscal 2021, Clinical Services accounted for approximately 82.8% of NeoGenomics’s total net revenues.

3. On March 28, 2022, after the market closed, NeoGenomics announced that its Chief Executive Officer, Mark Mallon, had resigned less than a year after accepting the position. In the

press release, NeoGenomics withdrew its fiscal 2022 financial guidance and stated that it expected its revenue for Q1 2022 to be “on the low end of its prior guidance of \$118 - \$120 million.” NeoGenomics stated that the revenue loss was “primarily driven by higher than anticipated Clinical Services cost of goods sold.”

4. On this news, NeoGenomics’s shares fell by \$5.30 per share, or approximately 30%, to close at \$12.49 per share on March 29, 2022, on unusually heavy trading volume.

5. Then, on April 27, 2022, NeoGenomics announced disappointing financial results for Q1 2022, including \$99 million in Clinical Services revenue, \$18 million in Pharma Services revenue (representing a 4% year-over-year decline), and a net loss of \$49 million (compared to a net loss of \$22 million for the first quarter of 2021).

6. On this news, NeoGenomics’s shares fell \$1.10, or 10%, over two consecutive trading sessions to close at \$9.75 per share on April 28, 2022, on unusually heavy trading volume.

7. Throughout the Class Period, Defendants made materially false and/or misleading statements, as well as failed to disclose material adverse facts about the Company’s business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that NeoGenomics has “not kept up” with larger, more comprehensive panels developed by emerging companies; (2) that, as a result, many of the Company’s labs were operating below capacity; (3) that, due to the complexity of the Company’s product offerings, NeoGenomics experienced a decrease in lab efficiency; (4) that, as a result, the Company experienced increased costs and longer turnaround times; (5) that, as a result, the Company’s revenue and profitability would be adversely impacted; and (6) that, as a result of the foregoing, Defendants’ positive statements about the Company’s business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

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

### **JURISDICTION AND VENUE**

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

10. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

11. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District. Many of the acts charged herein, including the dissemination of materially false and/or misleading information, occurred in substantial part in this Judicial District. In addition, the Company's principal executive offices are located in this district.

12. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

### **PARTIES**

13. Plaintiff \_\_\_\_\_, as set forth in the accompanying certification, incorporated by reference herein, purchased NeoGenomics securities during the Class Period, and suffered damages as a result of the federal securities law violations and false and/or misleading statements and/or material omissions alleged herein.

14. Defendant NeoGenomics is incorporated under the laws of Nevada with its principal executive offices located in Fort Myers, Florida. NeoGenomics's common stock trades on the NASDAQ exchange under the symbol "NEO."

15. Defendant Mark Mallon ("Mallon") was the Company's Chief Executive Officer ("CEO") from April 2021 through his resignation on March 28, 2022.

16. Defendant Lynn A. Tetrault ("Tetrault") has been the Company's interim CEO and Chair of its Board ("Chair") since May 12, 2022.

17. Defendant Kathryn B. McKenzie ("McKenzie") was the Company's Chief Financial Officer ("CFO") from February 2020 through December 31, 2021.

18. Defendant William Bonello ("Bonello") has been the Company's CFO since January 1, 2022.

19. Defendants Mallon, Tetrault, McKenzie, and Bonello (together, the "Individual Defendants"), because of their positions with the Company, possessed the power and authority to control the contents of the Company's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, i.e., the market. The Individual Defendants were provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading. The Individual Defendants are liable for the false statements pleaded herein.

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

20. NeoGenomics is a clinical laboratory that specializes in cancer genetics diagnostic testing. NeoGenomics provides services throughout the United States to pathologists, oncologists, urologists, hospitals, and various other laboratories. The Company has two reporting segments: Clinical and Pharma. Clinical customers include community-based pathology practices, hospital pathology labs, reference labs, and academic centers, and Pharma customers include pharmaceutical companies that use NeoGenomics to support their research studies and clinical trials. As of fiscal 2021, Clinical Services accounted for approximately 82.8% of NeoGenomics's total net revenues.

