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MMAS Research LLC and Dr. Donald E. Morisky

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MMAS RESEARCH LLC and DR.
DONALD E. MORISKY;

Plaintiff(s),

vs.

UNIVERSITY OF
MASSACHUSETTS; DR. DAVID D.
MCMANUS; DR. TIMOTHY
FITZGIBBONS; DR. JULIET
FARRELL; DR. ARACELI CARRERA;
DR. CHRISTINA TORRES; DR.
SUSAN SHAW; and DOES 1-50;

Defendant(s).

Case No.: 2:21-cv-3139

COMPLAINT FOR DAMAGES

- 1. Copyright Infringement Under 17 U.S.C. §§ 101, *et seq.***
- 2. False Designation of Origin/Federal Unfair Competition Under 15 U.S.C. § 1125(a)**
- 3. Trade Secret Misappropriation Under 18 U.S.C. § 1836, *et seq.***
- 4. Trade Secret Misappropriation Under Cal. Civ. Code § 3426 *et seq.***
- 5. Unfair Competition under Business and Professions Code §17200, *et seq.***

JURY TRIAL DEMANDED

1 Plaintiffs MMAS RESEARCH LLC and DR. DONALD MORISKY complain and allege as
2 follows:

3 1. Plaintiff MMAS RESEARCH LLC (“MMAS RESEARCH”) is a Washington limited
4 liability company in good standing which conducts business in California.

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

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

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

16 5. Plaintiff MMAS RESEARCH is the owner of the “MMAS RESEARCH WIDGET
17 CODE” (“Morisky Widget”), registered under United States Copyright Registration No. TX 8-816-
18 517 (Registration date December 3, 2019) (the “Morisky Widget Copyright”). The Morisky Widget
19 is an electronic diagnostic assessment protocol to measure and identify medication adherence
20 behaviors, as further described below.

21 6. Defendant University of Massachusetts (“UMASS”) is a public university located in
22 Massachusetts.

23 7. Defendant Dr. David D. McManus (“D. MCMANUS”) is or was a researcher at UMASS
24 at all relevant times.

1 under 28 U.S.C. § 1367. This Court has original jurisdiction over this controversy for
2 misappropriation of trade secrets claims pursuant to 18 U.S.C. § 1836(c).

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

11 **GENERAL ALLEGATIONS**

12 **MORISKY MEDICATION ADHERENCE SCALES**

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

16 24. The MMAS measures a person/patient's adherence to their prescribed medication, and
17 the results lead to specific diagnosis, medication reconciliation, and interventions to optimize
18 treatment, as well as form the basis for conclusions/assertions in scientific papers, all covering a wide
19 variety of chronic and infectious diseases and medical conditions. The MMAS is most commonly
20 administered electronically in questionnaire form by individuals/entities who are licensees of Plaintiff
21 MORISKY.

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

1 Registration for the Morisky MMAS-4 Copyright, which is comprised of the text of the MMAS-4
2 test.

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

7 33. In an effort to protect the integrity of the Morisky Widget and protect against
8 counterfeit, infringing, and/or unauthorized use, Plaintiff MMAS RESEARCH filed for and obtained
9 a Certificate of Registration for the Morisky Widget Copyright.

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

13 35. Plaintiff MMAS RESEARCH has complied in all respects with the Copyright Act of
14 1976, 17 U.S.C. § 101 *et. seq.* and all other laws governing copyrights as to the Morisky Widget
15 Copyright.

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

22 37. The MMAS-4, MMAS-8, MORISKY COPYRIGHTS, and the Morisky Widget
23 Copyright are vital to Plaintiffs' ongoing business and profession and, more specifically, Plaintiffs'
24 efforts to ensure that third-party use of the Morisky Medication Adherence Scales (MMAS-4 and/or
25

1 MMAS-8) are authorized and utilized in compliance with Plaintiffs' strict coding and scoring which
2 are maintained by Plaintiffs as trade secrets.

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

7 **TRADEMARKS**

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

10 40. The "MMAS" trademark is the subject of Federal Trademark Registration No.
11 5837273 and has been used in commerce since at least as early as February 2006.

12 41. As a result of the extensive, exclusive, and continued use of the MORISKY MARKS
13 in commerce, medical institutions through, among others, their physicians, nurses, researchers,
14 clinicians, and/or medical students have come to recognize and identify the MORISKY MARKS
15 exclusively with the medication adherence scales developed by Plaintiff MORISKY. The MORISKY
16 MARKS have become a valuable asset of Plaintiffs as well as a symbol of their goodwill and positive
17 reputations.

18 **LICENSES**

19 42. It is of critical importance the integrity of the MMAS be maintained. This is why a
20 strict licensing regimen is used and disclosure of coding and scoring criteria, and translations not
21 provided by Plaintiffs, are not permitted.

22 43. Plaintiffs have discovered that when someone obtains the MMAS coding and scoring
23 criteria they often make changes that lead to erroneous results. Others obtaining the MMAS from
24 counterfeiters often make further unauthorized revisions, further increasing the risk of harm to
25

1 patients and misleading healthcare providers. Unlicensed translations are often divulged and used
2 with the coding and scoring criteria which render the results invalid and misunderstood.

