

## ***Right to Opt Out and Revoke Authorization of Fulgent Genetics Genetic Information Privacy Act***

I have not been sufficiently provided the appropriate or adequate option to opt out and revoke authorization. I have a right to privacy as stated in Article 1, Section 1 of the California Constitution<sup>1</sup>. You cannot, therefore, require that I disclose anything outside what a normal person should know. I also do not have to give up rights in exchange for other rights. I, \_\_\_\_\_, give the following notice in writing, as required by law. I will officially submit this request to HR, or appropriate “persons” as defined in The Genetic Information Privacy Act. I do not consent or give authorization to be placed in any kind of database with Fulgent Genetics or Picture Genetics. I do not authorize any “persons” outside myself, to obtain, analyze, retain, or disclose my “*genetic samples, genetic test, genetic characteristic, or genetic information.*” I am explicitly protected by the **Genetic Information Privacy Act**<sup>2</sup>. As stated in California law, I have “*the right to control the use of my genetic information that I give to you.*”<sup>3</sup> Under no circumstances, does the law state my employment or “persons” may control the genetic information I give, unless I authorize it. The law clearly states that if I do consent, I may revoke that authorization at any time. I revoke any previous authorization.

*“The person shall permit an individual to **revoke an authorization** signed pursuant to subdivision (g) **at any time.**”<sup>4</sup>*

Fulgent Genetics Inc. offers three covid tests. All three tests operate under an Emergency Use Authorization and neither the test nor the collection kit have been approved or cleared by the FDA. “Picture Genetics,” Powered by Fulgent, is an at-home testing service that offers at-home COVID-19 testing solutions nationwide. In the EUA approval letter for Fulgent Tests, it clearly states, “This product has **not been FDA cleared or approved**, but has been authorized for emergency use by FDA under an EUA<sup>5</sup> for use by authorized laboratories. Currently, authorized under Section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1). In addition to my right to privacy in the California Constitution and The Genetic Information Privacy Act, it is also illegal to not allow me “the option to accept or refuse” an EUA product.

### ***Under 21 U.S.C. § 360bbb-3, “Authorization for medical products for use in emergencies”:***

*(ii) Appropriate conditions designed to ensure that individuals to whom the product is administered are informed — (I) that the Secretary [of Health and Human Services] has authorized the emergency use of the product; (II) of the significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown; and (III) of the option to **accept or refuse** administration of the product, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks.*

In addition, Title II of GINA, the Genetic Information Nondiscrimination Act<sup>6</sup>, makes it illegal for employers to use a person's *genetic information* when making decisions about hiring, promotion, and several other terms of employment. Title I of GINA prohibits discrimination based on genetic information in health coverage.

“Genetic Information” is protected by the right of privacy, *pursuant to Article I of Section 1 of the California Constitution* notwithstanding subdivision (c) of Section 56.10, or any other law, shall not be obtained, analyzed, retained, or disclosed without the written authorization of the individual *to whom the information pertains*. Each violation of this section is counted as a separate and actionable offense, with penalties associated. I do not authorize any “persons” outside myself to obtain, analyze, retain, or disclose my “*genetic samples, genetic test, genetic characteristic, or genetic information.*”

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<sup>1</sup> [https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CONS&article=I](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CONS&article=I)

<sup>2</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201120120SB1267](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1267)

<sup>3</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201120120SB1267](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1267)

<sup>4</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201120120SB1267](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1267)

<sup>5</sup> <https://www.fda.gov/media/138147/download>

<sup>6</sup> <https://www.govinfo.gov/content/pkg/PLAW-110publ233/pdf/PLAW-110publ233.pdf>

**Genetic Information Privacy Act is understood in the following excerpts.**

**CHAPTER 2.6. Genetic Privacy 56.18**

(3) “Genetic characteristic” includes a gene, chromosome, or alteration thereof that may be tested to determine the existence or risk of a disease...

(6) “Genetic test” means a test for determining the presence or absence of genetic characteristics in an individual or the individual’s blood relatives, including tests of nucleic acids such as DNA, RNA, and mitochondrial DNA, chromosomes, or proteins in order to diagnose or determine a genetic characteristic.

(7) “Person” means an individual, partnership, corporation, association, business, business trust, or legal representative of an organization.

**CHAPTER 2.6. Genetic Privacy 56.19**

(a) Genetic information is protected by the right of privacy *pursuant to Article I of Section 1 of the California Constitution*, and, notwithstanding subdivision (c) of Section 56.10, or any other law, shall not be obtained, analyzed, retained, or disclosed without the written authorization of the individual *to whom the information pertains* pursuant to subdivision (g). *A separate written authorization is required for each separate disclosure of an individual’s genetic information.*

Any employer, (“persons”) who negligently or willfully violates my genetic information is subject to fines, civil penalties, and a possible misdemeanor for each offense. You, “persons” at my employment, and Fulgent Genetics, are not an “authorized person” to *obtained, analyzed, retained, or disclose any of my genetic samples, genetic test, genetic characteristic, or genetic information. I revoke any authorization that I unknowingly authorized.*

“DNA sample” means any human biological specimen that is obtained or retained for the purpose of extracting and analyzing DNA to perform a genetic test. “Genetic Test” explicitly mentions DNA, RNA nucleic acid tests, including the PCR- test provided Fulgent Genetics. “Genetic Characteristic” includes a gene, chromosome, or alteration thereof that may be tested to determine the existence or risk of a disease. “Genetic information” *as “obtained from* the genetic tests of the individual.”