### **Materially False and Misleading Statements Issued During the Class Period**

21. The Class Period begins on November 4, 2021. On that day, NeoGenomics announced its third quarter 2021 financial results as well as its revised full year 2021 financial outlook in a press release that stated, in relevant part:<sup>1</sup>

#### **Third-Quarter Results**

*Consolidated revenue for the third quarter of 2021 was \$121 million, a decrease of 3% over the same period in 2020.* Clinical Services revenue of \$102 million was a decrease year-over-year of 6%. Excluding COVID-19 PCR testing, *Clinical Services revenue increased by 11% year-over-year.* Clinical test volume(1) increased by 7% year-over-year. Average revenue per clinical test (“revenue per test”) increased by 4% to \$375. Pharma Services revenue increased by 14% to \$19 million compared to the third quarter of 2020, primarily due to an increase in revenue related to research studies and informatics.

\* \* \*

*Net loss for the quarter was \$20 million compared to net income of \$3 million for the third quarter of 2020.* The net loss for the third quarter of 2021 includes an \$18

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<sup>1</sup> Unless otherwise stated, all emphasis in bold and italics hereinafter is added, and all footnotes are omitted.

million gain related to the acquisition of Inivata Limited, a private limited company incorporated in England and Wales, and respective prior loan receivable. ***Net loss for the quarter when excluding this gain was \$38 million.*** Adjusted Net Loss<sup>(2)</sup> was \$10 million compared to Adjusted Net Income<sup>(2)</sup> of \$7 million in the third quarter of 2020.

\* \* \*

### **2021 Financial Outlook**

The Company revised its full-year 2021 guidance, initially issued on May 5, 2021.

(in millions)	<u>Initial Guidance<sup>(3)</sup></u>	<u>Revised Guidance</u>
Consolidated revenue	\$490 - \$510	\$482.5 - \$487.5
Net (loss) income	\$(70) - \$(65)	\$(0.8) - \$4.2
Adjusted EBITDA	\$10 - \$15	\$(2.5) - \$2.5

22. The same day, NeoGenomics filed its quarterly report on Form 10-Q with the SEC for the quarterly period ending on September 30, 2021, affirming the previously reported financial results. It also touted the Company’s product offerings, stating in relevant part:

Our plans for 2021 include initiatives to continue to drive sustainable growth and innovation. ***We will continue to pursue market share gains by providing high complexity, cancer-related laboratory testing services*** to hospitals, community-based pathology and oncology practices, academic centers, clinicians, and pharmaceutical companies. Additionally, we will focus on continued reimbursement effectiveness through improving coverage, streamlining processes, and providing clients more efficient, automated ordering methods, which we believe will continue to fuel our growth and market share.

Our ***laboratory and informatics teams will continue to focus on new assays and product offerings***, including liquid biopsy, MRD and other high-quality tests. We expect this to enhance our strategic position while enabling us to maintain our high levels of client retention.

Our broad and innovative test menu of molecular, including NGS, IHC, and other testing has helped make us a “one-stop shop” for many clients who value that all of their testing can be sent to one laboratory.

23. On February 23, 2022, NeoGenomics announced its fourth quarter and full year 2021 financial results in a press release. Specifically, the Company stated, in relevant part:

“... In 2021, our labs processed almost 1.1 million clinical tests, generated revenue from over 1,000 pharma projects and ended the year with \$484 million in consolidated revenue representing 16% year over year growth excluding COVID-19 PCR testing revenue. These are strong results given the extraordinary environment,” said Mark Mallon, CEO of NeoGenomics.

“I am proud of the resolve our laboratory, operations, and client service employees showed in 2021 providing excellent care for cancer patients often under very difficult circumstances. During the year we also executed on two highly strategic acquisitions in Inivata and Trapelo Health that we believe will boost our growth in the years ahead.

