2 3 4 5 6 7 8 9 10 11	DEBRA A. VALENTINE General Counsel DARREN A. BOWIE KAREN JAGIELSKI Federal Trade Commission 600 Pennsylvania Ave., N.W. Room S-4002 Washington, D.C. 20580 (202) 326-2018, -2509 (voice) (202) 326-3259 (facsimile) GREGORY A. VEGA United States Attorney D. MICHAEL WALTZ Assistant United States Attorney California Bar Number 052877 Federal Office Building 880 Front Street Room 6293 San Diego, CA 92101-8893 (619) 557-7184 (voice) (619) 557-5004 (facsimile) UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA		
17 18	FEDERAL TRADE COMMISSION,		
19	Plaintiff,	Case No. 00CV 0081 BTM (NLS)	
20	V.	AMENDED COMPLAINT FOR	
21	ALFA SCIENTIFIC DESIGNS, INC.;	PERMANENT INJUNCTION AND OTHER EQUITABLE	
22	NAISHU WANG, M.D., Ph.D.; and DAVID F. H. ZHOU, M.D., Ph.D.,	RELIEF	
23	Defendants.		
24			
25	Plaintiff the Federal Trade Commission ("FT)	C" or "Commission") by its undersigned	
26	Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), by its undersigned attorneys, alleges as follows:		
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1. This is an action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure injunctive relief and other equitable relief against defendants for their deceptive acts and practices and false advertising in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

JURISDICTION AND VENUE

- 2. This Court has subject matter jurisdiction over plaintiff's claim pursuant to 15 U.S.C. §§ 45(a), 52, and 53(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345.
- 3. Venue in the United States District Court for the Southern District of California is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

THE PARTIES

- 4. **Plaintiff FTC** is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 58. The FTC enforces Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, which prohibit, respectively, deceptive acts or practices, and false advertisements for food, drugs, devices, services or cosmetics, in or affecting commerce. The FTC is authorized under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to initiate federal district court proceedings to enjoin violations of the FTC Act, and to secure such equitable relief as may be appropriate in each case.
- 5. **Defendant Alfa Scientific Designs, Inc.** ("ASD"), is a California corporation doing business at 11494 Sorrento Valley Road, Suite M, San Diego, California 92121, and with its registered office located at 7454 Park Village Road, San Diego, California 92129. It markets products that putatively test for a variety of medical conditions, including infection with the human immunodeficiency virus ("HIV").
- 6. **Defendant Naishu Wang, M.D., Ph.D.** ("Wang") is President of ASD. Wang resides at 7454 Park Village Road, San Diego, California 92129, and conducts business at 11494 Sorrento Valley Road, Suite M, San Diego, California 92121. Individually, or in concert with others, Wang directs, controls, formulates, or participates in the acts and practices complained of

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below. She resides and transacts business in the Southern District of California. 2 7. Defendant David F. H. Zhou, M.D., Ph.D. ("Zhou"), is the Chief Executive 3 Officer, Managing Director of Marketing and New Business Development of ASD. He conducts business at 11494 Sorrento Valley Road, Suite M, San Diego, California 92121. Individually, or 4 5 in concert with others, Zhou directs, controls, formulates, or participates in the acts and practices complained of below. He transacts business in the Southern District of California. 6 7 **COMMERCE** 8 8. Defendants' course of trade is in or affecting commerce, within the meaning of Section 4 of the FTC Act, 15 U.S.C. § 44. 10 **DEFENDANTS' BUSINESS PRACTICES** 11 9. Since at least October 1998, and continuing thereafter, defendants have marketed tests that purportedly test for HIV infection in humans ("HIV tests"), including "Alfa HIV-1/2" Rapid Tests," through the Internet and other means. HIV is the virus that causes acquired 13 immunodeficiency syndrome ("AIDS"), an infectious disease characterized by immune system 15 failure. To date, two strains of HIV have been identified: Type 1 and Type 2. 16 10. For purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, defendants' HIV test 17 constitutes a "device" as "device" is defined in Section 15 of the FTC Act, 15 U.S.C. §55. 18 11. The Uniform Resource Locator ("URL") of defendants' Internet Web site is 19 "www.alfascientific.com." The Web site, www.alfascientific.com, is a Web site registered to 20 defendants. Orders submitted through the Web site are transmitted to defendants. 21 12. In the course of marketing their HIV tests, defendants represent that their tests provide accurate results. Defendants' Web site contains the following statements: 22 [The HIV test] is double antigen "sandwich" assay for the detection of 23 HIV-1/2 specific antibodies in human whole blood or serum samples with very high specificity and sensitivity. 24 NEW IMPROVEMENTS IN ONE-STEP RAPID TESTS!! Alfa 25 Scientific Designs, Inc. is launching a new and improved rapid tests (sic) for the early and accurate detection of HIV -I/II . . . 26 27

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Alfa provides more than 70 high quality diagnostic tests in both one-step rapid test and traditional ELISA test formats with consistent, accurate 2 performance. 3 **DEFENDANTS' VIOLATIONS OF THE FTC ACT** 4 13. Defendants have represented, expressly or by implication, that their HIV tests accurately detect the presence of HIV antibodies. In fact, defendants' HIV tests do not accurately 5 detect the presence of HIV antibodies. Therefore, defendants' representation as set forth in this 6 paragraph is false and misleading, and constitutes a deceptive act or practice and false advertising, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52. 9 **CONSUMER INJURY** 10 14. Defendants' violations of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, have injured and will continue to injure consumers. In addition, defendants have been 11 unjustly enriched as a result of its unlawful practices. Absent injunctive relief by the Court, defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public 13 interest. 14 15 THIS COURT'S POWER TO GRANT RELIEF 16 15. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes this Court to issue 17 injunctive and other equitable relief, including consumer redress, disgorgement and restitution, to 18 prevent and remedy any violations of any provision of law enforced by the FTC. 19 PRAYER FOR RELIEF 20 WHEREFORE, plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. 21 § 53(b) and this Court's own equitable powers, requests that this Court: 22 (1) Enjoin defendants from violating Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, including committing such violations in connection with the offer, sale, 24 advertising, or other promotion or distribution of HIV tests or other devices; and 25 26 27 28 00CV 0081 BTM (NLS)

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1	(2)	Award such additional equitable relief as the Court may determine to be just and
	proper.	
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5		Respectfully submitted,
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7	DATED:	WAREN IA CIEV CIVI
8		KAREN JAGIELSKI DARREN A. BOWIE
9	•	Attorneys for Plaintiff FEDERAL TRADE COMMISSION
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