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

12 45. The various MMAS diagnostic assessments are validated and translated in over eighty
13 (80) languages and utilized throughout the world. The MMAS is famous in the industry and is the
14 number one patient-centered diagnostic medication adherence assessment of its kind. Plaintiffs make
15 considerable efforts to maintain the secrecy of the coding and scoring of the scale and expressly forbid
16 the disclosure of coding and scoring in their license agreements with licensees of all versions of the
17 MMAS.

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

23 47. Reasonable efforts are taken by Plaintiffs to protect and not to disseminate the MMAS,
24 Morisky Widget, or translated versions to non-authorized users, as well as the coding and scoring.

1 These restrictions not only protect patients and health care providers from counterfeit diagnostic
2 assessments and inaccurate coding and scoring, but also protect the economic interests of Plaintiffs
3 in the MORISKY COPYRIGHTS, MORISKY MARKS, the MMAS itself, along with the Morisky
4 Widget diagnostic assessment, as they receive licensing fees and are paid per test administered, unless
5 such fees are waived. In fact, the license agreement expressly provides that coding and scoring may
6 not be disclosed.

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

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

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

20 **DEFENDANTS UMASS, D. MCMANUS, AND FITZGIBBONS'**

21 **INFRINGEMENT CONDUCT**

22 51. Upon information and belief, from in or around April 2011 to January 2014,
23 Defendants UMASS and D. MCMANUS, among other UMASS researchers, conducted a clinical
24 study (the "TRACE-CORE Study"), the results of which were published in an article (the "TRACE-

1 CORE Article”) entitled, “Transitions, Risks, and Actions in Coronary Events—Center for
2 Outcomes Research and Education (TRACE-CORE)”. Attached hereto as Exhibit A is a true and
3 correct copy of the TRACE-CORE Article, hereby incorporated by reference in its entirety.

4 52. Page 5 of the TRACE-CORE Article provides: “Behavioral characteristics are
5 assessed during the baseline and follow-up interviews (Table 3). . . . At every interview, medication
6 adherence is assessed by the Morisky scale; cost-related non-adherence is assessed at baseline and
7 12 months using questions included in the Medicare Current Beneficiary Survey.”

8 53. On or around September 19, 2016, Plaintiff MMAS RESEARCH emailed one of the
9 researchers of the TRACE-CORE Study, Dr. Robert J. Goldberg (“GOLDBERG”), requesting his
10 response to certain questions regarding the use of the MMAS-8 in the TRACE-CORE Study. On or
11 around September 20, 2016, in response to Plaintiff MMAS RESEARCH’s inquiry, GOLDBERG
12 emailed three documents (the “TRACE-CORE Responses”). A true and correct copy of the
13 TRACE-CORE Responses is attached hereto as Exhibit B and incorporated herein by reference in
14 its entirety.

15 54. In particular, Plaintiff MMAS RESEARCH asked GOLDBERG for the “Name and
16 address of the Sponsoring Institution [of the TRACE-CORE Study].” In response, on page 1 of the
17 TRACE-CORE Responses, GOLDBERG provided the following information: “National Heart,
18 Lung and Blood Institute, Bethesda, MD (NIH grant U01HL105268).”

19 55. Upon information and belief, the TRACE-CORE Study was funded by a National
20 Institute of Health grant.

21 56. Plaintiff MMAS RESEARCH also asked GOLDBERG to provide a response to “The
22 total number of MMAS tests given.” In response, GOLDBERG stated: “The total number of
23 completed interviews across all study sites and time points was 7,959.”
24
25

1 63. Section (C)(2) of the UMass/McManus License Agreement provides: “Coding and
2 scoring criteria of the MORISKY are trade secrets of [Plaintiff MORISKY] and as such cannot be
3 divulged in any publication or report without [Plaintiff MORISKY’s] prior written permission.”

4 64. Section (C)(5) of the UMass/McManus License Agreement provides: “In case of
5 scientific, administrative or intellectual property misconduct in using the MORISKY SCALE
6 system of questionnaires or the Morisky name or MMAS names, [Plaintiff MORISKY] reserves the
7 right to withdraw permission for use and to pursue all legal remedies. Licensee agrees to the
8 jurisdiction in and venue for any infringement (if any at all) will take place in Los Angeles.”

9 65. Section (C)(7) of the UMass/McManus License Agreement provides: “Rights
10 granted under this Agreement to use the Morisky scales terminate one year from the date below or
11 on termination of Licensee’s study, whichever is shorter. Licensee acknowledges understanding and
12 agreeing [sic] to abide by the above requirements regarding the use of any Morisky Medication
13 Adherence Scale or other Morisky intellectual property.”

14 66. Page 3 of the UMass/McManus License describes the title of the study: “Systemic
15 Assessment of Geriatric Elements in Atrial Fibrillation (SAGE-AF) Grant ID: 1R01HL126911-
16 01A1” (the “SAGE-AF Study”).