We are incredibly excited about our market position and the progress we are making across our businesses toward becoming the world’s leading cancer testing and information company. The attributes that have made NeoGenomics successful in the past remain and **we’ve added new differentiating capabilities that we expect will strengthen our competitive position.**”

#### **Fourth Quarter Results**

Consolidated revenue for the fourth quarter of 2021 of \$126 million was flat compared to the fourth quarter of 2020. Excluding COVID-19 PCR testing, consolidated revenue increased year-over-year by 7%. **Clinical Services revenue was \$104 million, a decrease of approximately 3% compared to the fourth quarter of 2020. Excluding COVID-19 PCR testing, Clinical Services revenue increased year-over-year by 6%.** Clinical testing(1) volumes increased by 2% year-over-year. Average revenue per clinical test (“revenue per test”) increased by 4% to \$383 year-over-year. Pharma Services revenue increased by 13% to \$22 million compared to the fourth quarter of 2020.

\* \* \*

Net loss for the fourth quarter of 2021 was \$42 million compared to net income of \$15 million in the fourth quarter of 2020.

\* \* \*

#### **2022 Financial Guidance**

The Company also issued 2022 guidance(3) today (in millions).

	<b>Guidance</b>
Consolidated revenue	\$530 - \$550
Net loss	\$(133) - \$(118)
Adjusted EBITDA	\$(40) - \$(25)

24. On February 25, 2022, NeoGenomics filed its fiscal 2021 annual report on Form 10-K with the SEC for the fiscal year ended December 31, 2021 (the “2021 10-K”), affirming the previously reported financial results. It stated, in relevant part:

*We are [sic] a leading provider of Molecular and NGS testing. ...We have one of the broadest Molecular menus in the industry...This comprehensive menu means that NeoGenomics can be a “one-stop shop” for our clients who can get all of their oncology testing needs satisfied by our laboratory.* This is attractive to our clients as patient samples do not need to be split and then managed across several laboratories. . . .

25. The 2021 10-K purported to warn of certain risks impacting NeoGenomics, including:

**Increased competition, including price competition, could have a material adverse impact on our net revenues and profitability.**

*The market for genetic and molecular testing services is highly competitive and we expect competition to continue to increase.* Our major competitors, including Quest Diagnostics and Laboratory Corporation of America, are large national laboratories that possess greater name recognition, larger customer bases, and significantly greater financial resources and employ substantially more personnel than we do. *We also face increased competition from laboratories that more are specialized and focused on particular areas such as liquid biopsies or large tissue based molecular panels. Our competitors may develop products and services that are superior to ours or that achieve greater market acceptance than our offerings.* Many of our competitors have long established relationships with their customers and third-party payers. We cannot assure you that we will be able to compete successfully with such entities in the future.

The laboratory business is intensely competitive, both in terms of price and service. Pricing of laboratory testing services is often one of the most significant factors used by healthcare providers and third-party payers in selecting a laboratory. As a result of the laboratory industry undergoing consolidation, larger laboratory providers are able to increase cost efficiencies afforded by large-scale automated testing. This consolidation results in greater price competition. We may be unable to increase cost efficiencies sufficiently, if at all, and as a result, our net earnings and cash flows could be negatively impacted by such price competition. Additionally, we may also face changes in fee schedules, competitive bidding for laboratory services, or other actions or pressures reducing payment schedules as a result of increased or additional competition.

**We face the risk of capacity constraints, which could have a material adverse effect on our business, results of operations, and financial condition.**

We compete in the market place primarily on three factors: (i) the quality and accuracy of our test results; (ii) the speed or turnaround times of our testing services; and (iii) our ability to provide after-test support to those physicians requesting consultation. ***Any unforeseen increase in the volume of clients could strain the capacity of our personnel and systems, leading to unacceptable turnaround times*** or customer service failures. In addition, as the number of our clients and specimens increases, our products, services, and infrastructure may not be able to scale accordingly. We may also not be able to hire additional licensed medical technologists that we need to handle increased volumes. Any failure to handle higher volume of requests for our products and services could lead to the loss of established clients and have a material adverse effect on our business, results of operations, and financial condition. If we produce inaccurate test results, our clients may choose not to use us in the future. This could severely harm our business, results of operations, and financial condition. In addition, based on the importance of the subject matter of our tests, inaccurate results could result in improper treatment of patients and potential liability for us.

