Ca	e 2:21-cv-02569-CAS-MAA	Document 1	Filed 03/24/21	Page 1 of 35 Page ID #:1		
1	VENNETH L CDOSS ESO	#117020				
1	KENNETH I. GROSS, ESQ. #117838 LAW OFFICES OF KENNETH I. GROSS & ASSOCIATES					
2 3	849 South Broadway, Suite 504 Los Angeles, California 90014-3232 (213) 627-0218 (Tel.) kgross@kigrosslaw.com					
4						
5	Attorneys for Plaintiffs					
6	MMAS Research LLC and Dr. Donald E. Morisky					
7						
8	IN TH	E UNITED ST	LATES DISTRIC	TCOURT		
9	IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA					
10						
11	MMAS RESEARCH LLC and		Case No.:	2:21-cv-2569		
12	DR. DONALD E. MORISKY,	COMPL		AINT FOR DAMAGES		
13	Plai	ntiff(s),				
14	VS.		-	oyright Infringement Under		
15	DUKE UNIVERSITY; DR. ALLISON VORDERSTRASSE; DR. LUCY		17 U.S.C. §§ 101, <i>et seq.</i> 2. False Designation of			
16	PINER; DR. BRIAN D. DUSC MAHESH PATEL; DR. KARI	CHA; DR.	Cor	gin/Federal Unfair npetition Under 15 U.S.C. §		
17	CRAIG; DR. ROBERT W.			5(a) de Secret Misappropriation		
18	MCGARRAH III; DR. WILLI KRAUS; DR. DEEPAK VOOI	RA; DR.	Under 18 U.S.C. § 1836, <i>et seq.</i> 4. Trade Secret Misappropriation			
19	ASHLEY AULL DUNHAM; I BRANDI GRANGER; and DC		Und	ler Cal. Civ. Code § 3426 <i>et</i>		
20			seq.			
21	Defer	ndant(s).		IAL DEMANDED		
22						
23 24	Plaintiffs MMAS RESEARCH LLC and DR. DONALD MORISKY complain and allege as					
24 25	follows:					
23 26	- 1 -					
20	COMPLAINT					
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Plaintiff MMAS RESEARCH LLC ("MMAS RESEARCH") is a Washington
 limited liability company in good standing which conducts business in California.

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2. Plaintiff DR. DONALD E. MORISKY ("MORISKY") is an individual and Professor Emeritus at the University of California, Los Angeles. Together, Plaintiffs MMAS RESEARCH and MORISKY will be referred to as Plaintiffs.

Belaintiff MORISKY is the owner of the "Morisky Medication Adherence Scale (4item)" ("MMAS-4"), registered under United States Copyright Registration No. TX0008285390
(Registration date June 12, 2016) (the "Morisky MMAS-4 Copyright"). Plaintiff MORISKY is also
the owner of the "Morisky Medication Adherence Scale (8-item)" ("MMAS-8"), registered under
United States Copyright Registration No. TX0008632533 (Registration date September 21, 2018)
(the "Morisky MMAS-8 Copyright").

4. As used herein, the Morisky MMAS-4 Copyright and the Morisky MMAS-8
Copyright, when used collectively, are referred to as the MORISKY COPYRIGHTS.

14 5. Plaintiff MMAS RESEARCH is the owner of the "MMAS RESEARCH WIDGET
15 CODE" ("Morisky Widget"), registered under United States Copyright Registration No. TX 8-81616 517 (Registration date December 3, 2019) (the "Morisky Widget Copyright"). The Morisky Widget
17 is an electronic diagnostic assessment protocol to measure and identify medication adherence
18 behaviors, as further described below.

19 6. Defendant DUKE UNIVERSITY ("DUKE") is a private university located in
20 Durham, North Carolina.

21 7. Defendant Dr. Allison Vorderstrasse ("VORDERSTRASSE") is or was a researcher at
22 DUKE at all relevant times.

23 8. Defendant Dr. Brian M. Duscha ("DUSCHA") is or was a researcher at DUKE at all
24 relevant times.

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Cas	e 2:21-cv-02569-CAS-MAA Document 1 Filed 03/24/21 Page 3 of 35 Page ID #:3			
1	9. Defendant Dr. Lucy Piner ("PINER") is or was a researcher at DUKE at all relevant			
2	times.			
3	10. Defendant Dr. Mahesh Patel ("PATEL") is or was a researcher at DUKE at all relevant			
4	times.			
5	11. Defendant Dr. Karen M. Craig ("CRAIG") is or was a researcher at DUKE at all			
6	relevant times.			
7	12. Defendant Dr. Robert W. McGarrah III ("MCGARRAH") is or was a researcher at			
8	DUKE at all relevant times.			
9	13. Defendant Dr. William E. Kraus ("KRAUS") is or was a researcher at DUKE at all			
10	relevant times.			
11	14. Defendant Dr. Deepak Voora ("VOORA") is or was a researcher at DUKE at all relevant			
12	times.			
13	15. Defendant Dr. Ashley Aull Dunham ("DUNHAM") is or was a researcher at DUKE at			
14	all relevant times.			
15	16. Defendant Dr. Brandi Granger ("GRANGER") is or was a researcher at DUKE at all			
16	relevant times.			
17	17. Collectively, Defendants VORDERSTRASSE, DUSCHA, PINER, PATEL, CRAIG,			
18	MCGARRAH, KRAUS, VOORA, DUNHAM, and GRANGER are the "DUKE RESEARCHERS," or			
19	individually, as a "DUKE RESEARCHER."			
20	18. Whenever appearing in this Complaint, each reference to Defendants or to any of			
21	them, is intended to be and shall be a reference to all defendants hereto, including DUKE and			
22	DUKE RESEARCHERS, and to each of them named and unnamed, including all fictitiously named			
23	defendants, unless said reference is otherwise specifically qualified.			
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25	- 3 -			
26	COMPLAINT			
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1 19. Plaintiffs are informed, believe, and thereupon allege that each RESEARCHER was
 and is in some manner responsible for the actions, acts, and omissions herein alleged, and for the
 damage caused by the defendant DUKE and is, therefore, jointly and severally liable for the damage
 caused to Plaintiffs.

5 20. Plaintiffs are informed, believe, and thereon allege that each of the Defendants were, at
6 all times herein relevant, acting in concert with and in conspiracy with each one of the remaining
7 defendants.

8 21. Each defendant is sued both as principal and as the servant, agent, employee, co9 venturer, and co-tortfeasor of the remaining defendants, and each of them is liable in some manner for
10 the damages to Plaintiffs complained of herein.

22. Plaintiffs are informed, believe, and thereon allege defendants, and each of them, did at
all material times foresee the nature and extent of the probable consequences of their acts in proximately
causing said damages to Plaintiffs, and acted within the course and scope of such service, agency,
employment, and joint venture, and with the knowledge, permission, and authority, actual and apparent,
express and implied, direct and vicarious, of the remaining defendants, and each of them.

Plaintiffs are informed, believe, and thereon allege that at all relevant times each of the
defendants was the agent, employee, representative, co-conspirator, affiliate, alter-ego, and/or successorin-interest of each of them, and of each other, and has, in such capacity or capacities, participated in the
acts or conduct alleged herein. All allegations made herein shall apply to each of the Defendants, as
applicable.

21 24. The true names and capacities, whether individual, corporate, associate or otherwise,
22 of defendants DOES 1-50, inclusive, are unknown to Plaintiffs, who therefore sue said Defendants
23 by such fictitious names. Plaintiffs are informed and believe and based thereon allege, that each of
24 the Defendants herein designated as a DOE, is responsible in some manner for the events and

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- 4 -COMPLAINT happenings herein referred to, and caused injuries and damages proximately thereby. Plaintiffs will
 amend this complaint and insert the true names and capacities of said DOE Defendants when the
 same has been ascertained.