17 67. Page 3 of the UMass/McManus License further states: “Start date for data collection:
18 06/21/2016 thru 2018. (You will be locked into a 2 year waiver of license fee, but the license
19 contract has to be renewed each year).”

20 68. Defendants UMASS and D. MCMANUS never renewed the UMass/McManus
21 License Agreement upon expiration of the initial one-year license term, which ended on October 20,
22 2017.
23
24
25

1 69. Upon information and belief, between June 21, 2016 and 2018, Defendants UMASS
2 and D. MCMANUS administered MMAS-8 tests in the SAGE-AF Study pursuant to the
3 UMass/McManus License Agreement.

4 70. Upon information and belief, at least some of the MMAS-8 tests administered by
5 Defendants UMASS and D. MCMANUS in the SAGE-AF Study were administered after expiration
6 of the UMass/McManus License Agreement.

7 71. To the extent they administered MMAS-8 tests after expiration of the
8 UMass/McManus License Agreement expired, Defendants UMASS and D. MCMANUS both
9 utilized the MORISKY COPYRIGHTS and/or displayed the MORISKY MARKS without a valid
10 license and without authorization by Plaintiff MORISKY.

11 72. In or around November 30, 2018, Defendants UMASS, D. MCMANUS, and
12 FITZGIBBONS published or caused to be published on the ClinicalTrials.gov website a study
13 protocol (the “McManus Study Protocol”) for a clinical study entitled, “Pulsewatch: Smartwatch
14 Monitoring for Atrial Fibrillation after Stroke” (the “McManus/Pulsewatch Study”). A true and
15 correct copy of the McManus Study Protocol is attached hereto and incorporated herein as Exhibit
16 D.

17 73. As of March 29, 2021, the McManus Study Protocol remains publicly accessible on
18 the ClinicalTrials.gov website at:
19 https://clinicaltrials.gov/ProvidedDocs/94/NCT03761394/Prot_000.pdf.

20 74. Page 13 of the McManus Study Protocol states as follows: “Medication Adherence:
21 Medication adherence will be measured using the 8-item Morisky Adherence Questionnaire, a well-
22 validated measure of patient-reported adherence. Morisky scores range from 0-8 (higher
23 scores=poorer adherence).”

24 75. In fact, for the MMAS-8, higher scores equate to *lower* adherence.

1 76. Upon information and belief, Defendants UMASS, D. MCMANUS, and
2 FITZGIBBONS published or caused to be published the McManus Study Protocol, even though the
3 UMass/McManus License Agreement had expired and did not authorize use of the MORISKY
4 COPYRIGHTS or the MORISKY MARKS except in connection with the SAGE-AF Study.

5 77. The McManus Study Protocol utilizes the MORISKY COPYRIGHTS and displays
6 the MORISKY MARKS.

7 78. Further, the McManus Study Protocol discloses incorrect MMAS-8 scoring criteria.

8 79. Defendants UMASS, D. MCMANUS, and FITZGIBBONS did not have a license or
9 any other authorization from Plaintiff MORISKY to use the MORISKY COPYRIGHTS and the
10 MORISKY MARKS in the McManus Study Protocol.

11 80. On or around February 5, 2019, after the McManus Study Protocol had already been
12 published, Defendants UMASS and D. MCMANUS contacted Plaintiff MORISKY to request a
13 license to use the MMAS-8 in the McManus/Pulsewatch Study. A true and correct copy of
14 Defendants' email request for a MMAS-8 license is attached hereto and incorporated by reference
15 in its entirety as Exhibit E.

16 81. Plaintiff MORISKY never issued Defendants UMASS, D. MCMANUS, and
17 FITZGIBBONS a license to use the MORISKY COPYRIGHTS or display the MORISKY MARKS
18 in the McManus/Pulsewatch Study or the McManus Study Protocol.

19 82. When Defendants UMASS, D. MCMANUS, and FITZGIBBONS published the
20 McManus Study Protocol on the ClinitalTrials.gov website in or around November 30, 2018,
21 Defendants knew a license was required. Not only had Defendants UMASS and D. MCMANUS
22 previously obtained a license in 2016 to use the MMAS-8 for the SAGE-AF Study, but Defendants
23 also attempted to obtain a second MMAS-8 license in 2019, after publication of the McManus
24 Study Protocol.

DEFENDANTS UMASS AND FARRELL'S INFRINGING CONDUCT

83. Upon information and belief, from in or around September 2018 to April 2019, Defendants UMASS and FARRELL conducted a clinical study (the "UMass/Farrell Study"), the results of which were published in a manuscript entitled, "Self-Management of Dyspnea in Chronic Obstructive Pulmonary Disease Patients" (the "UMass/Farrell Article"). Attached as Exhibit F is a true and correct copy of UMass/Farrell Article, hereby incorporated by reference in its entirety.

84. Page 23 of the UMass/Farrell Article sets forth a table labeled, "Morisky Medication Adherence Scale." Underneath a column header labeled "MMAS-4," the table lists four questions:

- Do you ever forget to take your prescription drugs?
- Are you careless at times about taking your drugs?
- Do you sometimes stop taking your drugs when you feel better?
- Do you sometimes stop taking your drugs if they make you feel worse?