Fulgent Genetics explicitly states, it checks for RNA genetic material. Under frequently asked questions, Fulgent states no DNA is extracted, but instead RNA is<sup>7</sup>. “Picture Genetics,” Powered by Fulgent, states on their website that “samples are discarded after testing.” However, the privacy policy<sup>8</sup>, terms of agreement<sup>9</sup>, and notice of privacy practices<sup>10</sup> documents state otherwise. See direct quotes below:

- Under certain circumstances, we may use or **disclose** your Protected Health Information for research purposes.
- We may contribute **de-identified genetic** variants that we have **observed**...
- **Services** to publicly available databases.
- We may use or **disclose** de-identified patient information for general research purposes. This may include research collaborations with third parties, such as universities, hospitals, or other laboratories, including commercial collaborations with private companies, ...and we may present or publish such information.
- We may **collect** ,“The **sample** material involving **genetic data**.”

“Picture Genetics,” Powered by Fulgent, and Fulgent Genetics are best be understood as a “Genetic service” as it clearly refers to “obtaining, interpreting, analyzing, sampling, and assessing genetic information.” The intent of “persons” at my place of work is to require me to sign up for Fulgent Genetics. By signing up both my workplace and Fulgent Genetics gain authorization to **obtain** my “Genetic Information,” by **analyzing** my “DNA Sample,”

<sup>7</sup> <https://www.fulgentgenetics.com/covid19/molecular>

<sup>8</sup> [https://www.fulgentgenetics.com/content/EP-Privacy\\_Policy-V1.pdf](https://www.fulgentgenetics.com/content/EP-Privacy_Policy-V1.pdf)

<sup>9</sup> [https://www.fulgentgenetics.com/content/EP-Terms\\_of\\_Service-V1.pdf](https://www.fulgentgenetics.com/content/EP-Terms_of_Service-V1.pdf)

<sup>10</sup> [https://www.fulgentgenetics.com/content/EP-HIPAA\\_Privacy\\_Notice-V1.pdf](https://www.fulgentgenetics.com/content/EP-HIPAA_Privacy_Notice-V1.pdf)

through a “Genetic Test,” **retained** by Fulgent Genetics, and **disclosed** to “persons” in my employment, affiliates, corporations, hospitals, and researchers. I “revoke authorization” to Fulgent Genetics and “persons” at my employment, even if authorization was previously unintentionally given. **I do not authorize or consent** for any “persons” outside myself to obtain, analyze, retain, or disclose my “*genetic samples, genetic test, genetic characteristic, or genetic information.*”

**I do not authorize, nor consent** to the use of my “Genetic Characteristic” to “determine the existence of risk of a disease,” such as Covid 19. **I do not authorize, nor consent** to a “Genetic Test” as the means for determining the existence of “Genetic Characteristic” including tests as defined in the law, of “nucleic acids such as DNA, RNA, and mitochondrial DNA, chromosomes, or proteins,” as is offered by Fulgent Genetics, Picture Genetics (Powered By Fulgent Genetics), or any other genetic testing company, platform, or database.

**I expect immediate acceptance, as I “revoke authorization.” I am stating, in writing, no other “persons” besides myself has authorization. It is my right to opt out of Fulgent Genetics. They are not authorized “persons” regarding my genetic information. I do not authorize, nor consent for you** ( \_\_\_\_\_ ) to obtain, analyze, retain, or disclose my “*genetic samples, genetic test, genetic characteristic, or genetic information.*”

Please refer me to my original employment contract, where it states, I am required to sign up with Fulgent Genetics, “A Pioneer in genetic testing.” Please refer me to my original employment contract, where I am required to consent to frequent genetic testing, samples, in order to obtain, analyze, retain, or disclose my “*genetic samples, genetic test, genetic characteristic, or genetic information.*” Please refer me to my original employment contract, where it’s a condition of my employment to authorize my employer and Fulgent Genetics to obtain, analyze, retain, or disclose my “*genetic samples, genetic test, genetic characteristic, or genetic information.*”

If retaliation follows, the following Federal and State Laws continue to ensure my protection; including against genetic discrimination.

Americans with Disabilities Act (ADA), Rehabilitation Act (including the requirement for reasonable accommodations and non-discrimination, based on disability, as well as strict rules about employer-mandated or employer-led medical examinations and inquiries), Title VII of the Civil Rights Act (which prohibits discrimination based on race, color, national origin, religion, and sex, including pregnancy), Genetic Information Nondiscrimination Act, and Unruh Civil Rights Act

**There shall be no retaliation, including lowered wages, being furloughed, or laid off, and no intervention or any element of force, fraud, deceit, duress, coercion, or undue influence on my decision.** I am protected from retaliation through both State and Federal Laws such as the Genetic Information Nondiscrimination Act<sup>11</sup>. Title II of GINA prohibits discrimination based on genetic information in **employment. Any “persons,” including employers,** that choose to “not comply,” the **Genetic Information Privacy Act, “any person who willfully or negligently violates these subdivision”** will be assessed civil penalties, fines, and a possible misdemeanor for “*each violation a separate and actionable offense.*”

Printed Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

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<sup>11</sup> <https://www.govinfo.gov/content/pkg/PLAW-110publ233/pdf/PLAW-110publ233.pdf>