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#### JURISDICTION AND VENUE

5 25. This action arises, in part, under the Copyright Act of 1976, 17 U.S.C. §§ 101, *et.* 6 *seq.*, and the Lanham Trademark Act of 1946, 15 U.S.C. § 1051, *et seq.*, conferring Federal 7 question jurisdiction under 28 U.S.C. § 1331, and supplemental jurisdiction on Plaintiffs' state law 8 claims under 28 U.S.C. § 1367. This Court has original jurisdiction over this controversy for 9 misappropriation of trade secrets claims pursuant to 18 U.S.C. § 1836(c).

10 26. Venue is proper in this District pursuant to 28 U.S. C. §§ 1391(b)(2) as: (a) a 11 substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District; 12 (b) Defendants conduct business in this District; (c) the unlawful acts of Defendants complained of herein have been committed within this District and have had or will have had effect in this District; 13 14 (d) the written agreements/contracts as identified and described more thoroughly below were 15 entered into by the respective parties in this District; (e) the written agreements/contracts as identified and described more thoroughly below conferred jurisdiction in this District; and (f) 16 17 Plaintiffs are residents of this District, has been and will continue to be damaged by Defendants' 18 unlawful acts.

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### GENERAL ALLEGATIONS

#### MORISKY MEDICATION ADHERENCE SCALES

21 27. As early as 2002, Plaintiff MORISKY, a Professor Emeritus at UCLA,
22 independently developed a distinctive diagnostic tool which determines a patient's adherence to his
23 or her prescribed medication. The tool is known as the Morisky Medication Adherence Scale
24 ("MMAS").

- 5 -COMPLAINT 1 28. The MMAS measures a person/patient's adherence to their prescribed medication, 2 and the results lead to specific diagnosis, medication reconciliation, and interventions to optimize 3 treatment, as well as form the basis for conclusions/assertions in scientific papers, all covering a 4 wide variety of chronic and infectious diseases and medical conditions. The MMAS is most 5 commonly administered electronically in questionnaire form by individuals/entities who are 6 licensees of Plaintiff MORISKY.

7 29. The MMAS is currently utilized in two (2) forms: the MMAS-4 (consisting of 4
8 specifically-tailored questions) and the MMAS-8 (consisting of 8 specifically-tailored questions).

9 30. The MMAS-4 is a measure of medication-taking behavior, also referred to as 10 compliance, adherence, and concordance. It is used as a screening tool for non-adherence to the 11 medical recommendations of the health care provider. The MMAS-4 is intended to be integrated 12 into the patient's health care visit when the physician informally asks the four (4) questions and 13 provides immediate feedback to the patient. This "teachable moment" is one of the most important 14 aspects of potential behavioral change as counseling and reinforcement over time has shown 15 significant improvement of adherence over time.

16 31. The MMAS-8 is a diagnostic adherence assessment instrument which contains a total 17 of eight (8) items measuring two dimensions of non-adherence, namely intentional and 18 unintentional non-adherence. Furthermore, the MMAS-8 is more than a number defining the 19 magnitude of non- adherence as it also tells the physician "Why" the patient is non-adherent.

32. The MMAS-8 is the only diagnostic adherence assessment instrument in the
scientific literature that has one of the highest measures of reliability (stability of the measure over
time) and validity. It has been validated in over eighty (80) different languages in the world using
many levels of validation.

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- 6 -COMPLAINT 33. The Morisky Widget is an electronic derivative of the Morisky Medication
 Adherence Scales (the MMAS-4 and MMAS-8). The Morisky Widget administers, scores, and
 reports MMAS-4 and MMAS-8 test results.

4 34. Plaintiff MMAS RESEARCH licenses, and since January 2017 has licensed, use of
5 the Morisky Widget to score and code the MMAS-4 and MMAS-8 tests. Prior to 2017, individual
6 licenses to the MMAS-4 and MMAS-8 were granted and sold by Plaintiff MORISKY.

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#### COPYRIGHTS

8 35. In an effort to protect the integrity of the MMAS-4 and protect against counterfeit,
9 infringing, and/or unauthorized use, Plaintiff MORISKY filed for and obtained a Certificate of
10 Registration for the Morisky MMAS-4 Copyright, which is comprised of the text of the MMAS-4
11 test.

36. In an effort to protect the integrity of the MMAS-8 and protect against counterfeit,
infringing, and/or unauthorized use, Plaintiff MORISKY filed for and obtained a Certificate of
Registration for the Morisky MMAS-8 Copyright, which is comprised of the text of the MMAS-8
test.

16 37. In an effort to protect the integrity of the Morisky Widget and protect against
17 counterfeit, infringing, and/or unauthorized use, Plaintiff MMAS RESEARCH filed for and
18 obtained a Certificate of Registration for the Morisky Widget Copyright.

19 38. Plaintiff MORISKY has complied in all respects with the Copyright Act of 1976, 17
20 U.S.C. § 101, *et. seq.*, and all other laws governing copyrights as to the MMAS-4, MMAS-8, and
21 the MORISKY COPYRIGHTS.

39. Plaintiff MMAS RESEARCH has complied in all respects with the Copyright Act of
1976, 17 U.S.C. § 101 *et. seq.* and all other laws governing copyrights as to the Morisky Widget
Copyright.

#### - 7 -COMPLAINT

40. Since the MMAS-4 and MMAS-8 were created, Plaintiff MORISKY has been, and
 still is, the sole author and exclusive holder of all rights, title, and interest in and to the copyrights to
 the MMAS-4 and MMAS-8, including but not limited to the MORISKY COPYRIGHTS. Plaintiff
 MORISKY has not granted any license or right to any person or entity, including Defendants, to use
 the MORISKY COPYRIGHTS, except solely in association with the authorized use of the Morisky
 Medication Adherence Scales (MMAS-4 and/or MMAS-8).

7 41. The MMAS-4, MMAS-8, MORISKY COPYRIGHTS, and the Morisky Widget
8 Copyright are vital to Plaintiffs' ongoing business and profession and, more specifically, Plaintiffs'
9 efforts to ensure that third-party use of the Morisky Medication Adherence Scales (MMAS-4 and/or
10 MMAS-8) are authorized and utilized in compliance with Plaintiffs' strict coding and scoring which
11 are maintained by Plaintiffs as trade secrets.

42. Plaintiffs impose restrictions on the use and disclosure of the coding and scoring of
the MMAS-4, MMAS-8, and the Morisky Widget not only to protect their federally registered
rights, but also to protect patients and health care providers from counterfeit or scientifically
incorrect diagnostic assessments and inaccurate results.

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#### TRADEMARKS

17 43. Plaintiff MORISKY is the creator and owner of the trademarks "Morisky Medication
18 Adherence Scale," "MMAS," "MMAS-4," and "MMAS-8" (hereinafter the "MORISKY
19 MARKS").

44. The "MMAS" trademark is the subject of Federal Trademark Registration No.
5837273 and has been used in commerce since at least as early as February 2006.

45. As a result of the extensive, exclusive, and continued use of the MORISKY MARKS
 in commerce, medical institutions through, among others, their physicians, nurses, researchers,
 clinicians, and/or medical students have come to recognize and identify the MORISKY MARKS
 -8 COMPLAINT

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exclusively with the medication adherence scales developed by Plaintiff MORISKY. The 1 2 MORISKY MARKS have become a valuable asset of Plaintiffs as well as a symbol of their 3 goodwill and positive reputations.

LICENSES

5 46. It is of critical importance the integrity of the MMAS be maintained. This is why a 6 strict licensing regimen is used and disclosure of coding and scoring criteria, and translations not 7 provided by Plaintiffs, are not permitted.

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47. Plaintiffs have discovered that when someone obtains the MMAS coding and scoring 9 criteria they often make changes that lead to erroneous results. Others obtaining the MMAS from 10 counterfeiters often make further unauthorized revisions, further increasing the risk of harm to patients and misleading healthcare providers. Unlicensed translations are often divulged and used 11 12 with the coding and scoring criteria which render the results invalid and misunderstood.

