

1 **POMERANTZ LLP**

2 Jennifer Pafiti (SBN 282790)

3 468 North Camden Drive

4 Beverly Hills, CA 90210

5 Telephone: (818) 532-6499

6 E-mail: jpafiti@pomlaw.com

7 - additional counsel on signature page -

8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10                     , Individually and on Behalf  
11 of All Others Similarly Situated,

12 Plaintiff,

13 vs.

14 GENMARK DIAGNOSTICS, INC.,  
15 HANY MASSARANY, and SCOTT  
16 MENDEL,

17 Defendants

Case No.

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

JURY TRIAL DEMANDED

18  
19 Plaintiff                      (“Plaintiff”), individually and on behalf of all other persons  
20 similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against  
21 Defendants (defined below), alleges the following based upon personal knowledge as to  
22 Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters,  
23 based upon, *inter alia*, the investigation conducted by and through Plaintiff’s attorneys,  
24 which included, among other things, a review of the Defendants’ public documents,  
25  
26  
27  
28

1 conference calls and announcements made by Defendants, United States Securities and  
2 Exchange Commission (“SEC”) filings, wire and press releases published by and  
3 regarding GenMark Diagnostics, Inc. (“GenMark” or the “Company”), analysts’ reports  
4 and advisories about the Company, and information readily obtainable on the Internet.  
5 Plaintiff believes that substantial evidentiary support will exist for the allegations set  
6 forth herein after a reasonable opportunity for discovery.  
7  
8

### 9 NATURE OF THE ACTION

10 1. This is a federal securities class action on behalf of a class consisting of all  
11 persons other than Defendants who purchased or otherwise acquired common shares of  
12 GenMark between February 23, 2016 and November 2, 2017, both dates inclusive (the  
13 “Class Period”). Plaintiff seeks to recover compensable damages caused by Defendants’  
14 violations of the federal securities laws and to pursue remedies under Sections 10(b) and  
15 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5  
16 promulgated thereunder.  
17  
18  
19

20 2. GenMark Diagnostics, Inc. is a molecular diagnostics company that  
21 develops and commercializes molecular tests based on its proprietary eSensor  
22 electrochemical detection technology.  
23

24 3. GenMark is headquartered in Carlsbad, California. The Company’s  
25 common stock trades on the NASDAQ Global Market (“NASDAQ”) under the ticker  
26 symbol “GNMK.”  
27  
28

1 4. Throughout the Class Period, Defendants made materially false and  
2 misleading statements regarding the Company's business, operational and compliance  
3 policies. Specifically, Defendants made false and/or misleading statements and/or failed  
4 to disclose that: (i) GenMark had a slower than anticipated implementation process of its  
5 ePlex product; (ii) consequently, the Company's revenue recognition would fall below  
6 market expectations; and (iii) as a result, GenMark's public statements were materially  
7 false and misleading at all relevant times.  
8

9  
10 5. On November 2, 2017, GenMark President and Chief Executive Officer  
11 Hany Massarany stated during an earnings conference call that revenue recognition for  
12 expected placements of the Company's ePlex product was slowed by a longer-than-  
13 expected customer evaluation and validation process prior to implementation of ePlex in  
14 routine clinical use.  
15

16  
17 6. On this news, shares of GenMark have fallen as much as \$2.63, or 36.23%,  
18 during intraday trading on November 3, 2017.  
19

20 7. As a result of Defendants' wrongful acts and omissions, and the precipitous  
21 decline in the market value of the Company's common shares, Plaintiff and other Class  
22 members have suffered significant losses and damages.  
23  
24  
25  
26  
27  
28

## JURISDICTION AND VENUE

1  
2 8. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of  
3 the Exchange Act (15 U.S.C. §§78j(b) and §78t(a)) and Rule 10b-5 promulgated  
4 thereunder by the SEC (17 C.F.R. §240.10b-5).

5  
6 9. This Court has jurisdiction over the subject matter of this action under 28  
7 U.S.C. §1331 and §27 of the Exchange Act.