85. These questions are not part of the MMAS-4. In fact, these questions belong to a different medication adherence scale developed by Plaintiff MORISKY.

86. In addition, on page 49 of the UMass/Farrell Manuscript, Appendix E sets forth the "Interpretation/Scoring" of the Morisky Scale as follows: "Score 1 point for every YES answer. 0 points = high adherence. 1-2 points = intermediate. 3-4 points = low adherence."

87. In fact, contrary to the explanation given in the UMass/Farrell Manuscript, 0 points equates to *low* adherence for the MMAS-4, and 3-4 points equates to *high* adherence for the MMAS-4.

88. Upon information and belief, from in or around September 2018 to April 2019, Defendants UMASS and FARRELL administered MMAS-4 tests in the UMass/Farrell Study, utilizing the MORISKY COPYRIGHTS and/or displaying the MORISKY MARKS.

1 95. In addition, the scoring criteria for the MMAS-4 that Defendants UMASS and
2 CARRERA disclosed in the UMass/Carrera Article is considered a trade secret by Plaintiffs, and it
3 is incorrect.

4 96. Defendants UMASS and CARRERA repeatedly disclosed incorrect and trade secret
5 MMAS-4 scoring criteria throughout the UMass/Carrera Article.

6 97. On page 30 of the UMass/Carrera Article, in a note below Table 3, Defendants
7 UMASS and CARRERA again disclosed incorrect trade secret coding of the MMAS-4, stating as
8 follows: “The scoring of the Morisky Scale (Yes = 0 and No = 1).”

9 98. In Appendix K, on page 56 of the UMass/Carrera Article, Defendants UMASS and
10 CARRERA list the MMAS-4 questions and, for the third time, provide incorrect and trade secret
11 coding criteria for the MMAS-4, stating as follows: “Scoring the Morisky Scale: Yes = 0 and No =
12 1.”
13

14 99. In a table at the bottom of page 56, Defendants UMASS and CARRERA also
15 provide incorrect scoring criteria for the MMAS-4, stating the “High Adherence” equates to a
16 MMAS-4 Score of 0, while “Low Adherence” equates to a MMAS-4 Score of 3-4.
17

18 100. Upon information and belief, from in or around Fall 2017 to Spring 2018,
19 Defendants UMASS and CARRERA administered MMAS-4 tests in the UMass/Carrera Study,
20 utilizing the MORISKY COPYRIGHTS and/or displaying the MORISKY MARKS.
21

22 101. Plaintiff MORISKY never licensed and never authorized the use of the MORISKY
23 COPYRIGHTS and/or the MORISKY MARKS by Defendants UMASS and CARRERA

24 102. Further, Plaintiffs never authorized Defendants UMASS and CARRERA’S
25 disclosure of the trade secret coding criteria for the MMAS-4 in the UMass/Carrera Article.

1 **DEFENDANT UMASS, TORRES, AND SHAW’S INFRINGING CONDUCT**

2 103. On or around April 14, 2014, Plaintiff MORISKY and Defendant SHAW entered
3 into a license agreement (hereinafter the “Shaw License Agreement”) whereby said Defendant was
4 permitted to administer MMAS-8 tests, and in so doing, utilize the MORISKY COPYRIGHTS and
5 MORISKY MARKS for a period of one year. A copy of the Shaw License Agreement is attached
6 hereto and incorporated herein as Exhibit H.

7
8 104. Section (C)(2) of the Shaw License Agreement provides: “Coding and scoring
9 criteria of the MMAS-8 are trade secrets of [Plaintiff MORISKY] and confidential; as such they
10 cannot be used or divulged, whether orally or in any publication, presentation, or report without
11 [Plaintiff MORISKY’s] prior written permission.”

12 105. Section (C)(5) of the Shaw License Agreement provides: “In case of scientific,
13 administrative or intellectual property misconduct in using the MMAS system of questionnaires or
14 the trademarked MMAS or Morisky or similar names, [Plaintiff MORISKY] reserves the right to
15 terminate this Agreement and to pursue all legal remedies. Licensee agrees to the jurisdiction of and
16 venue in the State and Federal Courts in Los Angeles County, subject to the laws of California,
17 irrespective of its conflict of laws provisions.”

18
19 106. Section (C)(6) of the Shaw License Agreement provides: “Rights granted under this
20 Agreement to use the Morisky scales terminate one-year from the date below or on termination of
21 Licensee’s study, whichever occurs sooner.”

22
23 107. The Shaw License describes the Title of Research as the following: “Medication
24 Adherence, Health Literacy, and Cultural Health Beliefs in a Massachusetts Community Health
25 Center” (the “Massachusetts Study”).

108. Upon information and belief, Defendant SHAW administered MMAS-8 tests pursuant to the Shaw License Agreement.

109. Upon information and belief, at the time Defendant SHAW entered into the Shaw License Agreement, Defendant SHAW was a researcher at the University of Arizona and did not transfer any rights under the Shaw License Agreement to Defendant UMASS, including but not limited to the rights to use the MORISKY COPYRIGHTS and/or display the MORISKY MARKS.