13 48. Plaintiffs have spent considerable time and money to develop, maintain, and advance 14 the MMAS described herein and it now can be administered with regard to one hundred ten (110) 15 medical conditions and thousands of specific medications as of this filing, and in more than eighty (80) languages. The MMAS is used by physicians, hospitals, clinicians, pharmaceutical companies, 16 17 universities, medical researchers, and health ministries throughout the world, including National 18 Institute of Health funded studies, all to measure medication adherence and identify the reasons for 19 why patients do not take their prescribed medications. MMAS translations are provided by 20 Plaintiffs for a small fee along with a translation certification. Translations of the MMAS without 21 proper authorization are prohibited.

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49. The various MMAS diagnostic assessments are validated and translated in over 23 eighty (80) languages and utilized throughout the world. The MMAS is famous in the industry and 24 is the number one patient-centered diagnostic medication adherence assessment of its kind.

> -9-COMPLAINT

Plaintiffs make considerable efforts to maintain the secrecy of the coding and scoring of the scale
 and expressly forbid the disclosure of coding and scoring in their license agreements with licensees
 of all versions of the MMAS.

50. Plaintiffs permit the use of the MORISKY COPYRIGHTS, MORISKY MARKS, the
MMAS, and the Morisky Widget only through a licensing program memorialized in a licensing
agreement. This ensures uniformity of use in coding and scoring, as well as provides much needed
support from Plaintiffs. Modifications of the MMAS, and disclosure of coding and scoring criteria
and linguistically certified translations are not permitted.

9 51. Reasonable efforts are taken by Plaintiffs to protect and not to disseminate the 10 MMAS, Morisky Widget, or translated versions to non-authorized users, as well as the coding and 11 scoring. These restrictions not only protect patients and health care providers from counterfeit 12 diagnostic assessments and inaccurate coding and scoring, but also protect the economic interests of 13 Plaintiffs in the MORISKY COPYRIGHTS, MORISKY MARKS, the MMAS itself, along with the 14 Morisky Widget diagnostic assessment, as they receive licensing fees and are paid per test 15 administered, unless such fees are waived. In fact, the license agreement expressly provides that coding and scoring may not be disclosed. 16

17 52. Licenses are typically provided at no cost for federally-funded studies, and to 18 educational institutions that are not receiving funding for the research/study for which the MMAS 19 and Morisky Widget is to be used. Others are charged a fee for a fixed term or for a perpetual 20 license sold as the Morisky Widget. Plaintiffs also charge fees for training and certification in use of 21 the Morisky Widget, and there is a charge for each test administered by a licensee, in addition to 22 those included in the cost of the license.

23 53. The MORISKY COPYRIGHTS, MORISKY MARKS, and the MMAS have been
24 cited in over eight thousand (8,000) academic journals throughout the world.

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- 10 -COMPLAINT 54. Due to Plaintiffs' exclusive and extensive use, through a strict regimen of licensing
 and supervision, the MORISKY COPYRIGHTS, MORISKY MARKS, the MMAS, and the
 Morisky Widget have enormous value both economically and for the promotion of health and
 proper diagnosis of persons suffering from a wide range of chronic and infectious diseases and
 mental health conditions worldwide.

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#### DEFENDANTS DUKE AND VORDERSTRASSE'S INFRINGING CONDUCT

55. On or around August 19, 2013, Plaintiff MORISKY and Defendants DUKE and
VORDERSTRASSE entered into a license agreement (hereinafter the "Duke/Vorderstrasse License
Agreement") whereby said Defendants were permitted to administer MMAS-8 tests, and in so
doing, utilize the MORISKY COPYRIGHTS and MORISKY MARKS for a period of one year. A
copy of the Duke/Vorderstrasse License Agreement is attached hereto and incorporated herein as
<u>Exhibit A</u>.

13 56. Section (C)(2) of the Duke/Vorderstrasse License Agreement provides: "Coding and
14 scoring criteria of the MMAS-8 are trade secrets of [Plaintiff MORISKY] and as such cannot be
15 divulged in any publication or report without [Plaintiff MORISKY's] prior written permission."

16 57. Section (C)(5) of the Duke/Vorderstrasse License Agreement provides: "In case of
17 scientific, administrative or intellectual property misconduct using the MORISKY SCALE system
18 of questionnaires or the Morisky name or MMAS names, [Plaintiff MORISKY] reserves the right to
19 withdraw permission for use and to pursue all legal remedies. Licensee agrees to the jurisdiction in
20 and venue of the State and Federal Courts in Los Angeles County."

58. Section (C)(6) of the Duke/Vorderstrasse License Agreement provides: "Rights
 granted under this Agreement to use the Morisky scales terminate one-year from the date below or
 on termination of Licensee's study, whichever is shorter. Licensee acknowledges understanding and
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agreeing [sic] to abide by the above requirements regarding use of any Morisky Medication
 Adherence Scale or other Morisky intellectual property."

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59. Upon information and belief, Defendants DUKE and VORDERSTRASSE conducted a medical study testing patient adherence to proscribed treatments, which is described on the ClinicalTrials.gov website under the title, "Genetic Risk and Health Coaching for Type 2 Diabetes and Coronary Heart Disease" (the "Vorderstrasse Study"). Attached as <u>Exhibit B</u> is a true and correct copy of the ClinicalTrials.gov webpage containing the Vorderstrasse Study, hereby incorporated by reference in its entirety.

9 60. On or around January 29, 2019, in response to Plaintiff MMAS RESEARCH's
 inquiry, Defendant VORDERSTRASSE stated that she administered MMAS tests between
 December 20, 2013, and February 28, 2017. Attached as <u>Exhibit C</u> is a copy of Defendant
 VORDERSTRASSE's January 29, 2019 response.

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In her January 29, 2019 response, Defendant VORDERSTRASSE attached the
 In her January 29, 2019 response, Defendant VORDERSTRASSE attached the
 following MMAS-8 Scale that she administered to patients (the "Duke/Vorderstrasse MMAS-8
 Patient Questionnaire"). Attached as <u>Exhibit D</u> is a true and correct copy of the Duke/Vorderstrasse
 MMAS-8 Patient Questionnaire, hereby incorporated by reference in its entirety.

Upon information and belief, between December 20, 2013, and February 28, 2017,
 Defendants DUKE and VORDERSTRASSE administered MMAS-8 tests using the
 Duke/Vorderstrasse MMAS-8 Patient Questionnaire.

20 63. Upon information and belief, at least some of the MMAS-8 tests administered by
 21 Defendants DUKE and VORDERSTRASSE were administered after expiration of the
 22 Duke/Vorderstrasse License Agreement.

64. To the extent it was administered after expiration of the Duke/Vorderstrasse License
 Agreement expired, the Duke/Vorderstrasse MMAS-8 Patient Questionnaire both utilizes the
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MORISKY COPYRIGHTS and/or displays the MORISKY MARKS without a valid license and
 without authorization by Plaintiff MORISKY.

3 65. Further, the Duke/Vorderstrasse MMAS-8 Patient Questionnaire discloses trade
4 secret MMAS-8 coding and scoring criteria without a valid license and without authorization by
5 Plaintiff MORISKY.

# DEFENDANTS DUKE, PINER, DUSCHA, PATEL, CRAIG, MCGARRAH, and KRAUS 'S INFRINGING CONDUCT

66. On or around January 7, 2015, Plaintiff MORISKY and Defendants DUKE and
PINER entered into a license agreement (hereinafter the "Duke/Piner License Agreement") whereby
said Defendants were permitted to administer MMAS-8 test for one clinical study, and in so doing,
utilize the MORISKY COPYRIGHTS and MORISKY MARKS during the one-year period
commencing on January 7, 2015. A copy of the Duke/Piner License Agreement is attached hereto
and incorporated herein as Exhibit E.

67. Section (C)(2) of the Duke/Piner License Agreement provides: "Coding and scoring
criteria of the MMAS-8 are trade secrets of [Plaintiff MORISKY] and as such cannot be divulged in
any publication or report without [Plaintiff MORISKY's] prior written permission."

17 68. Section (C)(5) of the Duke/Piner License Agreement provides: "In case of scientific,
18 administrative or intellectual property misconduct using the MORISKY SCALE system of
19 questionnaires or the Morisky name or MMAS names, [Plaintiff MORISKY] reserves the right to
20 withdraw permission for use and to pursue all legal remedies. Licensee agrees to the jurisdiction in
21 and venue of the State and Federal Courts in Los Angeles County."