8  
9 10. Venue is proper in this Judicial District pursuant to §27 of the Exchange  
10 Act (15 U.S.C. §78aa) and 28 U.S.C. §1391(b) as GenMark's principal executive offices  
11 are located within this Judicial District.

12  
13 11. In connection with the acts, conduct and other wrongs alleged in this  
14 Complaint, Defendants, directly or indirectly, used the means and instrumentalities of  
15 interstate commerce, including but not limited to, the United States mail, interstate  
16 telephone communications and the facilities of the national securities exchange.  
17

## PARTIES

18  
19  
20 12. Plaintiff, as set forth in the accompanying Certification, purchased common  
21 shares of GenMark at artificially inflated prices during the Class Period and was  
22 damaged upon the revelation of the alleged corrective disclosure.

23  
24 13. Defendant GenMark is incorporated in Delaware with principal executive  
25 offices located at 5964 La Place Court, Carlsbad, California 92008. GenMark's common  
26 stock trades on the NASDAQ under the ticker symbol "GNMK."  
27

1 14. Defendant Hany Massarany (“Massarany”) has served at all relevant times  
2 as the Company’s Chief Executive Officer (“CEO”), President and Director.

3 15. Defendant Scott Mendel (“Mendel”) has served at all relevant times as the  
4 Company’s Chief Financial Officer (“CFO”).

5 16. The Defendants referenced above in ¶¶ [REDACTED] are sometimes referred to-  
6 herein as the “Individual Defendants.”  
7

## 8 **SUBSTANTIVE ALLEGATIONS**

### 9 **Background**

10 17. GenMark Diagnostics, Inc. is a molecular diagnostics company that  
11 develops and commercializes molecular tests based on its proprietary eSensor  
12 electrochemical detection technology.  
13  
14

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

16 18. The statements referenced in ¶¶ [REDACTED] above were materially false and/or  
17 misleading because they misrepresented and/or failed to disclose the following adverse  
18 facts pertaining to the Company’s business, operational and financial results, which were  
19 known to Defendants or recklessly disregarded by them. Specifically, Defendants made  
20 false and/or misleading statements and/or failed to disclose that: (i) GenMark had  
21 slower than anticipated implementation process of its ePlex product; (ii) consequently,  
22 the Company’s revenue recognition would fall below market expectations; and (iii) as a  
23  
24  
25  
26  
27  
28

1 result, GenMark's public statements were materially false and misleading at all relevant  
2 times.

### 3 **The Truth Begins to Emerge**

4  
5 19. On November 2, 2017, GenMark President and Chief Executive Officer  
6 Hany Massarany stated during an earnings conference call that revenue recognition for  
7 expected placements of the Company's ePlex product was slowed by a longer-than-  
8 expected customer evaluation and validation process prior to implementation of ePlex in  
9 routine clinical use.  
10

11  
12 20. On this news, shares of GenMark have fallen as much as \$2.63, or 36.23%,  
13 during intraday trading on November 3, 2017

14  
15 21. As a result of Defendants' wrongful acts and omissions, and the precipitous  
16 decline in the market value of the Company's common shares, Plaintiff and other Class  
17 members have suffered significant losses and damages.  
18

### 19 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

20 22. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil  
21 Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or  
22 otherwise acquired GenMark common shares traded on the NASDAQ during the Class  
23 Period (the "Class"); and were damaged upon the revelation of the alleged corrective  
24 disclosures. Excluded from the Class are Defendants herein, the officers and directors of  
25 the Company, at all relevant times, members of their immediate families and their legal  
26  
27  
28

1 representatives, heirs, successors or assigns and any entity in which Defendants have or  
2 had a controlling interest.