26. The 2021 10-K also stated that the development of new tests could replace the Company's tests, stating in relevant part:

***Our business is subject to rapid scientific change, which could have a material adverse effect on our business, results of operations, and financial condition.***

The market for genetic and molecular testing services is characterized by rapid scientific developments, evolving industry standards and customer demands, and frequent new product introductions and enhancements. ***For example, new tests developed by our competitors may prove superior and replace our existing tests.*** Additionally, certain technological changes, such as advances in point-of-care testing, could reduce the need for the laboratory tests we provide. Our future success will depend in significant part on our ability to continually improve our offerings in response to both evolving demands of the marketplace and competitive service offerings, and we may be unsuccessful in doing so, which could have a material adverse effect on our business, results of operations, and financial condition.

27. The above statements identified in ¶¶ 21-26 were materially false, and/or misleading, and failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that NeoGenomics has "not kept up" with larger, more comprehensive panels developed by emerging companies; (2) that, as a result, many of the Company's labs were operating below capacity; (3) that, due to the complexity of the Company's product offerings, NeoGenomics experienced a decrease in lab

efficiency; (4) that, as a result, the Company experienced increased costs and longer turnaround times; (5) that, as a result, the Company's revenue and profitability would be adversely impacted; and (6) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

### **Disclosures at the End of the Class Period**

28. On March 28, 2022, NeoGenomics issued a press release announcing that its CEO, Mallon, would step down from both his positions as CEO and a member of the Board, effective immediately. Additionally, the Company withdrew its 2022 annual financial guidance, originally issued the previous month on February 23, 2022. The release also noted NeoGenomics's expectation that "revenue for Q1 2022 may be below the low end of its prior guidance," and its understanding that "EBITDA for Q1 2022 will be below the low end of its prior guidance."

Specifically, the release stated, in relevant part:

**NeoGenomics, Inc. (NASDAQ:NEO) (the "Company")**, a leading provider of cancer-focused genetic testing services and global oncology contract research services, today announced that the Board of Directors (the "Board") and Mark Mallon, Chief Executive Officer, have agreed that Mr. Mallon will step down as CEO and member of the Board, effective immediately. . . .

The Board has appointed current Chair Lynn Tetrault, Esq. as Executive Chair and established an Interim Office of the CEO to provide seamless leadership continuity and operational management of the Company while the Board conducts the CEO search. . . .

The Company currently expects revenue for Q1 2022 may be below the low end of its prior guidance of \$118 - \$120 million and EBITDA for Q1 2022 will be below the low end of its prior guidance of \$(15) - \$(12) million. ***The larger than anticipated EBITDA loss was primarily driven by higher than anticipated Clinical Services cost of goods sold.*** The Company intends to take immediate action to address performance and costs while continuing to invest prudently in the RaDaR™ Assay. The Company plans to report full Q1 2022 results on April 27, 2022. Additionally, the Company has withdrawn its 2022 annual financial guidance issued February 23, 2022.

29. On this news, NeoGenomics's share price fell by \$5.30 per share, or 30%, to close at \$12.49 per share on March 29, 2022, on unusually heavy trading volume.

30. Then, on April 27, 2022, NeoGenomics issued a press release announcing its financial results for first quarter 2022. The release stated, in relevant part:

Consolidated revenue for the first quarter of 2022 was \$117 million, an increase of 1% over the same period in 2021. Clinical Services revenue of \$99 million was an increase year-over-year of 2%. Excluding 2021 COVID-19 PCR testing, Clinical Services revenue increased by 4% year-over-year. Clinical test volume <sup>(1)</sup> increased by 2% year-over-year. Average revenue per clinical test ("revenue per test") increased by 2% to \$371. Pharma Services revenue decreased by 4% to \$18 million compared to the first quarter of 2021.

Net loss for the quarter was \$49 million compared to net loss of \$22 million for the first quarter of 2021.