69. Section (C)(6) of the Duke/Piner License Agreement provides: "Rights granted
 under this Agreement to use the Morisky scales terminate one-year from the date below or on
 termination of Licensee's study, whichever is shorter. Licensee acknowledges understanding and
 -13 COMPLAINT

agreeing [sic] to abide by the above requirements regarding use of any Morisky Medication
 Adherence Scale or other Morisky intellectual property."

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70. Page 2, paragraph 1, of the Duke/Piner License Agreement provides: "If your study becomes funded following the waiver of license fee, you must inform the developer/owner of the MMAS-8 and pay the license fee for continued use of the copyrighted intellectual property."

- 13 72. The Piner Study 1 Webpage lists the "Study Start Date" for Piner Study 1 as July
  14 2015. The Piner Study 1 Webpage lists the "Actual Primary Completion Date" and "Actual Study
  15 Completion Date for Piner Study 1 as March 20, 2017.
- The Piner Study 1 Webpage provides: "Secondary Outcome Measures . . . 4. Change
   in Medication Adherence as measured by Morisky Medication Adherence Scale (MMAS-8)."

<sup>18</sup> 74. Upon information and belief, between January 7, 2016 and March 20, 2017,
 <sup>19</sup> Defendants DUKE, PINER, DUSCHA, PATEL, CRAIG, MCGARRAH, and KRAUS administered
 <sup>20</sup> MMAS-8 tests in Piner Study 1, utilizing the MORISKY COPYRIGHTS and/or displaying the
 <sup>21</sup> MORISKY MARKS without a valid license and without authorization by Plaintiff MORISKY.

22 75. Upon information and belief, Piner Study 1 was funded by Vida Health, a condition
 23 which required Defendants DUKE and PINER to inform Plaintiff MORISKY pursuant to the
 24 Duke/Piner License Agreement.

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76. Defendants DUKE and PINER never informed Plaintiff MORISKY that Piner Study
 1 received funding, nor did Defendants DUKE, PINER, DUSCHA, PATEL, CRAIG,
 MCGARRAH, or KRAUS pay a license fee for the continued use of the MMAS-8 beyond the one year term of the Duke/Piner License Agreement.

5 77. On or around August 12, 2018, Plaintiff MMAS RESEARCH became aware of a
6 second clinical study conducted by Defendants DUKE, PINER, DUSCHA, PATEL, CRAIG,
7 MCGARRAH, and KRAUS ( "Piner Study 2"), ostensibly pursuant to the Duke/Piner License
8 Agreement. However, the Duke/Piner License Agreement did not authorize Defendants' use of the
9 MORISKY COPYRIGHTS or the MORISKY MARKS in Piner Study 2 because Defendants had
10 already conducted one study—Piner Study 1—pursuant to the Duke/Piner License Agreement.

The results of Piner Study 2 were published on the ClinicalTrials.gov website, under
 the study entitled, "Verizon mHealth Solution for Patients With Peripheral Artery Disease (PAD)".
 Attached as <u>Exhibit G</u> is a true and correct copy of the ClinicalTrials.gov webpage describing Piner
 Study 2 (the "Piner Study 2 Webpage"), hereby incorporated by reference in its entirety.

79. Although the Piner Study 2 Webpage lists Defendant PATEL as the principal
investigator, upon information and belief, Defendants DUKE, PINER, DUSCHA, CRAIG,
MCGARRAH, and KRAUS were also involved in the conduct of Piner Study 2.

18 80. On or around August 12, 2018, Plaintiff MMAS RESEARCH contacted Defendant
19 DUSCHA via email regarding Piner Study 2.

81. On or around August 14, 2018, Defendant DUSCHA confirmed that Piner Study 2
was conducted without a license, "I have recently been made aware of an oversight in our study
below regarding the use of the MMAS-8. During the years 2014-205[sic] we had multiple contacts
both over the phone and email with the developer of the questionnaire, Dr. Morisky. During this
time Dr. Morisky waived the license fee. We also signed a license contract and copyright

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agreement, which is attached. [¶] However, this was for a different study [Piner Study 1], and not
 the study listed below [Piner Study 2]. We thought the license provided us with a one-time site
 license and was not needed for individual studies. Therefore, no agreement was signed for the study
 cited below. Our apologies for this oversight." A true and correct copy of Defendant DUSCHA's
 August 14, 2018 email is attached hereto as Exhibit H, hereby incorporated by reference in its
 entirety.

7 82. The Piner Study 2 Webpage lists the "Study Start Date" for Piner Study 2 as July
8 2015. The Piner Study 2 Webpage lists the "Actual Primary Completion Date" and "Actual Study
9 Completion Date for Piner Study 2 as November 7, 2017.

10 83. The Piner Study 2 Webpage provides: "Secondary Outcome Measures . . . 6. Change
11 in Medication Adherence scores as measured by the Morisky Medication Adherence Scale
12 (MMAS-8)."

13 84. Upon information and belief, Defendants DUKE, PINER, DUSCHA, PATEL,
14 CRAIG, MCGARRAH, and KRAUS administered MMAS-8 tests for Piner Study 2 between July
15 2015 and November 7, 2017, utilizing the MORISKY COPYRIGHTS and/or displaying the
16 MORISKY MARKS.

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85. Upon information and belief, Piner Study 2 was funded by Verizon.

18 86. Defendants DUKE, PINER, DUSCHA, PATEL, CRAIG, MCGARRAH, and
19 KRAUS never paid a license fee for the use of the MORISKY COPYRIGHTS, the MORISKY
20 MARKS, or the MMAS-8 for Piner Study 2.

87. Plaintiff MORISKY never licensed and never authorized the use of the MORISKY
 COPYRIGHTS and/or the MORISKY MARKS by Defendants DUKE, PINER, DUSCHA, PATEL,
 CRAIG, MCGARRAH, and KRAUS for Piner Study 2.

- 16 -COMPLAINT 1

#### DEFENDANTS DUKE AND VOORA'S INFRINGING CONDUCT

88. In or around July 2013, Plaintiff MORISKY and Defendants DUKE and VOORA
entered into a license agreement (hereinafter the "Duke/Voora License Agreement") whereby said
Defendants were permitted to administer MMAS-8 test for one clinical study, and in so doing,
utilize the MORISKY COPYRIGHTS and MORISKY MARKS for a one-year period. A copy of
the Duke/Voora License Agreement is attached hereto and incorporated herein as <u>Exhibit I</u>.

89. Section (C)(2) of the Duke/Voora License Agreement provides: "Coding and scoring
criteria of the MMAS-8 are trade secrets of [Plaintiff MORISKY] and as such cannot be divulged in
any publication or report without [Plaintiff MORISKY's] prior written permission."

90. Section (C)(5) of the Duke/Voora License Agreement provides: "In case of
scientific, administrative or intellectual property misconduct using the MORISKY SCALE system
of questionnaires or the Morisky name or MMAS names, [Plaintiff MORISKY] reserves the right to
withdraw permission for use and to pursue all legal remedies. Licensee agrees to the jurisdiction in
and venue of the State and Federal Courts in Los Angeles County."

91. Section (C)(6) of the Duke/Voora License Agreement provides: "Rights granted
under this Agreement to use the Morisky scales terminate one-year from the date below or on
termination of Licensee's study, whichever is shorter. Licensee acknowledges understanding and
agreeing [sic] to abide by the above requirements regarding use of any Morisky Medication
Adherence Scale or other Morisky intellectual property."

92. The last paragraph on page 3 of the Duke/Voora License Agreement provides: "I
understand that the licensure fee for use of the copyrights MMAS-8 will be waived, as I am a
physician conducting adherence assessment with no private funding source. If this situation should
change to private sources of funding, then the license is no longer in effect."

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COMPLAINT

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93. In February 2021, Plaintiffs became aware of two clinical studies conducted by
 Defendants DUKE and VOORA. However, the Duke/Voora License Agreement only authorized
 use of the MORISKY COPYRIGHTS and the MORISKY MARKS for one study.