3         23. The members of the Class are so numerous that joinder of all members is  
4 impracticable. Throughout the Class Period, GenMark common shares were actively  
5 traded on the NASDAQ. While the exact number of Class members is unknown to  
6 Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff  
7 believes that there are hundreds or thousands of members in the proposed Class. Record  
8 owners and other members of the Class may be identified from records maintained by  
9 GenMark or its transfer agent and may be notified of the pendency of this action by mail,  
10 using the form of notice similar to that customarily used in securities class actions.  
11

12         24. Plaintiff's claims are typical of the claims of the members of the Class as all  
13 members of the Class are similarly affected by Defendants' wrongful conduct in  
14 violation of federal law that is complained of herein.  
15

16         25. Plaintiff will fairly and adequately protect the interests of the members of  
17 the Class and has retained counsel competent and experienced in class and securities  
18 litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.  
19

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

- 23         • whether the federal securities laws were violated by Defendants' acts  
24 as alleged herein;  
25

- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the financial condition, business, operations, and management of GenMark;
- whether Defendants caused GenMark to issue false and misleading financial statements during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false and misleading financial statements;
- whether the prices of GenMark securities during the Class Period were artificially inflated because of Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

27. 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 make 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.

28. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;

- GenMark common shares are traded in efficient markets;
- the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- the Company traded on the NASDAQ, and was covered by multiple analysts;
- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's common shares; and
- Plaintiff and members of the Class purchased and/or sold GenMark common shares between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

29. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

30. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

## COUNT I

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

31. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

1           32. This Count is asserted against GenMark and the Individual Defendants and  
2 is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5  
3 promulgated thereunder by the SEC.  
4

5           33. During the Class Period, GenMark and the Individual Defendants,  
6 individually and in concert, directly or indirectly, disseminated or approved the false  
7 statements specified above, which they knew or deliberately disregarded were  
8 misleading in that they contained misrepresentations and failed to disclose material facts  
9 necessary in order to make the statements made, in light of the circumstances under  
10 which they were made, not misleading.  
11

12           34. GenMark and the Individual Defendants violated §10(b) of the 1934 Act  
13 and Rule 10b-5 in that they:  
14

- 15           • employed devices, schemes and artifices to defraud;
- 16           • made untrue statements of material facts or omitted to state material  
17 facts necessary in order to make the statements made, in light of the  
18 circumstances under which they were made, not misleading; or
- 19           • engaged in acts, practices and a course of business that operated as a  
20 fraud or deceit upon plaintiff and others similarly situated in  
21 connection with their purchases of GenMark common shares during  
the Class Period.

22           35. GenMark and the Individual Defendants acted with scienter in that they  
23 knew that the public documents and statements issued or disseminated in the name of  
24 GenMark were materially false and misleading; knew that such statements or documents  
25 would be issued or disseminated to the investing public; and knowingly and substantially  
26 participated, or acquiesced in the issuance or dissemination of such statements or  
27  
28

1 documents as primary violations of the securities laws. These Defendants by virtue of  
2 their receipt of information reflecting the true facts of GenMark, their control over,  
3 and/or receipt and/or modification of GenMark allegedly materially misleading  
4 statements, and/or their associations with the Company which made them privy to  
5 confidential proprietary information concerning GenMark, participated in the fraudulent  
6 scheme alleged herein.  
7  
8

9         36. Individual Defendants, who are the senior officers and/or directors of the  
10 Company, had actual knowledge of the material omissions and/or the falsity of the  
11 material statements set forth above, and intended to deceive Plaintiff and the other  
12 members of the Class, or, in the alternative, acted with reckless disregard for the truth  
13 when they failed to ascertain and disclose the true facts in the statements made by them  
14 or other GenMark personnel to members of the investing public, including Plaintiff and  
15 the Class.  
16  
17

18         37. As a result of the foregoing, the market price of GenMark common shares  
19 was artificially inflated during the Class Period. In ignorance of the falsity of  
20 GenMark's and the Individual Defendants' statements, Plaintiff and the other members  
21 of the Class relied on the statements described above and/or the integrity of the market  
22 price of GenMark common shares during the Class Period in purchasing GenMark  
23 common shares at prices that were artificially inflated as a result of GenMark's and the  
24 Individual Defendants' false and misleading statements.  
25  
26  
27  
28