110. Upon information and belief, Defendants UMASS, TORRES, and SHAW conducted a second clinical study from January 2014 to December 2018 (the “RxHL Study”).

111. In or around 2017, Defendants UMASS, SHAW, and TORRES reported the results of the RxHL Study in at least one poster presentation (the “Shaw/Torres Poster Presentation”) entitled, “RxHL: Medication Beliefs, Adherence, and Health Literacy in a Massachusetts Community Health Center.” A true and correct copy of the Shaw/Torres Poster Presentation is attached hereto and incorporated by reference in its entirety as Exhibit I.

112. In a table entitled “Multimethod Research Design,” the Shaw/Torres Poster Presentation lists “Morisky medication adherence scale.”

113. In a table entitled “Preliminary Findings: Adherence and Beliefs about Medicines,” the Shaw/Torres Poster Presentation provides a pie chart labeled “Morisky Adherence Scores,” and displays “High,” “Med,” and “Low” percentages.

114. Upon information and belief, from in or around January 2014 to December 2018, Defendants UMASS, TORRES, and SHAW administered MMAS-8 tests in the RxHL Study, utilizing the MORISKY COPYRIGHTS and/or displaying the MORISKY MARKS.

1 115. At the time of the RxHL Study, Defendants UMASS, TORRES, and SHAW did not
2 have a valid license to administer MMAS-8 tests, use the MORISKY COPYRIGHTS, or display the
3 MORISKY MARKS, because the Shaw License Agreement had expired.

4 116. In or around October 2018, Defendants UMASS and TORRES published the results
5 of the RxHL Study in a second article entitled, “Social Determinants of Cardiometabolic Disease
6 Control: An Ecosocial Approach” (the “UMass/Torres Article”). Attached as Exhibit J is a true and
7 correct copy of UMass/Torres Article, hereby incorporated by reference in its entirety.

8 117. Pages 45 and 46 of the UMass/Torres Articles provides as follows:

9
10 “Of the four approaches typically used to measure medication
11 adherence (self-report, electronic monitoring, pill count, and pharmacy
12 fill rates (Morisky, et al. 2008, 11)), the RxHL study used self-report
13 and manual pill count. Self-reported medication adherence is assessed
14 using the Morisky 8-Item Medication Adherence Scale at baseline and
15 at 3-months follow-up. Responses from the 8-items create a score
16 ranging from 0-8. Response categories are yes/no for each item and a
17 5-point Likert response for the last item. The original scale score is
18 categorized into three groups: high adherence (0), medium adherence
19 (1-2), and low adherence (3-8). The RxHL study reversed the order
such that a higher score (7.01-8.00) reflects high adherence, a medium
score (5.01-7.00) reflects adequate adherence and lower score (0-5)
reflects low adherence. We then dichotomized the groups into
adequate/high adherence (1) (scores ranging 5.01-8.0) and low
adherence (0) (scores ranging 0-5) (Morisky et al, 2008; Kelly et al.,
2016).

20 118. Notably, contrary to the explanation given by Defendants UMASS and TORRES in
21 the UMass/Torres Article, high adherence equates to *higher* scores for the MMAS-8, and lower
22 adherence equates to *lower* scores for the MMAS-8.

23 119. Page 57 of the UMass/Torres Article states as follows: “Participant characteristics of
24 medication adherence are shown in Table 1b. Among the entire study sample (N=361), self-reported
25

1 adequate medication adherence using the 8-item Morisky Medication Adherence Scale was 70.4%
2 compared to 55.4% adequate adherence (>80%) . . .”

3 120. Page 71 of the UMass/Torres Articles sets forth a table (“Table 1b”), labeled “Table
4 1b. Participant characteristics for medication adherence (Morisky self-report and pill count) and
5 medication use.”

6 121. Table 1b lists the following “Characteristics”: “Morisky Medication Adherence
7 Score (self-report)”; “Morisky, overall (n=361)”; “Morisky, if Diabetes (n=171)”; “Morisky, if
8 Hypertension (n=309)”; “Morisky, if Dyslipidemia (n=239)”; and “Morisky, if Depression (n=96).”

9 122. Page 80 of the UMass/Torres Article contains a table (“Table 6”), entitled “Table 6.
10 Mean pill count adherence by self-reported Morisky medication adherence.” Below the table, there
11 is a note that states, “T-test of continuous pill count % mean adherence by low-adequate self-
12 reported Morisky adherence.”

13 123. Page 85 of the UMass/Torres Study Article provides a figure (“Figure 3”), entitled
14 Medication Adherence, Health Literacy and Culture Health Beliefs (RxHL) Study Activities and
15 Timeline.” Figure 3 contains a text box which contains the label “3-month follow-up (N~383),”
16 followed by two bullet-point items” “Pill Count” and “8-item Morisky Medication Adherence
17 Scale.”

18 124. Page 149 of the UMass/Torres Study Article provides as follows: “to examine the
19 relationship between race/ethnicity and medication adherence as measured by self-report (8-item
20 Morisky Medication Adherence Scale (MMAS)) and by pill count. We hypothesized that there are
21 differences between groups in both medication adherence measurement approaches.”
22
23
24
25

125. Defendants UMASS and TORRES did not have a valid license to use the MORISKY COPYRIGHTS or display the MORISKY MARKS in the UMass/Torres Study Article, because the Shaw License Agreement had expired.