94. On or around July 10, 2013, Defendants DUKE and VOORA published or caused to
be published the results of one study ("Voora Study 1") entitled, "Statin Therapy to Improve
Medication Adherence." Attached as <u>Exhibit J</u> is a true and correct copy of Voora Study 1 on the
ClinicalTrials.gov website (the "Voora Study 1 Webpage"), hereby incorporated by reference in its
entirety.

9 95. As of March 12, 2021, the Voora Study 1 Webpage remains publicly accessible on
10 the ClinicalTrials.gov website.

11 96. The Voora Study 1 Webpage provides: "Medication adherence is assessed by the 8-12 item Morisky medication adherence scale (MMAS). The first 7 questions of the MMAS are scored 13 one point for 'yes' and zero points for a 'no' response; the last question is assessed using a 5-point 14 Likert-type responses ranging from "usually" to "all the time" (usually = 1; all the time = 5). Non-15 adherence is defined as a score higher than zero. For the purposes of this pilot study, the MMAS is 16 adapted to focus on cholesterol lowering therapies."

17 97. The Voora Study 1 Webpage, which remained publicly accessible as of March 12,
18 2021, discloses incorrect and trade secret coding and incorrect scoring criteria for the MMAS-8.

98. Upon information and belief, Defendants DUKE and VOORA entered into the
 Duke/Voora License Agreement for the purpose of authorizing Defendants' use of the MORISKY
 COPYRIGHTS and the MORISKY MARKS during the term of the Duke/Voora License
 Agreement and in connection with Voora Study 1, and no other study.

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- 18 -COMPLAINT 99. To the extent Defendants DUKE and VOORA used the MORISKY COPYRIGHTS
 and/or the MORISKY MARKS in Voora Study 1 beyond the term of the Duke/Voora License
 Agreement, such use was not authorized.

4 100. Plaintiffs never authorized Defendants DUKE and VOORA's disclosure of the trade
5 secret coding criteria for the MMAS-8 on the Voora Study 1 Webpage.

6 101. From on or around August 22, 2013, to on or around October 16, 2015, Defendants
7 DUKE and VOORA conducted a second clinical study ("Voora Study 2").

- 8 102. Defendants DUKE and VOORA reported the results of Voora Study 2 in two
  9 published articles. The first article, published in or around September 2018, was entitled, "Effects of
  10 Delivering SLCO1B1 Pharmacogenetic Information in Randomized Trial and Observational
  11 Settings," (the "Voora Effects Article"). Attached as <u>Exhibit K</u> is a true and correct copy of the
  12 Voora Effects Article, hereby incorporated by reference in its entirety.
- 13 103. Page 1 of the Voora Effects Article provides: "METHODS: . . . The primary
  14 outcome was statin adherence using the Morisky Medication Adherence Scale, which was assessed
  15 in those patients who reinitiated statins."

16 104. Page 1 of the Voora Effects Article further states: "RESULTS: . . . Statin adherence
17 was similar between arms (Morisky Medication Adherence Scale in GIST versus UC, 6.8±1.5
18 versus 6.9±1.6, P=0.96)."

19 105. Page 3 of the Voora Effects Article states: "At the 3-month follow-up time point, 62
20 out of 159 (39%) reported statin utilization and completed the Morisky Medication Adherence Scale
21 (MMAS)."

22 106. On or around March 2017, Defendants DUKE and VOORA published or caused to
 23 be published a second article reporting the results of the Voora Study 2. This second article was
 24 entitled, "Genetically Guided Statin Therapy" (the "Voora Guided Statins Article"). Attached as
 25 -19 26 COMPLAINT
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<u>Exhibit L</u> is a true and correct copy of the Voora Guided Statins Article, hereby incorporated by
 reference in its entirety.

3 107. Page 3 of the Voora Guided Statins Article provides: "The outcomes measured at 3
4 and 8 months were statin reinitiation, low-density lipoprotein cholesterol (LDLc), and statin
5 adherence using the validated Morisky Medication Adherence Scale."

6 108. Page 11 of the Voora Guided Statins Article provides: "Survey Instruments. The
7 survey instruments administered to the patients in this study are described below. The primary
8 outcome of the study was the eight-item MMAS, which includes eight yes/no items that are
9 summed to create an overall adherence score ranging from 0 to 8, with higher scores indicating
10 better adherence."

11 109. Upon information and belief, during the course of Voora Study 2, Defendants DUKE
12 and VOORA administered MMAS-8 tests which both utilize the MORISKY COPYRIGHTS and/or
13 display the MORISKY MARKS.

14 110. Plaintiff MORISKY never authorized use of the MORISKY COPYRIGHTS and/or
15 the MORISKY MARKS by Defendants DUKE and VOORA in Voora Study 2.

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#### DEFENDANT DUKE'S INFRINGING CONDUCT IN THE NORC EVALUATION

17 111. Upon information and belief, the Southeastern Diabetes Initiative ("SEDI") was "a joint effort between several departments within Duke and external partners. The SEDI project is 18 19 funded by Centers for Medicare and Medicaid Health Care Innovations Award and a grant from the 20 Bristol Meyers Squibb Foundation." Duke Center for Health Informatics, Southeastern Diabetes 21 Initiative (SEDI) Data Mart: Phase 2 Completion, https://dukeinformatics.org/southeastern-22 diabetes-initiative-sedi-data-mart-phase-2-completion/ (last modified Oct. 28, 2014). 23 On or around January 31, 2013, Plaintiff MORISKY and Defendants DUKE and 112. 24 DUNHAM entered into a license agreement (hereinafter the "Duke/SEDI License Agreement") 25 - 20 -26 COMPLAINT 27

whereby said Defendants were permitted to administer MMAS-8 test for one research study,
 entitled "CMS Innovation Award: Southeastern Diabetes Initiative [SEDI], and the Bristol Myers
 Squibb Foundation Durham Diabetes Coalition" (hereinafter, the "Duke/SEDI Study"). A copy of
 the Duke/SEDI License Agreement is attached hereto and incorporated herein as <u>Exhibit M</u>.

5 113. The Duke/SEDI License Agreement permitted Defendants DUKE and DUNHAM to
6 utilize the MORISKY COPYRIGHTS and MORISKY MARKS in connection with the Duke/SEDI
7 Study during the one-year period commencing on January 31, 2013.

8 114. Section (C)(2) of the Duke/SEDI License Agreement provides: "Coding and scoring
9 criteria of the MMAS-8 are trade secrets of [Plaintiff MORISKY] and as such cannot be divulged in
10 any publication or report without [Plaintiff MORISKY's] prior written permission."

11 115. Section (C)(5) of the Duke/SEDI License Agreement provides: "In case of scientific,
12 administrative or intellectual property misconduct using the MORISKY SCALE system of
13 questionnaires or the Morisky name or MMAS names, [Plaintiff MORISKY] reserves the right to
14 withdraw permission for use and to pursue all legal remedies. Licensee agrees to the jurisdiction in
15 and venue of the State and Federal Courts in Los Angeles County."

16 116. Section (C)(6) of the Duke/SEDI License Agreement provides: "Rights granted
17 under this Agreement to use the Morisky scales terminate one-year from the date below or on
18 termination of Licensee's study, whichever is shorter. Licensee acknowledges understanding and
19 agreeing [sic] to abide by the above requirements regarding use of any Morisky Medication
20 Adherence Scale or other Morisky intellectual property."

21 117. On or around March 2016, NORC at the University of Chicago ("NORC") released a
22 "Second Annual Report HCIA Disease Specific Evaluation" (the "NORC Evaluation"). Attached
23 hereto as <u>Exhibit N</u> is a true and correct copy of the NORC Evaluation, hereby incorporated by
24 reference in its entirety.

