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Attorneys for Plaintiffs
13 LIFE TECHNOLOGIES CORPORATION and
APPLIED BIOSYSTEMS, LLC
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15 UNITED STATES DISTRICT COURT
16 SOUTHERN DISTRICT OF CALIFORNIA

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18 LIFE TECHNOLOGIES CORPORATION and
APPLIED BIOSYSTEMS, LLC,
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Plaintiff,
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v.
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PROMEGA CORPORATION,
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Defendant.
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Case No. '12CV2992 WQHMD

**COMPLAINT FOR DECLARATORY
JUDGMENT**

JURY TRIAL DEMANDED

1 Plaintiffs Life Technologies Corporation (“Life Tech”) and Applied Biosystems,
2 LLC (“ABLLC”) (collectively “Plaintiffs”) for their complaint against Defendant Promega
3 Corporation (“Promega”) alleges as follows:

4 **NATURE OF THIS ACTION**

5 1. This action arises under 28 U.S.C. §§ 1331, 2201 and 2202, and the United
6 States Patent Act, 35 U.S.C. § 100 *et seq.*

7 2. Plaintiffs bring this action for a declaration that no activities relating to
8 their AuthentiFiler™ line of products do or will directly (whether literally or under the doctrine of
9 equivalents) or indirectly (including without limitation contributory infringement or inducement
10 of infringement) infringe U.S. Patent Nos. 5,843,660 (the “’660 patent”), 6,221,598 (“the ’598
11 patent”), 6,479,235 (“the ’235 patent”), and 7,008,771 (the “’771 Patent) (collectively, the
12 “Patents-in-Suit”).

13 **PARTIES**

14 3. Plaintiff Life Tech is a corporation organized under the laws of Delaware
15 with a principal place of business located at 5791 Van Allen Way, Carlsbad, California.

16 4. Plaintiff ABLLC is a limited liability corporation organized under the laws
17 of Delaware with a principal place of business located at 5791 Van Allen Way, Carlsbad,
18 California. ABLLC is a wholly-owned subsidiary of Life Tech.

19 5. On information and belief, Defendant Promega is a Wisconsin corporation
20 with a principal place of business located at 2800 Woods Hollow Road, Madison, WI 53711.

21 6. On information and belief, Defendant has, and has had, continuous and
22 systematic contacts with the State of California, including this District. On information and
23 belief, Defendant has also purposefully directed a broad range of business activities at this
24 District, including among other things research, sales, support services, processing, and related
25 services. On information and belief, residents of this District have used products sold by or from
26 Defendant.

27 **JURISDICTION**

1 These products are and have been used extensively in forensics and paternity testing for many
2 years.

3 11. More recently, Life Tech and ABLCC have developed a new line of STR
4 based products for cell line authentication/identification, which they began selling in December
5 2012 under the tradename Authentifiler™. Briefly, in biotech research, the misidentification of
6 and contamination of cell lines presents a serious problem. Research organizations, governmental
7 entities, and scientific journals thus frequently require that the pedigree of cell lines be verified.
8 Like human beings and other organisms, cell lines also have a unique DNA fingerprints
9 associated with them based on the number of STRs located at various loci in their genomes. Life
10 Tech and ABLCC have developed various products for performing cell line
11 authentication/identification based on multiplex PCR analysis using primers specific for STRs in
12 the cell line genomic DNA.

13 12. The Authentifiler™ products operate according to the same general
14 principals as the AmpFℓSTR® products, and thus include the same general classes of
15 components. However, the Authentifiler™ products utilize a different set of STR loci than those
16 used in the AmpFℓSTR® products. The genetic loci used in the Authentifiler™ products also do
17 not overlap with those required by the claims of the Patents-in-Suit. Thus, Life Tech and
18 ABLCC's new Authentifiler™ products do not directly (whether literally or under the doctrine of
19 equivalents) or indirectly (including without limitation contributory infringement or inducement
20 of infringement) infringe the Patents-in-Suit.

