

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K
CURRENT REPORT

Pursuant to Section 13 OR 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): August 4, 2020

Fulgent Genetics, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

001-37894
(Commission File Number)

81-2621304
(I.R.S. Employer Identification No.)

4978 Santa Anita Avenue,
Temple City, California
(Address of principal executive offices)

91780
(Zip Code)

(626) 350-0537
Registrant's telephone number, including area code

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13a-4(c))

Securities Registered pursuant to Section 12(b) of the Act:

<u>Title of each class:</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered:</u>
Common Stock, par value \$0.0001 per share	FLGT	The Nasdaq Stock Market (Nasdaq Global Market)

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement.

On August 4, 2020, Fulgent Genetics, Inc. (the “Company”) and Piper Sandler & Co. (the “Agent”) entered into an amendment (the “Amendment”) to the Equity Distribution Agreement, dated August 30, 2019 (as amended, the “Equity Distribution Agreement”), by and between the Company and the Agent to increase the amount of Company common stock (the “Shares”) that the Company may offer and sell, from time to time, through the Agent pursuant to the Equity Distribution Agreement from an aggregate offering price of up to \$30 million to an aggregate offering price of up to \$44.92 million. Except as specifically amended by the Amendment, the Equity Distribution Agreement remains in full force and effect and all other terms of the Equity Distribution Agreement remain unchanged.

Under the Equity Distribution Agreement, the Agent may sell the Shares by any method permitted by law deemed to be an “at the market” offering as defined in Rule 415 promulgated under the Securities Act of 1933, as amended, including sales made directly on the Nasdaq Global Market or on any other existing trading market for the Shares. Any Shares offered and sold in the Offering will be issued pursuant to the Company’s registration statement on Form S-3 (File No. 333-233227) filed with the Securities and Exchange Commission (the “SEC”) on August 12, 2019 (the “Registration Statement”) and declared effective on August 23, 2019, the prospectus supplements relating to the Offering filed with the SEC on August 30, 2019, May 6, 2020 and August 4, 2020 and any applicable additional prospectus supplements related to the Offering that form a part of the Registration Statement. As of August 4, 2020, the Company has sold an aggregate of 104,390 shares of its common stock pursuant to the Equity Distribution Agreement for gross proceeds of \$1,266,878.82.

The foregoing description of the Amendment is not complete and is qualified in its entirety by reference to the full text of the Amendment filed as Exhibit 1.1 hereto, which is incorporated herein by reference.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy the Shares, nor shall there be any offer, solicitation or sale of the Shares in any state or country in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or country.

The opinion of the Company's counsel regarding the validity of the Shares is filed as Exhibit 5.1 hereto. This opinion is also filed with reference to, and is hereby incorporated by reference into, the Registration Statement.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Number	Description
1.1	<u>Amendment to Equity Distribution Agreement, dated as of August 4, 2020, by and between Fulgent Genetics, Inc. and Piper Sandler & Co.</u>
5.1	<u>Opinion of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.</u>
23.1	<u>Consent of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (included in Exhibit 5.1).</u>

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Fulgent Genetics, Inc.

Date: August 4, 2020

By: /s/ Paul Kim

Name: Paul Kim

Title: Chief Financial Officer

AMENDMENT NO. 1 TO EQUITY DISTRIBUTION AGREEMENT

August 4, 2020

Ladies and Gentlemen:

Fulgent Genetics, Inc. (the “**Company**”) and Piper Sandler & Co. (formerly known as Piper Jaffray & Co.) (the “**Agent**”) are parties to that certain Equity Distribution Agreement dated August 30, 2019 (the “**Original Agreement**”). All capitalized terms used but not defined in this Amendment No. 1 to the Original Agreement by and between the Company and the Agent (the “**Amendment**”) shall have the meanings ascribed to them in the Original Agreement. The parties, intending to be legally bound, hereby amend the Original Agreement as follows:

1. Amendments to Equity Distribution Agreement. The first sentence of the introductory paragraph of the Original Agreement is amended to read as follows:

“As further set forth in this agreement (this “**Agreement**”), Fulgent Genetics, Inc., a company organized under the laws of the State of Delaware (the “**Company**”), proposes to issue and sell from time to time through Piper Jaffray & Co. (the “**Agent**”), as sales agent, the Company’s common stock, par value \$0.0001 per share (the “**Common Stock**”) having an aggregate offering price of up to \$44.92 million (such shares of Common Stock to be sold pursuant to this Agreement, the “**Shares**”) on terms set forth herein.”