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- 1 118. As of March 12, 2021, the NORC Evaluation remains publicly available for
   2 download from the United States government's Centers for Medicare and Medicaid Services
   3 website at: <u>https://downloads.cms.gov/files/cmmi/hcia-diseasespecific-secondevalrpt.pdf</u>.
- 4 119. Page 66 of the NORC Evaluation provides: "We use questionnaire data and clinical
  5 measures collected by the [Defendant DUKE's] SEDI team to evaluate the high-risk intervention."
- 6 120. On page 67 of the NORC Evaluation, Exhibit 4.1 ("Exhibit 4.1"), entitled "SEDI
  7 Overview of Data and Measures," describes the Morisky Medication Adherence Scale as follows:
  8 "Addresses barriers to medication-taking and permits health care providers to reinforce positive
  9 adherence behaviors (*higher scores indicate worse adherence*)" [emphasis added].
- 10 121. In fact, contrary to the description provided by Exhibit 4.1, higher scores for both the
  11 MMAS-4 and MMAS-8 tests indicate *better* adherence.
- 12 122. In addition, Footnote 39 of the NORC Evaluation contains a hyperlink to a PDF
  13 hosted on the Alabama Pharmacy Association's website (the "Alabama Pharmacy Scoring PDF").
  14 Attached as <u>Exhibit O</u> is a true and correct copy of the Alabama Pharmacy Scoring PDF, hereby
  15 incorporated by reference in its entirety.
- 16 123. The Alabama Pharmacy Scoring PDF lists the following question as part of the
  17 MMAS-4 test: "Are you careless at times about taking your medicine"? (hereinafter "Alabama
  18 Question 2").
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124. The Morisky MMAS-4 Copyright does not contain Alabama Question 2.

125. Furthermore, at the bottom of the Alabama Pharmacy Scoring PDF, there is a table
that states "High Adherence" corresponds to scores of "0" for each of the MMAS-4 and MMAS-8.
The same table explains that "Low Adherence" corresponds to scores of "3-4" for the MMAS-4,
and "3-8" for the MMAS-8.

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COMPLAINT

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1 126. Again, contrary to the description provided by the Alabama Pharmacy Scoring PDF,
 2 higher adherence equates to higher scores for both the MMAS-4 and the MMAS-8, while lower
 3 adherence equates to lower scores for both the MMAS-4 and the MMAS-8.

4 127. Upon information and belief, neither the NORC Evaluation nor the Alabama
5 Pharmacy Scoring PDF are the Duke/SEDI Study. Consequently, neither the NORC Evaluation nor
6 the Alabama Pharmacy Scoring PDF were within the scope of the Duke/SEDI License Agreement.

7 128. Plaintiffs never authorized Defendants DUKE and DUNHAM to provide MMAS
8 scoring criteria to NORC. In addition, the MMAS scoring criteria provided by Defendants DUKE
9 and DUNHAM for publication in the NORC Evaluation is obviously incorrect.

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#### DEFENDANT DUKE AND GRANGER'S INFRINGING CONDUCT

129. 11 On or around October 2, 2013, Plaintiff MORISKY and Defendants DUKE and 12 GRANGER entered into a license agreement whereby said Defendants were permitted to administer 13 MMAS-8 test for one clinical study entitled, "Heart at Home (utilize the MMAS<sup>TM</sup> as a core 14 assessment as standard of care)," and in so doing, utilize the MORISKY COPYRIGHTS and 15 MORISKY MARKS during a one-year period commencing on October 2, 2013 (hereinafter the 16 "Duke/Granger License Agreement"). A copy of the Duke/Granger License Agreement is attached 17 hereto and incorporated herein as Exhibit P. 18

19 130. Section (C)(2) of the Duke/Granger License Agreement provides: "Coding and
 20 scoring criteria of the MMAS-8 are trade secrets of [Plaintiff MORISKY] and as such cannot be
 21 divulged in any publication or report without [Plaintiff MORISKY's] prior written permission."

131. Section (C)(5) of the Duke/Granger License Agreement provides: "In case of
 scientific, administrative or intellectual property misconduct using the MORISKY SCALE system
 of questionnaires or the Morisky name or MMAS names, [Plaintiff MORISKY] reserves the right to

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1 withdraw permission for use and to pursue all legal remedies. Licensee agrees to the jurisdiction in
2 and venue of the State and Federal Courts in Los Angeles County."

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  132. Section (C)(6) of the Duke/Granger License Agreement provides: "Rights granted
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  under this Agreement to use the Morisky scales terminate one-year from the date below or on
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  adherence Scale or other Morisky intellectual property."
- 9 133. Upon information and belief, the Medication Adherence Alliance ("MAA") is a
  10 group of medication adherence experts whose mission is to "identify evidence-based resources to
  11 educate and equip patients and their families, healthcare providers, industry partners, and academic
  12 researchers about the field of medication adherence." Medication Adherence Alliance, *About*,
  13 <u>http://www.managingyourmeds.org/about/</u> (last visited Mar. 12, 2021).

14 134. Upon information and belief, and according to the MAA website itself, the MAA
15 website was developed by MAA members from Defendant DUKE and another organization named
16 PhRMA. *Id.*

17 135. On the MAA website, Defendant GRANGER is listed as the electronic health 18 records (EHR) Workgroup Director. On the MAA website's "About" page, Defendant 19 GRANGER's name is a hyperlink to her faculty profile on Defendant DUKE's website: 20 http://nursing.duke.edu/directories/faculty/bradi.granger. 21 The MAA website provides a link (http://managingyourmeds.org/wp-136. 22 content/uploads/2016/02/Glossary-of-Terms-12 13 2015.pdf) to a downloadable PDF entitled, 23 "Duke University CRI - Medication Adherence Alliance -Adherence Measures Working Group"

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- 24 -COMPLAINT (the "MAA PDF"). A true and correct copy of the MAA PDF is attached hereto as <u>Exhibit Q</u>, which
 is hereby incorporated by reference in its entirety.

3 137. As of March 12, 2021, the MAA PDF remains available for download on the MAA
4 website.

5 138. The MAA PDF states as follows: "The Morisky Medication Adherence Scale 6 (MMAS) is a generic self-reported, medication-taking behavior scale, validated for hypertension but 7 used for a wide variety of medical conditions. The original version of the scale (MMAS-4) consists of four items with a scoring scheme of "Yes" = 0 and "No" = 1. 1 The items are summed to give a 8 9 range of scores from low adherence to high adherence (Tables 1 and 2). The latest version of the scale (MMAS-8) consists of eight items with a scoring scheme of "Yes" = 0 and "No" = 1 for the 10 first seven items and a 5-point Likert response for the last item. 2 The items are summed to give a 11 12 range of scores from low adherence to high adherence."

13 139. Upon information and belief, Defendants DUKE and GRANGER published the
14 MAA PDF in reliance on the expired Duke/Granger License Agreement.

15 140. Upon information and belief, the MAA PDF is not the "Heart at Home" study
16 described in the Duke/Granger License Agreement. Consequently, Defendants DUKE and
17 GRANGER's use of the MORISKY COPYRIGHTS and the MORISKY MARKS in the MAA PDF
18 was not within the scope of the Duke/Granger License Agreement.

19 141. Defendants DUKE and GRANGER used the MORISKY COPYRIGHTS and/or
 20 displayed the MORISKY MARKS in the MAA PDF without a license and without authorization by
 21 Plaintiff MORISKY.

142. In addition, the MAA PDF discloses incorrect and trade secret coding and incorrect
scoring criteria for the MMAS-4 and MMAS-8.

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#### <u>FIRST CAUSE OF ACTION</u> <u>COPYRIGHT INFRINGEMENT (17 U.S.C. §§ 101, *et seq.*)</u> (BY PLAINTIFF MORISKY AGAINST ALL DEFENDANTS)

143. Plaintiff MORISKY realleges each allegation contained in the preceding paragraphs.
144. At all times relevant hereto, Plaintiff MORISKY was the owner of all copyright
rights or rights to assert copyright claims for the MORISKY COPYRIGHTS and all derivative
works. Plaintiff MORISKY has complied in all respects with the Copyright Act of 1976, 17 U.S.C.
§§ 101, *et seq.*, and all other laws governing copyright.