21 13. Life Tech and ABLCC have made a substantial investment to prepare for
22 the commercial launch of the Authentifiler™ products. Specifically, Life Tech and ABLCC have
23 invested resources in research and development efforts dedicated to the formulation and
24 optimization of assays and the verification of assay performance, trained sales and marketing
25 employees, and have developed specific marketing and sales materials directed to their
26 Authentifiler™ products. These are among the many concrete and substantial steps that Life Tech
27 and ABLCC have undertaken to prepare for commercial use and marketing of the Authentifiler™
28 products.

1 14. In May 2010, Promega initiated litigation against Life Tech, ABLLC and
2 another Life Tech wholly-owned subsidiary, Invitrogen IP Holdings, Inc., in the Western District
3 of Wisconsin, alleging that certain of Life Tech and ABLLC's AmpF ℓ STR $\text{\textcircled{R}}$ products infringed
4 one or more of the Patents-in-Suit. Promega pursued this litigation aggressively through
5 summary judgment proceedings and a jury trial. At trial, Promega sought \$104 million in
6 damages. Following the jury trial, the jury awarded \$52 million in damages.

7 15. Although the \$52 million jury award did not survive post-trial briefing,
8 Promega's very recent efforts to enforce the Patents-in-Suit against Life Tech and ABLLC, and
9 the magnitude of damages it sought in connection with those efforts, demonstrate that there is a
10 substantial and immediate controversy as to whether Life Tech and ABLLC's newly released
11 Authentifiler TM products directly (whether literally or under the doctrine of equivalents) or
12 indirectly (including without limitation contributory infringement or inducement of infringement)
13 infringe the Patents-in-Suit. Indeed, Life Tech and ABLLC are presently in the position of
14 having to choose between either abandoning their new Authentifiler TM products, or running the
15 risk of being sued by Promega for infringement, despite believing that the Patents-in-Suit are not
16 infringed, either directly (whether literally or under the doctrine of equivalents) or indirectly
17 (including without limitation contributory infringement or inducement of infringement).

18 16. Furthermore, Promega has also made clear that it believes its patents have
19 wide scope, and that it will attempt to enforce these patents in the broadest possible manner. For
20 instance, during the jury trial in the prior litigation, high ranking Promega officers testified that
21 Promega was, in fact, seeking a "monopoly" in the general technical area of determining the
22 individual from which a cell line came based on the use of STR products, among other technical
23 areas. Specifically, Randall Dimond, Promega's Vice President-Chief Technology Officer,
24 testified as follows:

25 **Q.** And Promega wants a monopoly on selling kits to scientists who
26 are – want to make sure that the cell lines they are looking at are –
 can trace back to the appropriate individual that they came from

27 **A.** Correct.

28 **Q.** And same for the other uses on Mr. Troupis's chart?

A. That is correct.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

A. Judgment in Plaintiffs' favor on all claims for relief;

B. A declaration in favor of Life Tech and ABLLC that all activities (including without limitation the use, manufacture, sale, offer for sale, importation and/or exportation) relating to the Authentifiler™ products do not and will not directly (whether literally or under the doctrine of equivalents) or indirectly (whether by contributory infringement or inducement of infringement) infringe any claim of the Patents-in-Suit under 35 U.S.C. § 271, and have not done so in the past;

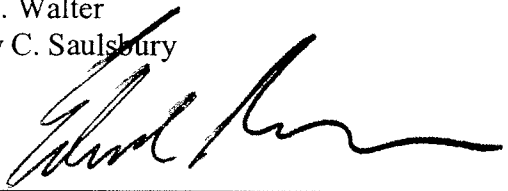
DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b) and Civil Local Rule 38.1, Life Tech hereby demands a trial by jury on all issues so triable.

Dated: December 17, 2012

Respectfully submitted,

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By: 

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