UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ASSOCIATION FOR MOLECULAR PATHOLOGY; AMERICAN COLLEGE OF MEDICAL GENETICS; AMERICAN SOCIETY FOR CLINICAL PATHOLOGY; COLLEGE OF AMERICAN PATHOLOGISTS; HAIG KAZAZIAN, MD; ARUPA GANGULY, PhD; WENDY CHUNG, MD, PhD; HARRY OSTRER, MD; DAVID LEDBETTER, PhD; STEPHEN WARREN, PhD; ELLEN MATLOFF, M.S.; ELSA REICH, M.S.; BREAST CANCER ACTION; BOSTON WOMEN'S HEALTH BOOK COLLECTIVE; LISBETH CERIANI; RUNI LIMARY; GENAE GIRARD; PATRICE FORTUNE; VICKY THOMASON; KATHLEEN RAKER,

Plaintiffs,

-against-

UNITED STATES PATENT AND TRADEMARK OFFICE; MYRIAD GENETICS; LORRIS BETZ, ROGER BOYER, JACK BRITTAIN, ARNOLD B. COMBE, RAYMOND GESTELAND, JAMES U. JENSEN, JOHN KENDALL MORRIS, THOMAS PARKS, DAVID W. PERSHING, and MICHAEL K. YOUNG, in their official capacity as Directors of the University of Utah Research Foundation,

Defendants.

No. 09 Civ. 4515 (RWS)

ECF Case

Declaration of
Richard P. Frieder, MD

I, Richard P. Frieder, declare:

1. I received my Bachelor's of Science degree in Biology from University of Southern California in 1975, graduating *Magna Cum Laude*. I received my medical degree from University of California, Davis Campus, in 1980. I completed a rotating internship at Harbor-UCLA Med Center in 1981. I completed my residency in OB/GYN at Harbor-UCLA Med Center in 1984. I completed an intensive program in Clinical Cancer Genetics with Risk Assessment and Prevention of Hereditary Cancers at City of Hope National Cancer Hospital in 2009.
2. I hold a California State Medical License and am a member of the American Board of Obstetrics and Gynecology, the National Society of Genetic Counselors, American Association of Gynecologic Laparoscopists, Los Angeles County Medical Association, California Medical Association, American Medical Association, and Los Angeles OB-GYN Society.
3. I am an Assistant Clinical Professor in the UCLA Dept. of Obstetrics and Gynecology. I am the Chairman of the Santa Monica/UCLA Committee for Emergency OB-GYN Services. I hold hospital appointments at Santa Monica/UCLA Medical Center, Saint John's Hospital, UCLA Medical Center and Surgery Center of Santa Monica.
4. As part of my medical practice, I regularly advise patients concerning their risks for hereditary breast and ovarian cancer, the possibility of genetic testing, and medical

management options based upon the interpretation of tests performed through Myriad Genetic Laboratories, Inc. ("Myriad").

5. In my experience, the practice of hereditary cancer screening has been extremely important to the medical treatment of my patients, and has resulted in significant impact in the medical management of my patients.

6. As part of my medical practice, I have ordered the BRACAnalysis® test provided by Myriad which tests for mutations in the *BRCA1* and *BRCA 2* genes.

7. I have utilized this testing for over twelve years, and have screened over 200 patients.

8. My utilization of the BRACAnalysis® testing has resulted in the identification of over 20 patients who have now been recognized to carry cancer susceptibility genetic mutations.

9. My experience and understanding is that genetic testing provided by Myriad is done competently and accurately, and provides me with accurate, prompt and timely results.

10. Patient care has been greatly promoted by the ability to test for mutations in the *BRCA1* and *BRCA2* genes, as provided by Myriad.

11. Based on the quality and accuracy of the BRACAnalysis® test, I do not believe there is any benefit in obtaining a second test on the *BRCA1* and *BRCA2* genes from another provider. None of my patients have ever requested such a second genetic test. It is my understanding of the technical aspects of this testing process that there is no scientific basis to question the accuracy and reliability of the test results, and that there is no need for a second, confirmatory test.

12. In my experience, a high percentage of the BRACAnalysis® testing I have ordered has been covered by insurance, thus limiting the financial impact of testing on my patients. For those

few patients whose insurance has denied coverage, the extreme potential value of the test results has led most patients to make those financial arrangements that were necessary to self pay for this testing. Myriad has been very accommodating in structuring financial arrangements for self-paying patients.

13. I am aware of the significant efforts that Myriad has made to help educate physicians and other health care providers in the area of genomic medicine, cancer risk assessment, and genetic testing for appropriate patients. The academic medical community has been ineffective in bringing this rapidly evolving knowledge base to physicians already in practice, and Myriad has made enormous contributions to fill this void. Through this direct educational outreach to health care providers, patient care has been enhanced, mutation carriers have been identified, and management decisions have been made that have prevented cancers, and saved numerous lives.

Pursuant to 28 U.S.C. §1746, I declare, under penalty of perjury, that the foregoing is true and correct.

Richard P. Frieder, M.D.

Executed on December 9, 2009.

CERTIFICATE OF SERVICE

This is to certify that on December 23, 2009, a true and correct copy of the foregoing document has been served on all counsel of record via the court's ECF system.

/s/ Brian M. Poissant
Brian M. Poissant