126. Plaintiffs never authorized Defendants UMASS and TORRES' disclosure of the trade secret coding criteria for the MMAS-8 in the UMass/Torres Article. Further, in disclosing the trade secret coding criteria for the MMAS-8, Defendants UMASS and TORRES breached Section (C)(2) of the Shaw License Agreement.

127. In or around October 1, 2019, Defendants UMASS and SHAW published a third publication entitled, “The RxHL study: community-responsive research to explore barriers to medication adherence” (the “RxHL Study Article”). Attached as Exhibit K is a true and correct copy RxHL Study Article, hereby incorporated by reference in its entirety.

129. Footnote 29 of the RxHL Study Article contains a reference to Plaintiff MORISKY as follows: “Morisky DE, Ang A, Krousel-Wood M et al. Predictive validity of a medication adherence measure in an outpatient setting. J Clin Hypertens 2008; 10: 348–54.”

130. Footnote 30 of the RxHL Study Article contains a second reference to Plaintiff MORISKY as follows: “Morisky DE, DiMatteo MR. Improving the measurement of self-reported medication nonadherence: final response. J Clin Epidemiol 2011; 64: 262–3.”

131. The Acknowledgements section on page 10 of the RxHL Study Article contains a reference to the MMAS COPYRIGHTS and Plaintiff MORISKY as follows: “Use of the ©MMAS

1 is protected by US copyright laws. Permission for use is required. A license agreement is available
2 from: Donald E. Morisky, ScD, ScM, MSPH, Professor, Department of Community Health
3 Services, UCLA School of Public Health, 650 Charles E. Young Drive South, Los Angeles, CA
4 90095-1772, USA.”

5
6 132. Defendants UMASS and SHAW did not have a valid license to use the MORISKY
7 COPYRIGHTS or display the MORISKY MARKS in the RxHL Study Article, because the Shaw
8 License Agreement had expired.

9 133. Plaintiff MORISKY never licensed and never authorized the use of the MORISKY
10 COPYRIGHTS and/or the MORISKY MARKS by Defendants UMASS, TORRES, and SHAW in
11 any of the RxHL Study, the Shaw/Torres Poster Presentation, the UMass/Torres Study Article, or
12 the RxHL Study Article.
13

14 **FIRST CAUSE OF ACTION**

15 **COPYRIGHT INFRINGEMENT (17 U.S.C. §§ 101, *et seq.*)**

16 **(BY PLAINTIFF MORISKY AGAINST ALL DEFENDANTS)**

17 134. Plaintiff MORISKY realleges each allegation contained in the preceding paragraphs
18 and incorporates them by this reference as though fully set forth herein.

19 135. At all times relevant hereto, Plaintiff MORISKY was the owner of all copyright rights
20 or rights to assert copyright claims for the MORISKY COPYRIGHTS and all derivative works.
21 Plaintiff MORISKY has complied in all respects with the Copyright Act of 1976, 17 U.S.C. §§ 101,
22 *et seq.*, and all other laws governing copyright.

23 136. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
24 UMASS and D. MCMANUS without authorization, have infringed the MORISKY COPYRIGHTS
25

1 by using, copying, counterfeiting, distributing, or otherwise exploiting the same in the SAGE-AF
2 Study after expiration of the UMass/McManus License Agreement.

3 137. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
4 UMASS, D. MCMANUS, and FITZGIBBONS without authorization, have infringed the MORISKY
5 COPYRIGHTS by using, copying, counterfeiting, distributing, or otherwise exploiting the same in
6 the McManus Study Protocol after expiration of the UMass/McManus License Agreement.

7 138. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
8 UMASS and FARRELL without authorization, have infringed the MORISKY COPYRIGHTS by
9 using, copying, counterfeiting, distributing, or otherwise exploiting the same in the UMass/Farrell
10 Study.

11 139. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
12 UMASS and CARRERA without authorization, have infringed the MORISKY COPYRIGHTS by
13 using, copying, counterfeiting, distributing, or otherwise exploiting the same in the UMass/Carrera
14 Study.

15 140. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
16 UMASS, TORRES, and SHAW without authorization, have infringed the MORISKY
17 COPYRIGHTS by using, copying, counterfeiting, distributing, or otherwise exploiting the same in
18 the RxHL Study and the Shaw/Torres Poster Presentation.

19 141. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
20 UMASS and TORRES without authorization, have infringed the MORISKY COPYRIGHTS by
21 using, copying, counterfeiting, distributing, or otherwise exploiting the same in the UMass/Torres
22 Article.

142. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants UMASS and SHAW without authorization, have infringed the MORISKY COPYRIGHTS by using, copying, counterfeiting, distributing, or otherwise exploiting the same in the RxHL Study Article.

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

144. Plaintiff MORISKY is entitled to an injunction (a) restraining Defendants and all persons acting in concert with them, from engaging in further such acts in violation of the copyright laws, (b) requiring Defendants to remove incorrect coding and scoring of the MMAS tests in published articles.