2. Terminology. Upon the effectiveness of this Amendment, each reference in the Original Agreement to “this Agreement,” “hereunder,” “herein” or words of like import shall mean and be a reference to the Original Agreement as amended by this Amendment.

3. No Other Amendments. Except as set forth in paragraphs 1 and 2 above, all terms and provisions of the Original Agreement shall continue in full force and effect.

4. Applicable Law. This Amendment and any claim, controversy or dispute arising under or related to this Amendment will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and performed within the State of New York.

5. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Delivery of an executed Amendment by one party to the other may be made by facsimile, email or other electronic format (including, without limitation, “pdf”, “tif”, or “jpg”) and other electronic signatures (including, without limitation, DocuSign and AdobeSign).

[Remainder of Page Intentionally Blank]

If the foregoing correctly sets forth the understanding among the Company and the Agent, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding amendment to the Original Agreement between the Company and the Agent.

Very truly yours,

FULGENT GENETICS, INC.

By: /s/ Ming Hsieh
Name: Ming Hsieh
Title: Chairman, President and Chief Executive Officer

PIPER SANDLER & CO.

By: /s/ Neil Riley
Name: Neil Riley
Title: Managing Director

[Signature page to Amendment No. 1 to Equity Distribution Agreement]



MINTZ

August 4, 2020

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San Diego, CA 92130
858-314-1500
www.mintz.com

Fulgent Genetics, Inc.
4978 Santa Anita Avenue, Suite 205
Temple City, CA 91780

Ladies and Gentlemen:

We have acted as counsel to Fulgent Genetics, Inc., a Delaware corporation (the "Company"), in connection with the preparation and filing with the Securities and Exchange Commission (the "Commission") of a Prospectus Supplement, dated August 4, 2020, to a Prospectus, dated August 12, 2019 (the "Prospectus and Prospectus Supplement"), filed pursuant to a Registration Statement on Form S-3, Registration No. 333-233227 (the "Registration Statement"), pursuant to which the Company is registering under the Securities Act of 1933, as amended (the "Securities Act"), the sale of up to \$44.92 million of shares (the "Shares") of common stock, \$0.0001 par value per share (the "Common Stock"), of the Company. The Shares are being sold pursuant to an Equity Distribution Agreement, dated as of August 30, 2019, by and between the Company and Piper Sandler & Co., as amended on August 4, 2020 (the "Distribution Agreement"), pursuant to which the Company may issue and sell the Shares pursuant to the Registration Statement and the Prospectus and Prospectus Supplement.

In connection with this opinion, we have examined the Company's Certificate of Incorporation, as amended to date, and Bylaws, both as currently in effect, such other records of the corporate proceedings of the Company and certificates of the Company's officers as we have deemed relevant, as well as the Registration Statement and the exhibits thereto and the Prospectus and the Prospectus Supplement.

In our examination, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified, photostatic or facsimile copies and the authenticity of the originals of such copies.

Based upon the foregoing, and subject to the limitations set forth below, we are of the opinion that the Shares, when issued by the Company out of the Company's duly authorized Common Stock and issued and delivered by the Company against payment therefor as contemplated by the Distribution Agreement, on terms approved by the Board of Directors of the Company, or a duly authorized committee thereof, will be duly and validly issued, fully paid and nonassessable.

BOSTON LONDON LOS ANGELES NEW YORK SAN DIEGO SAN FRANCISCO WASHINGTON

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.

August 4, 2020

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Our opinion is limited to the General Corporation Law of the State of Delaware, and we express no opinion with respect to the laws of any other jurisdiction. No opinion is expressed herein with respect to the qualification of the Shares under the securities or blue sky laws of any state or any foreign jurisdiction.

We have relied as to certain matters on information obtained from public officials, officers of the Company, and other sources believed by us to be responsible.

Please note that we are opining only as to the matters expressly set forth herein, and no opinion should be inferred as to any other matters. This opinion is based upon currently existing statutes, rules, regulations and judicial decisions, and we disclaim any obligation to advise you of any change in any of these sources of law or subsequent legal or factual developments which might affect any matters or opinions set forth herein.

We hereby consent to the filing of this opinion as an exhibit to a Current Report on Form 8-K in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act and to the use of this firm's name therein and in the Prospectus and Prospectus Supplement under the caption "Legal Matters." In giving such consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission.

Very truly yours,

/s/ Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.