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 9 **UNITED STATES DISTRICT COURT**  
 10 **NORTHERN DISTRICT OF CALIFORNIA**  
 11 **SAN JOSE DIVISION**

12 SECURITIES AND EXCHANGE COMMISSION,

Case No.

13 Plaintiff,

14 vs.

15 ELIZABETH ANNE HOLMES and  
 THERANOS, INC.

16 Defendants.  
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 19 **CONSENT OF DEFENDANT ELIZABETH ANNE HOLMES**

20 1. Defendant Elizabeth Anne Holmes (“Defendant”) waives service of a  
 21 summons and the complaint in this action, enters a general appearance, and admits the Court’s  
 22 jurisdiction over Defendant and over the subject matter of this action.

23 2. Without admitting or denying the allegations of the complaint (except as  
 24 provided herein in paragraph 12 and except as to personal and subject matter jurisdiction,  
 25 which Defendant admits), Defendant hereby consents to the entry of the final Judgment in the  
 26 form attached hereto (the “Final Judgment”) and incorporated by reference herein, which,  
 27 among other things:  
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- 1 (a) permanently restrains and enjoins Defendant from violations of Section  
2 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15  
3 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]  
4 and Section 17(a) of the Securities Act of 1933 (“Securities Act”)[15  
5 U.S.C. §77q(a)];
- 6 (b) prohibits Defendant from acting as an officer or director of any issuer  
7 that has a class of securities registered pursuant to Section 12 of the  
8 Exchange Act, 15 U.S.C. § 78l, or that is required to file reports  
9 pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d), for  
10 a period of ten (10) years pursuant to Section 21(d)(2) of the Exchange  
11 Act [15 U.S.C. § 78u(d)(2)];
- 12 (c) orders Defendant to pay a civil penalty in the amount of \$500,000  
13 pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and  
14 Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] according to  
15 the payment plan set forth below;
- 16 (d) orders Defendant to return to Theranos, Inc. 18,897,137 Class B  
17 common stock shares in Theranos, Inc. purchased by defendant within  
18 14 days of entry of this Final Judgment;
- 19 (e) orders Defendant, after her return of shares pursuant to paragraph 2(d)  
20 above, to provide written notice to Theranos, Inc. that she elects to  
21 convert all Class B common stock shares in Theranos, Inc. to Class A  
22 common stock shares in Theranos, Inc. and take all necessary  
23 administrative actions to effectuate the conversion of these Class B  
24 common stock shares to Class A common stock shares within 28 days  
25 of entry of this Final Judgment; and
- 26 (f) orders Defendant to certify, in writing, compliance with paragraphs  
27 2(d) and 2(e) set forth above. The certification shall identify the  
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1 actions, provide written evidence of compliance in the form of a  
2 narrative, and be supported by exhibits sufficient to demonstrate  
3 compliance. The Securities and Exchange Commission (the  
4 “Commission”) staff may make reasonable requests for further  
5 evidence of compliance, and Defendant agrees to provide such  
6 evidence. Defendant shall submit the certification and supporting  
7 material to Monique C. Winkler, with a copy to the Office of Chief  
8 Counsel of the Enforcement Division, no later than thirty (30) days  
9 from the date of compliance.

10 3. Defendant agrees that she shall not seek or accept, directly or indirectly,  
11 reimbursement or indemnification from any source, including but not limited to payment  
12 made pursuant to any insurance policy, with regard to any civil penalty amounts that  
13 Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts  
14 or any part thereof are added to a distribution fund or otherwise used for the benefit of  
15 investors. Defendant further agrees that she shall not claim, assert, or apply for a tax  
16 deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts  
17 that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty  
18 amounts or any part thereof are added to a distribution fund or otherwise used for the benefit  
19 of investors.

20 4. Defendant shall pay the penalty due of \$500,000 in two installments to the  
21 Commission according to the following schedule: (1) \$35,000, within 14 days of entry of this  
22 Final Judgment and (2) \$465,000, within one year of entry of this Final Judgment. Payments  
23 shall be deemed made on the date they are received by the Commission and shall be applied  
24 first to post judgment interest, which accrues pursuant to 28 U.S.C. § 1961 on any unpaid  
25 amounts due after 14 days of the entry of Final Judgment. Prior to making the final payment  
26 set forth herein, Defendant shall contact the staff of the Commission for the amount due for  
27 the final payment.  
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1 If Defendant fails to make any payment by the date agreed and/or in the amount  
2 agreed according to the schedule set forth above, all outstanding payments under this Final  
3 Judgment, including post-judgment interest, minus any payments made, shall become due and  
4 payable immediately at the discretion of the staff of the Commission without further  
5 application to the Court.

6 5. Defendant waives the entry of findings of fact and conclusions of law pursuant  
7 to Rule 52 of the Federal Rules of Civil Procedure.

8 6. Defendant waives the right, if any, to a jury trial and to appeal from the entry  
9 of the Final Judgment.

10 7. Defendant enters into this Consent voluntarily and represents that no threats,  
11 offers, promises, or inducements of any kind have been made by the Commission or any  
12 member, officer, employee, agent, or representative of the Commission to induce Defendant  
13 to enter into this Consent.

14 8. Defendant agrees that this Consent shall be incorporated into the Final  
15 Judgment with the same force and effect as if fully set forth therein.

16 9. Defendant will not oppose the enforcement of the Final Judgment on the  
17 ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil  
18 Procedure, and hereby waives any objection based thereon.

19 10. Defendant waives service of the Final Judgment and agrees that entry of the  
20 Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to  
21 Defendant of its terms and conditions. Defendant further agrees to provide counsel for the  
22 Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court,  
23 with an affidavit or declaration stating that Defendant has received and read a copy of the  
24 Final Judgment.