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

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

147. In addition, Plaintiff MORISKY is further entitled to statutory damages for infringement and willful infringement of the Morisky MMAS-8 Copyright by Defendants UMASS and D. MCMANUS in the SAGE-AF Study; Defendants UMASS, D. MCMANUS, and FITZGIBBONS in the McManus Study Protocol; Defendants UMASS and TORRES in the UMass/Torres Article; and Defendants UMASS and SHAW in the RxHL Study Article.

148. In addition, Plaintiff MORISKY is further entitled to statutory damages for infringement and willful infringement of the Morisky MMAS-4 Copyright by Defendants UMASS

1 and FARRELL in the UMass/Farrell Study, and by Defendants UMASS and CARRERA in the
2 UMass/Carrera Study.

3 **SECOND CAUSE OF ACTION**

4 **FALSE DESIGNATION OF ORIGIN/FEDERAL UNFAIR COMPETITION**

5 **(15 U.S.C. § 1125(a))**

6 **(BY PLAINTIFF MORISKY AGAINST ALL DEFENDANTS)**

7 149. MORISKY realleges each allegation contained in the preceding paragraphs and
8 incorporates them by this reference as though fully set forth herein.

9 150. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
10 UMASS and D. MCMANUS have infringed the MORISKY MARKS by using the same without
11 authorization in the SAGE-AF Study after expiration of the UMass/McManus License Agreement.

12 151. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
13 UMASS, D. MCMANUS, and FITZGIBBONS have infringed the MORISKY MARKS by using the
14 same without authorization in the McManus Study Protocol after expiration of the UMass/McManus
15 License Agreement.

16 152. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
17 UMASS and FARRELL have infringed the MORISKY MARKS by using the same without
18 authorization in the UMass/Farrell Article.

19 153. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
20 UMASS and CARRERA have infringed the MORISKY MARKS by using the same without
21 authorization in the UMass/Carrera Article.

22 154. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
23 UMASS, TORRES, and SHAW have infringed the MORISKY MARKS by using the same without
24 authorization in the RxHL Study and the Shaw/Torres Poster Presentation.

1 155. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
2 UMass and TORRES have infringed the MORISKY MARKS by using the same without
3 authorization in the UMass/Torres Article.

4 156. Plaintiff MORISKY is informed and believes and thereon alleges that Defendants
5 UMass and SHAW have infringed the MORISKY MARKS by using the same without authorization
6 in the RxHL Study Article.

7 157. As herein alleged, the aforementioned Defendants' unauthorized use of the
8 MORISKY MARKS in connection with their studies and related publications constitutes unfair
9 competition and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C.
10 § 1125(a), because Defendants' use of the marks suggests a false designation of the origin of the
11 unauthorized MMAS diagnostic tests used, identified, and published. Further, such acts of
12 infringement by Defendants further suggests a false association with MORISKY and/or that
13 MORISKY approved of or authorized the use of the unauthorized MMAS diagnostic tests used,
14 identified, and published by Defendants.

15 158. As a direct and legal result Defendants' unauthorized use of the MORISKY MARKS,
16 Defendants have damaged and will continue to damage MORISKY and MORISKY'S goodwill and
17 reputation; and have caused and are likely to continue to cause a loss of profits for MORISKY.
18 Defendants' actions have caused and will continue to cause irreparable harm to MORISKY and to
19 the public, who is confused by Defendants' unauthorized use of the MORISKY MARKS, unless
20 restrained and enjoined by this Court. MORISKY has no adequate remedy at law to prevent
21 Defendants from continuing their infringing actions and from injuring MORISKY.

22 159. As a further direct and legal result of Defendants' actions, MORISKY has been
23 damaged and will continue to sustain damage and is entitled to receive compensation arising from
24 Plaintiff MORISKY'S lost profits and efforts necessary to minimize and/or prevent customer and
25

1 consumer confusion, in an amount to be proven at the time of trial. In addition, MORISKY is entitled
2 to disgorge Defendants' profits, and is entitled to interest and to his attorney's fees and costs in
3 bringing this action, all in an amount to be proven at the time of Trial. MORISKY is further entitled
4 to injunctive relief as set forth above, and to all other and further forms of relief this Court deems
5 appropriate.

6 **THIRD CAUSE OF ACTION**

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

8 **(BY PLAINTIFFS AGAINST DEFENDANTS UMASS, FARRELL, AND CARRERA)**

9 160. Plaintiffs reallege each allegation contained in the preceding paragraphs and
10 incorporate them by this reference as though fully set forth herein.

11 161. Plaintiffs own confidential information, proprietary and trade secret information, as
12 alleged above, including but not limited to the MMAS coding and scoring criteria.

13 162. Plaintiffs' confidential, proprietary, and trade secret information relates to products
14 and services used, sold, shipped and/or ordered in, or intended to be used, sold, shipped, and/or
15 ordered in, interstate or foreign commerce.