9 145. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
10 DUKE and VORDERSTRASSE without authorization, have infringed the MORISKY
11 COPYRIGHTS by using, copying, counterfeiting, distributing, or otherwise exploiting the same in
12 the Vorderstrasse Study after expiration of the Duke/Vorderstrasse License Agreement.

13 146. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
14 DUKE, PINER, DUSCHA, PATEL, CRAIG, MCGARRAH, and KRAUS without authorization,
15 have infringed the MORISKY COPYRIGHTS by using, copying, counterfeiting, distributing, or
16 otherwise exploiting the same from January 7, 2016 to March 20, 2017 in Piner Study 1, and at all
17 times in Piner Study 2.

18 147. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
19 DUKE and VOORA without authorization, have infringed the MORISKY COPYRIGHTS by using,
20 copying, counterfeiting, distributing, or otherwise exploiting the same in Voora Study 2.

148. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
DUKE and DUNHAM without authorization, have infringed the MORISKY COPYRIGHTS by
using, copying, counterfeiting, distributing, or otherwise exploiting the same in the NORC
Evaluation and the Alabama Pharmacy Scoring PDF.

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149. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants DUKE and GRANGER without authorization, have infringed the MORISKY COPYRIGHTS by using, copying, counterfeiting, distributing, or otherwise exploiting the same in the MAA PDF.

4 150. Plaintiff MORISKY is informed and believes and thereon alleges that the
5 aforementioned Defendants, by means of the actions complained of herein, without authorization,
6 have infringed and will continue to infringe the MORISKY COPYRIGHTS by using, copying,
7 counterfeiting, distributing, or otherwise exploiting the same without a license to do so.

8 151. Plaintiff MORISKY is entitled to an injunction restraining Defendants, and each of
9 the defendants, and all persons acting in concert with them, from engaging in further such acts in
10 violation of the copyright laws.

11 152. As a direct result of Defendants' infringement, Plaintiff MORISKY has sustained
12 damages in an amount to be determined at trial.

13 153. Pursuant to 17 U.S.C. §§ 502, 503, 504, and 505, Plaintiff MORISKY is entitled to
14 an award of actual damages, injunctive relief, the impoundment and destruction of the infringing
15 materials, and his attorneys' fees and costs against all Defendants.

16 154. In addition, Plaintiff MORISKY is further entitled to statutory damages for
17 Defendant DUKE's infringement and willful infringement of the Morisky MMAS-4 Copyright in
18 the NORC Evaluation and the accompanying Alabama Pharmacy Scoring PDF.

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#### SECOND CAUSE OF ACTION

## FALSE DESIGNATION OF ORIGIN/FEDERAL UNFAIR COMPETITION (15 U.S.C. § 1125(a)

#### (BY PLAINTIFF MORISKY AGAINST ALL DEFENDANTS)

155. MORISKY realleges each allegation contained in the preceding paragraphs.

- 27 -COMPLAINT 1 156. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
 2 DUKE and VORDERSTRASSE have infringed the MORISKY MARKS by using the same without
 3 authorization in the Vorderstrasse Study after expiration of the Duke/Vorderstrasse License
 4 Agreement.

5 157. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
6 DUKE, PINER, DUSCHA, PATEL, CRAIG, MCGARRAH, and KRAUS have infringed the
7 MORISKY MARKS by using the same without authorization from January 7, 2016 to March 20,
8 2017 in Piner Study 1, and at all times in Piner Study 2.

9 158. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
10 DUKE and VOORA have infringed the MORISKY MARKS by using the same without
11 authorization in Voora Study 2.

12 159. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
13 DUKE and DUNHAM have infringed the MORISKY MARKS by using the same without
14 authorization in the NORC Evaluation and the Alabama Pharmacy Scoring PDF.

15 160. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
16 DUKE and GRANGER, have infringed the MORISKY MARKS by using the same without
17 authorization in the MAA PDF.

18 161. As herein alleged, Defendants' unauthorized use of the MORISKY MARKS in 19 connection with their studies constitutes unfair competition and false designation of origin in 20 violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), because Defendants' use of the 21 marks suggests a false designation of the origin of the unauthorized MMAS diagnostic tests used, 22 identified, and published. Further, such acts of infringement by Defendants further suggests a false 23 association with MORISKY and/or that MORISKY approved of or authorized the use of the 24 unauthorized MMAS diagnostic tests used, identified, and published by Defendants.

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162. As a direct and legal result Defendants' unauthorized use of the MORISKY 2 MARKS, Defendants have damaged and will continue to damage MORISKY and MORISKY'S 3 goodwill and reputation; and have caused and are likely to continue to cause a loss of profits for 4 MORISKY. Defendants' actions have caused and will continue to cause irreparable harm to MORISKY and to the public, who is confused by Defendants' unauthorized use of the MORISKY 5 6 MARKS, unless restrained and enjoined by this Court. MORISKY has no adequate remedy at law 7 to prevent Defendants from continuing their infringing actions and from injuring MORISKY.

8 163. As a further direct and legal result of Defendants' actions, MORISKY has been 9 damaged and will continue to sustain damage and are entitled to receive compensation arising from 10 MORISKY'S lost profits and efforts necessary to minimize and/or prevent customer and consumer confusion, in an amount to be proven at the time of trial. In addition, MORISKY is entitled to 11 12 disgorge Defendants' profits, and are entitled to interest and to their attorney's fees and costs in bringing this action, all in an amount to be proven at the time of Trial. MORISKY is further entitled 13 14 to injunctive relief as set forth above, and to all other and further forms of relief this Court deems 15 appropriate.

**THIRD CAUSE OF ACTION** 

TRADE SECRET MISAPPROPRIATION (18 U.S.C. § 1836, et seq.)

(BY PLAINTIFFS AGAINST DEFENDANTS DUKE, VORDERSTRASSE, VOORA, AND

**GRANGER**)

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COMPLAINT

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164. Plaintiffs reallege each allegation contained in the preceding paragraphs.

22 165. Plaintiffs own confidential information, proprietary and trade secret information, as 23 alleged above, including but not limited to the MMAS coding and scoring criteria.

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1 166. Plaintiffs' confidential, proprietary, and trade secret information relates to products
 2 and services used, sold, shipped and/or ordered in, or intended to be used, sold, shipped, and/or
 3 ordered in, interstate or foreign commerce.

4 167. Plaintiffs have taken reasonable measures to keep such information secret and
5 confidential. For example, Plaintiffs require any licensee of the MORISKY COPYRIGHTS to
6 contractually agree to maintain the confidentiality of the coding and scoring criteria.

7 168. In fact, Plaintiffs required Defendants to contractually agree to maintain the
8 confidentiality of the coding and scoring criteria of the MMAS in the Duke/Vorderstrasse License
9 Agreement, the Duke/Piner License Agreement, the Duke/Voora License Agreement, the
10 Duke/SEDI License Agreement, and the Duke/Granger License Agreement.

11 169. Plaintiffs' confidential, proprietary, and trade secret information derives independent
12 economic value from not being generally known to, and not being readily ascertainable through
13 proper means by, another person who can obtain economic value from the disclosure or use of the
14 information.

15 170. Defendants DUKE and VORDERSTRASSE misappropriated Plaintiffs' confidential,
proprietary, and trade secret information by disclosing MMAS-8 coding criteria in the
Duke/Vorderstrasse MMAS-8 Patient Questionnaire to patients, in direct contravention of the terms
of the Duke/Vorderstrasse License Agreement. Defendants DUKE and VORDERSTRASSE's
misappropriation of Plaintiffs' confidential, proprietary, and trade secret information was
intentional, knowing, willful, and malicious. Defendants DUKE and VORDERSTRASSE have
attempted and continue to attempt to conceal their misappropriation.

22 171. Defendants DUKE and VOORA misappropriated Plaintiffs' confidential,
23 proprietary, and trade secret information by disclosing MMAS-8 coding criteria in on the Voora
24 Study 1 Webpage, in direct contravention of the terms of the Duke/Voora License Agreement.

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Defendants DUKE and VOORA's misappropriation of Plaintiffs' confidential, proprietary, and
 trade secret information was intentional, knowing, willful, and malicious. Defendants DUKE and
 VOORA have attempted and continue to attempt to conceal their misappropriation.