1 38. Had Plaintiff and the other members of the Class been aware that the market  
2 price of GenMark common shares had been artificially and falsely inflated by  
3 GenMark's and the Individual Defendants' misleading statements and by the material  
4 adverse information which GenMark's and the Individual Defendants did not disclose,  
5 they would not have purchased GenMark's common shares at the artificially inflated  
6 prices that they did, or at all.  
7

8  
9 39. As a result of the wrongful conduct alleged herein, Plaintiff and other  
10 members of the Class have suffered damages in an amount to be established at trial.  
11

12 40. By reason of the foregoing, GenMark and the Individual Defendants have  
13 violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are  
14 liable to the plaintiff and the other members of the Class for substantial damages which  
15 they suffered in connection with their purchase of GenMark common shares during the  
16 Class Period.  
17

18  
19 **COUNT II**

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

22 41. Plaintiff repeats and realleges each and every allegation contained in the  
23 foregoing paragraphs as if fully set forth herein.  
24

25 42. During the Class Period, the Individual Defendants participated in the  
26 operation and management of GenMark, and conducted and participated, directly and  
27 indirectly, in the conduct of GenMark's business affairs. Because of their senior  
28

1 positions, they knew the adverse non-public information regarding the Company's  
2 inadequate internal safeguards in data security protocols.

3  
4 43. As officers and/or directors of a publicly owned company, the Individual  
5 Defendants had a duty to disseminate accurate and truthful information with respect to  
6 GenMark's financial condition and results of operations, and to correct promptly any  
7 public statements issued by GenMark which had become materially false or misleading.  
8

9 44. Because of their positions of control and authority as senior officers, the  
10 Individual Defendants were able to, and did, control the contents of the various reports,  
11 press releases and public filings which GenMark disseminated in the marketplace during  
12 the Class Period. Throughout the Class Period, the Individual Defendants exercised their  
13 power and authority to cause GenMark to engage in the wrongful acts complained of  
14 herein. The Individual Defendants therefore, were "controlling persons" of GenMark  
15 within the meaning of Section 20(a) of the Exchange Act. In this capacity, they  
16 participated in the unlawful conduct alleged which artificially inflated the market price  
17 of GenMark common shares.  
18  
19  
20

21 45. By reason of the above conduct, the Individual Defendants are liable  
22 pursuant to Section 20(a) of the Exchange Act for the violations committed by GenMark.  
23

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff demands judgment against Defendants as follows:  
26  
27  
28

1 A. Determining that the instant action may be maintained as a class action  
2 under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the  
3 Class representative;

4  
5 B. Requiring Defendants to pay damages sustained by Plaintiff and the Class  
6 by reason of the acts and transactions alleged herein;

7  
8 C. Awarding Plaintiff and the other members of the Class prejudgment and  
9 post- judgment interest, as well as their reasonable attorneys' fees, expert fees and other  
10 costs; and

11  
12 D. Awarding such other and further relief as this Court may deem just and  
13 proper.

14  
15 **DEMAND FOR TRIAL BY JURY**

16 Plaintiff hereby demands a trial by jury.

17 Dated: November     , 2017

18 Respectfully submitted,

19 **POMERANTZ LLP**

20 By: /s/ Jennifer Pafiti

21 Jennifer Pafiti (SBN 282790)  
22 468 North Camden Drive  
23 Beverly Hills, CA 90210  
24 Telephone: (818) 532-6499  
25 E-mail: jpafiti@pomlaw.com

26 **POMERANTZ, LLP**  
27 Jeremy A. Lieberman  
28 J. Alexander Hood II  
600 Third Avenue, 20th Floor  
New York, New York 10016  
Telephone: (212) 661-1100

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Facsimile:(212) 661-8665  
E-mail: jalieberman@pomlaw.com  
E-mail: ahood@pomlaw.com

**POMERANTZ LLP**  
Patrick V. Dahlstrom  
Ten South La Salle Street, Suite 3505  
Chicago, Illinois 60603  
Telephone: (312) 377-1181  
Facsimile: (312) 377-1184  
E-mail: pdahlstrom@pomlaw.com

*Attorneys for Plaintiff*

DRAFT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DRAFT