Adjusted EBITDA[] was negative \$19 million compared to positive \$4 million in the first quarter of 2021. Adjusted net loss <sup>(2)</sup> was \$25 million compared to Adjusted net loss[] of \$5 million in the first quarter of 2021.

31. On this news, NeoGenomics's shares fell \$1.10, or 10%, over two consecutive trading sessions to close at \$9.75 per share on April 28, 2022, on unusually heavy trading volume.

### **CLASS ACTION ALLEGATIONS**

32. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and entities that purchased or otherwise acquired NeoGenomics securities between November 4, 2021 and April 27, 2022, inclusive, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest.

33. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, NeoGenomics's shares actively traded on the

NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are at least hundreds or thousands of members in the proposed Class. Millions of NeoGenomics shares were traded publicly during the Class Period on the NASDAQ. Record owners and other members of the Class may be identified from records maintained by NeoGenomics or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

34. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

35. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

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

(a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) whether statements made by Defendants to the investing public during the Class Period omitted and/or misrepresented material facts about the business, operations, and prospects of NeoGenomics; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

37. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation makes it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

#### **UNDISCLOSED ADVERSE FACTS**

38. The market for NeoGenomics's shares was open, well-developed and efficient at all relevant times. As a result of these materially false and/or misleading statements, and/or failures to disclose, NeoGenomics's shares traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired NeoGenomics's shares relying upon the integrity of the market price of the Company's securities and market information relating to NeoGenomics and have been damaged thereby.

39. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of NeoGenomics's shares, by publicly issuing false and/or misleading statements and/or omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and/or misleading. The statements and omissions were materially false and/or misleading because they failed to disclose material adverse information and/or misrepresented the truth about NeoGenomics's business, operations, and prospects as alleged herein.

40. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about NeoGenomics's financial well-being and prospects. These material

misstatements and/or omissions had the cause and effect of creating in the market an unrealistically positive assessment of the Company and its financial well-being and prospects, thus causing the Company's shares to be overvalued and artificially inflated at all relevant times. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's shares at artificially inflated prices, thus causing the damages complained of herein when the truth was revealed.

### **LOSS CAUSATION**

41. Defendants' wrongful conduct, as alleged herein, directly and proximately caused the economic loss suffered by Plaintiff and the Class.

42. During the Class Period, Plaintiff and the Class purchased NeoGenomics's shares at artificially inflated prices and were damaged thereby. The price of the Company's shares significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses.

### **SCIENTER ALLEGATIONS**

43. As alleged herein, Defendants acted with scienter since Defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and/or misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, the Individual Defendants, by virtue of their receipt of information reflecting the true facts regarding NeoGenomics, their control over, and/or receipt and/or modification of NeoGenomics's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential

proprietary information concerning NeoGenomics, participated in the fraudulent scheme alleged herein.

**APPLICABILITY OF PRESUMPTION OF RELIANCE  
(FRAUD-ON-THE-MARKET DOCTRINE)**

44. The market for NeoGenomics's shares was open, well-developed and efficient at all relevant times. As a result of the materially false and/or misleading statements and/or failures to disclose, NeoGenomics's shares traded at artificially inflated prices during the Class Period. On November 10, 2021, the Company's share price closed at a Class Period high of \$44.26 per share. Plaintiff and other members of the Class purchased or otherwise acquired the Company's shares relying upon the integrity of the market price of NeoGenomics's shares and market information relating to NeoGenomics, and have been damaged thereby.

45. During the Class Period, the artificial inflation of NeoGenomics's shares was caused by the material misrepresentations and/or omissions particularized in this Complaint causing the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about NeoGenomics's business, prospects, and operations. These material misstatements and/or omissions created an unrealistically positive assessment of NeoGenomics and its business, operations, and prospects, thus causing the price of the Company's shares to be artificially inflated at all relevant times, and when disclosed, negatively affected the value of the Company shares. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's shares at such artificially inflated prices, and each of them has been damaged as a result.