172. Defendants DUKE and GRANGER misappropriated Plaintiffs' confidential,
proprietary, and trade secret information by disclosing MMAS-8 coding criteria in the MAA PDF,
in direct contravention of the terms of the Duke/Granger License Agreement. Defendants DUKE
and GRANGER's misappropriation of Plaintiffs' confidential, proprietary, and trade secret
information was intentional, knowing, willful, and malicious. Defendants DUKE and GRANGER
have attempted and continue to attempt to conceal their misappropriation.

10 173. As the direct and proximate result of Defendants DUKE, VORDERSTRASSE, 11 VOORA, and GRANGER's conduct, Plaintiffs have suffered and, if Defendants DUKE, 12 VORDERSTRASSE, VOORA, and GRANGER's conduct is not stopped, will continue to suffer, severe competitive harm, irreparable injury, and significant damages, in an amount to be proven at 13 14 trial. Because Plaintiffs' remedy at law is inadequate, Plaintiffs seek, in addition to damages, temporary, preliminary, and permanent injunctive relief to recover and protect their confidential, 15 proprietary, and trade secret information and to protect other legitimate business interests. 16 Plaintiffs' business operates in a competitive market and will continue suffering irreparable harm 17 absent injunctive relief. 18

19 174. Plaintiffs have been damaged by all of the foregoing and are entitled to an award of
20 exemplary damages and attorney's fees.

# 22 FOURTH CAUSE OF ACTION 23 TRADE SECRET MISAPPROPRIATION (Cal. Civ. Code § 3426 et seq.) 24 -31 25 -31 26 COMPLAINT 27 28

#### (BY PLAINTIFFS AGAINST DEFENDANTS DUKE, VORDERSTRASSE, VOORA, AND GRANGER)

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175. Plaintiffs reallege each allegation contained in the preceding paragraphs.

4 176. Plaintiffs own confidential information, proprietary and trade secret information, as
5 alleged above, including but not limited to the MMAS coding and scoring criteria, which constitute
6 trade secrets as defined by California's Uniform Trade Secrets Act.

7 177. Plaintiffs have taken measures that are reasonable under the circumstances to
 8 maintain the secrecy of the trade secrets at issue. For example, Plaintiffs require any licensee of the
 9 MORISKY COPYRIGHTS to contractually agree to maintain the confidentiality of the coding and
 10 scoring criteria.

11 178. In fact, Plaintiffs required Defendants to contractually agree to maintain the
 12 confidentiality of the coding and scoring criteria of the MMAS in the Duke/Vorderstrasse License
 13 Agreement, the Duke/Piner License Agreement, the Duke/Voora License Agreement, the
 14 Duke/SEDI License Agreement, and the Duke/Granger License Agreement.

15 179. Defendants DUKE and VORDERSTRASSE knew or should have known under the
 circumstances that the MMAS-8 coding criteria misappropriated by them in the Duke/Vorderstrasse
 17 MMAS-8 Patient Questionnaire were trade secrets.

18 180. Defendants DUKE and VOORA knew or should have known under the
 19 circumstances that the MMAS-8 coding criteria misappropriated by them in the Voora Study 1
 20 Webpage were trade secrets.

181. Defendants DUKE and GRANGER knew or should have known under the
 circumstances that the MMAS-8 coding criteria misappropriated by them in the MAA PDF were
 trade secrets.

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1 182. Defendants DUKE, VORDERSTRASSE, VOORA, and GRANGER
 2 misappropriated and threaten to further misappropriate trade secrets at least by acquiring trade
 3 secrets with knowledge of or reason to know that the trade secrets were acquired by improper
 4 means, and Defendants are using and threatening to use the trade secrets acquired by improper
 5 means without Plaintiffs' knowledge or consent.

6 183. As the direct and proximate result of Defendants DUKE, VORDERSTRASSE,
7 VOORA, and GRANGER's conduct, Plaintiffs are threatened with injury and have been injured in
8 an amount in excess of the jurisdictional minimum of this Court and that will be proven at trial.
9 Plaintiffs have also incurred, and will continue to incur, additional damages, costs, and expenses,
10 including attorney's fees, as a result of the Defendants' misappropriation. As a further proximate
11 result of the misappropriation and use of Plaintiffs' trade secrets, Defendants DUKE,
12 VORDERSTRASSE, VOORA, and GRANGER were unjustly enriched.

13 184. Defendants DUKE, VORDERSTRASSE, VOORA, and GRANGER's acts were
14 willful, malicious, and fraudulent, and Plaintiffs are entitled to exemplary damages under California
15 Civil Code § 3426.3(c).

16 Defendants DUKE, VORDERSTRASSE, VOORA, and GRANGER's conduct 185. constitutes a transgression of a continuing nature for which Plaintiffs have no adequate remedy at 17 18 law. Unless this Court enjoins Defendants, they will continue to use Plaintiffs' trade secret 19 information to enrich themselves. Plaintiffs are entitled to an injunction against the 20 misappropriation and continued threatened misappropriation of trade secrets under California Civil 21 Code § 3426.2, and Plaintiffs ask this Court to restrain Defendants from using all trade secret 22 information misappropriated from Plaintiffs. 23 24 25 - 33 -26 COMPLAINT

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1 186. Pursuant to California Civil Code § 3426.4 and related law, Plaintiffs are entitled to
 2 an award of attorneys' fees for Defendants DUKE, VORDERSTRASSE, VOORA, and
 3 GRANGER's misappropriation of trade secrets.

#### PRAYER FOR RELIEF

5 WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against
6 Defendants as follows:

- For actual damages in an amount according to proof at trial, and for any additional
   profits attributable to infringements of Plaintiff MORISKY's copyright in the
   MMAS-4 and MMAS-8, in accordance with proof at trial;
- 2. For actual damages in an amount according to proof at trial, and for any additional
  profits attributable to infringements of Plaintiff MORISKY'S MARKS, in
  accordance with proof at trial;
- 3. For statutory damages for copyright infringement and/or willful copyright infringement by Defendants DUKE and DUNHAM;
- 4. For issuance of preliminary and permanent injunctive relief against Defendants, and
  each of them, and their respective officers, agents, representatives, servants,
  employees, attorneys, successors and assigns, and all others in active concert or
  participation with Defendants, enjoining and restraining them from:
- a. using the MMAS-4, MMAS-8, the Morisky Widget, or the MORISKY MARKS
  until a license is obtained, including the maintenance on websites, posted on the
  Internet, or in any publication, the articles, publications, and reports described
  herein, or any such articles, publication, and reports in the future which use or
  reference the MMAS-4, MMAS-8, the Morisky Widget, or the MORISKY
  MARKS;

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1		b. selling, offering to sell, advertising, promoting, or passing off, inducing, or		
2		enabling others to sell, offer to sell, advertise, promote, or pass off any diagnostic		
3		tools like the Morisky Widget provided by Plaintiffs under a name or mark the		
4		same as the MORISKY MARKS;		
5		c. otherwise unfairly competing with Plaintiffs in any manner, including but not		
6		limited to, infringing usage of the MORISKY MARKS, or any confusingly		
7		similar marks.		
8	5.	Order that Defendants file with this Court and serve upon Plaintiffs within thirty (30)		
9		days after service on Defendants of an injunction in this action, a report by		
10		Defendants, under oath, setting forth that Defendants have complied with the		
11		injunction, as well as the steps they have taken to comply;		
12	6.	For costs of suit herein incurred;		
13	7.	For attorneys' fees;		
14	8.	For prejudgment interest in the amount of ten percent (10%) per annum or the		
15		maximum amount allowed by law; and		
16	9.	For such other and further relief the Court deems just and proper.		
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19	Dated: Marcl	h 24, 2021 KENNETH I. GROSS & ASSOC.		
20				
21		$\mathcal{L}_{\mathcal{O}}$		
22		By: Konneth L. Gross Esc		
23	Kenneth I. Gross, Esq. Attorneys for Plaintiffs			
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