25 11. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims  
26 asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise  
27 or representation has been made by the Commission or any member, officer, employee, agent,  
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1 or representative of the Commission with regard to any criminal liability that may have arisen  
2 or may arise from the facts underlying this action or immunity from any such criminal  
3 liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this  
4 proceeding, including the imposition of any remedy or civil penalty herein. Defendant further  
5 acknowledges that the Court's entry of a permanent injunction may have collateral  
6 consequences under federal or state law and the rules and regulations of self-regulatory  
7 organizations, licensing boards, and other regulatory organizations. Such collateral  
8 consequences include, but are not limited to, a statutory disqualification with respect to  
9 membership or participation in, or association with a member of, a self-regulatory  
10 organization. This statutory disqualification has consequences that are separate from any  
11 sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding  
12 before the Commission based on the entry of the injunction in this action, Defendant  
13 understands that she shall not be permitted to contest the factual allegations of the complaint  
14 in this action.

15 12. Defendant understands and agrees to comply with the terms of 17 C.F.R.  
16 § 202.5(e), which provides in part that it is the Commission's policy "not to permit a  
17 defendant or respondent to consent to a judgment or order that imposes a sanction while  
18 denying the allegations in the complaint or order for proceedings," and "a refusal to admit the  
19 allegations is equivalent to a denial, unless the defendant or respondent states that he neither  
20 admits nor denies the allegations." As part of Defendant's agreement to comply with the  
21 terms of Section 202.5(e), Defendant: (i) will not take any action or make or permit to be  
22 made any public statement denying, directly or indirectly, any allegation in the complaint or  
23 creating the impression that the complaint is without factual basis; (ii) will not make or permit  
24 to be made any public statement to the effect that Defendant does not admit the allegations of  
25 the complaint, or that this Consent contains no admission of the allegations, without also  
26 stating that Defendant does not deny the allegations; (iii) upon the filing of this Consent,  
27 Defendant hereby withdraws any papers filed in this action to the extent that they deny any  
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1 allegation in the complaint; and (iv) stipulates solely for purposes of exceptions to discharge  
2 set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, that the allegations in the  
3 complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil  
4 penalty or other amounts due by Defendant under the Final Judgment or any other judgment,  
5 order, consent order, decree or settlement agreement entered in connection with this  
6 proceeding, is a debt for the violation by Defendant of the federal securities laws or any  
7 regulation or order issued under such laws, as set forth in Section 523(a)(19) of the  
8 Bankruptcy Code, 11 U.S.C. § 523(a)(19). If Defendant breaches this agreement, the  
9 Commission may petition the Court to vacate the Final Judgment and restore this action to its  
10 active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or  
11 (ii) right to take legal or factual positions in litigation or other legal proceedings in which the  
12 Commission is not a party.

13 13. Defendant hereby waives any rights under the Equal Access to Justice Act, the  
14 Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law  
15 to seek from the United States, or any agency, or any official of the United States acting in his  
16 or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees,  
17 expenses, or costs expended by Defendant to defend against this action. For these purposes,  
18 Defendant agrees that Defendant is not the prevailing party in this action since the parties  
19 have reached a good faith settlement.

20 14. In connection with this action and any related judicial or administrative  
21 proceeding or investigation commenced by the Commission or to which the Commission is a  
22 party, Defendant (i) agrees to appear and be interviewed by Commission staff at such times  
23 and places as the staff requests upon reasonable notice; (ii) will accept service by mail or  
24 facsimile transmission of notices or subpoenas issued by the Commission for documents or  
25 testimony at depositions, hearings, or trials, or in connection with any related investigation by  
26 Commission staff; (iii) appoints Defendant's undersigned attorney as agent to receive service  
27 of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the  
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1 territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and  
2 any applicable local rules, provided that the party requesting the testimony reimburses  
3 Defendant's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government  
4 per diem rates; and (v) consents to personal jurisdiction over Defendant in any United States  
5 District Court for purposes of enforcing any such subpoena.

6 15. Defendant agrees that the Commission may present the Final Judgment to the  
7 Court for signature and entry without further notice.

8 16. Defendant agrees that this Court shall retain jurisdiction over this matter for  
9 the purpose of enforcing the terms of the Final Judgment.

10 Dated: 3/6/18  
11   
12 ELIZABETH ANNE HOLMES

13 On \_\_\_\_\_, 2018, \_\_\_\_\_, a person known to me,  
14 personally appeared before me and acknowledged executing the foregoing Consent.

15   
16 Notary Public  
17 Commission expires:

18 Approved as to form:

19   
20 JOHN C. DWYER, ESQ.   
21 COOLEY LLP  
22 3175 Hanover Street  
23 Palo Alto, CA 94304-1130

24 Attorney for Defendant Elizabeth Holmes  
25  
26  
27  
28



A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

STATE OF CALIFORNIA )

COUNTY OF SANTA CLARA )

) ss.

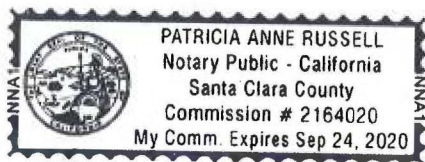
On March 6 2018 before me, Patricia Anne Russell, Notary Public,

personally appeared Elizabeth Anne Holmes,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Patricia Anne Russell  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Consent of Δ Elizabeth Anne Holmes

Document Date: March 6 2018 Number of Pages: 7

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer – Title(s): \_\_\_\_\_
- Partner –  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer is representing: \_\_\_\_\_