46. At all relevant times, the market for NeoGenomics's shares was an efficient market for the following reasons, among others:

(a) NeoGenomics shares met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

(b) As a regulated issuer, NeoGenomics filed periodic public reports with the SEC and/or the NASDAQ;

(c) NeoGenomics regularly communicated with public investors via established market communication mechanisms, including through regular dissemination of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and/or

(d) NeoGenomics was followed by securities analysts employed by brokerage firms who wrote reports about the Company, and these reports were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

47. As a result of the foregoing, the market for NeoGenomics's shares promptly digested current information regarding NeoGenomics from all publicly available sources and reflected such information in NeoGenomics's share price. Under these circumstances, all purchasers of NeoGenomics's shares during the Class Period suffered similar injury through their purchase of NeoGenomics's shares at artificially inflated prices and a presumption of reliance applies.

48. A Class-wide presumption of reliance is also appropriate in this action under the Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972), because the Class's claims are, in large part, grounded on Defendants' material misstatements and/or omissions. Because this action involves Defendants' failure to disclose material adverse

information regarding the Company's business operations and financial prospects—information that Defendants were obligated to disclose—positive proof of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in making investment decisions. Given the importance of the Class Period material misstatements and omissions set forth above, that requirement is satisfied here.

### **NO SAFE HARBOR**

49. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward looking, they were not identified as “forward-looking statements” when made and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. In the alternative, to the extent that the statutory safe harbor is determined to apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the speaker had actual knowledge that the forward-looking statement was materially false or misleading, and/or the forward-looking statement was authorized or approved by an executive officer of NeoGenomics who knew that the statement was false when made.

**FIRST CLAIM**

**Violation of Section 10(b) of The Exchange Act and  
Rule 10b-5 Promulgated Thereunder  
Against All Defendants**

50. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

51. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other members of the Class to purchase NeoGenomics's shares at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each defendant, took the actions set forth herein.

52. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's shares in an effort to maintain artificially high market prices for NeoGenomics's shares in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

53. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about NeoGenomics's financial well-being and prospects, as specified herein.

54. Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course

of conduct as alleged herein in an effort to assure investors of NeoGenomics's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and/or omitting to state material facts necessary in order to make the statements made about NeoGenomics and its business operations and future prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of the Company's shares during the Class Period.

55. Each of the Individual Defendants' primary liability and controlling person liability arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of their responsibilities and activities as a senior officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of, and had access to, other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew and/or recklessly disregarded was materially false and misleading.

56. Defendants had actual knowledge of the misrepresentations and/or omissions of material facts set forth herein or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such

defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing NeoGenomics's financial well-being and prospects from the investing public and supporting the artificially inflated price of its shares. As demonstrated by Defendants' overstatements and/or misstatements of the Company's business, operations, financial well-being, and prospects throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and/or omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

57. As a result of the dissemination of the materially false and/or misleading information and/or failure to disclose material facts, as set forth above, the market price of NeoGenomics's shares was artificially inflated during the Class Period. In ignorance of the fact that market prices of the Company's shares were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which the securities trades, and/or in the absence of material adverse information that was known to or recklessly disregarded by Defendants, but not disclosed in public statements by Defendants during the Class Period, Plaintiff and the other members of the Class acquired NeoGenomics's shares during the Class Period at artificially high prices and were damaged thereby.

58. At the time of said misrepresentations and/or omissions, Plaintiff and other members of the Class were ignorant of their falsity and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known the truth regarding the problems that NeoGenomics was experiencing, which were not disclosed by Defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their NeoGenomics shares,

or, if they had acquired such shares during the Class Period, they would not have done so at the artificially inflated prices which they paid.

59. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

60. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's shares during the Class Period.

## **SECOND CLAIM**

### **Violation of Section 20(a) of The Exchange Act Against the Individual Defendants**

61. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

62. Individual Defendants acted as controlling persons of NeoGenomics within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions and their ownership and contractual rights, participation in, and/or awareness of the Company's operations and intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading. Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings, and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

63. In particular, Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

64. As set forth above, NeoGenomics and Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their position as controlling persons, Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's shares during the Class Period.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- (a) Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- (b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- (d) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
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