16 163. Plaintiffs have taken reasonable measures to keep such information secret and
17 confidential. For example, Plaintiffs require any licensee of the MORISKY COPYRIGHTS to
18 contractually agree to maintain the confidentiality of the coding and scoring criteria.

19 164. In fact, Plaintiffs required Defendants to contractually agree to maintain the
20 confidentiality of the coding and scoring criteria of the MMAS in the UMass/McManus License
21 Agreement.

22 165. Plaintiffs' confidential, proprietary, and trade secret information derives independent
23 economic value from not being generally known to, and not being readily ascertainable through
24

1 proper means by, another person who can obtain economic value from the disclosure or use of the
2 information.

3 166. Defendants UMASS and FARRELL misappropriated Plaintiffs' confidential,
4 proprietary, and trade secret information by disclosing MMAS-4 coding criteria in the
5 UMass/Farrell Article. Defendants UMASS and FARRELL'S misappropriation of Plaintiffs'
6 confidential, proprietary, and trade secret information was intentional, knowing, willful, and
7 malicious. Defendants UMASS and FARRELL have attempted and continue to attempt to conceal
8 their misappropriation.

9 167. Defendants UMASS and CARRERA misappropriated Plaintiffs' confidential,
10 proprietary, and trade secret information by disclosing MMAS-4 coding criteria in the
11 UMass/Carrera Article. Defendants UMASS and CARRERA'S misappropriation of Plaintiffs'
12 confidential, proprietary, and trade secret information was intentional, knowing, willful, and
13 malicious. Defendants UMASS and CARRERA have attempted and continue to attempt to conceal
14 their misappropriation.

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

23 169. Plaintiffs have been damaged by all of the foregoing and are entitled to an award of
24 exemplary damages and attorney's fees.

FOURTH CAUSE OF ACTION

TRADE SECRET MISAPPROPRIATION (Cal. Civ. Code § 3426 *et seq.*)

(BY PLAINTIFFS AGAINST DEFENDANTS UMASS, FARRELL, AND CARRERA)

170. Plaintiffs reallege each allegation contained in the preceding paragraphs and incorporate them by this reference as though fully set forth herein.

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

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

173. In fact, Plaintiffs required Defendants to contractually agree to maintain the confidentiality of the coding and scoring criteria of the MMAS in the UMass/McManus License Agreement.

174. Defendants UMASS and FARRELL knew or should have known under the circumstances that the MMAS-4 coding criteria misappropriated by them in the UMass/Farrell Article were trade secrets.

175. Defendants UMASS and CARRERA knew or should have known under the circumstances that the MMAS-4 coding criteria misappropriated by them in the UMass/Carrera Article were trade secrets.

176. The aforementioned Defendants misappropriated and threaten to further misappropriate trade secrets at least by acquiring trade secrets with knowledge of or reason to know

1 that the trade secrets were acquired by improper means, and Defendants are using and threatening to
2 use the trade secrets acquired by improper means without Plaintiffs' knowledge or consent.

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

9 178. Defendants' acts were willful, malicious, and fraudulent, and Plaintiffs are entitled to
10 exemplary damages under California Civil Code § 3426.3(c).

11 179. Defendants' conduct constitutes a transgression of a continuing nature for which
12 Plaintiffs have no adequate remedy at law. Unless this Court enjoins Defendants, they will continue
13 to use Plaintiffs' trade secret information to enrich themselves. Plaintiffs are entitled to an
14 injunction against the misappropriation and continued threatened misappropriation of trade secrets
15 under California Civil Code § 3426.2, and Plaintiffs ask this Court to restrain Defendants from
16 using all trade secret information misappropriated from Plaintiffs.

17 180. Pursuant to California Civil Code § 3426.4 and related law, Plaintiffs are entitled to
18 an award of attorneys' fees for Defendants' misappropriation of trade secrets.

19 **FIFTH CAUSE OF ACTION**

20 **UNFAIR COMPETITION [BUSINESS AND PROFESSIONS CODE §17200, ET SEQ.]**

21 **(BY PLAINTIFFS AGAINST ALL DEFENDANTS)**

22 181. Plaintiffs reallege each allegation contained in the preceding paragraphs and
23 incorporate them by this reference as though fully set forth herein.
24
25

1 182. Defendants have committed all of the aforesaid acts willfully, maliciously, and
2 oppressively, without regard to Plaintiffs' legal, contractual, and exclusive proprietary rights.

3 183. Defendants' acts and practices as detailed above constitute acts of unlawful, unfair,
4 or fraudulent business acts and practices within the meaning of California Business and Professions
5 Code § 17200.

6 184. Pursuant to California Business and Professions Code §17203, Plaintiffs seek an
7 order from this Court prohibiting Defendants from engaging or continuing to engage in the
8 unlawful, unfair, or fraudulent business acts or practices set forth herein.

9 185. Plaintiffs have incurred and will continue to incur attorney fees in enforcing the
10 rights described herein and seek recovery of their attorney fees incurred pursuant to Code of Civil
11 Procedure § 1021.5.

12
13 **PRAYER FOR RELIEF**

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

- 16 1. For actual damages in an amount according to proof at trial, and for any additional
17 profits attributable to infringements of Plaintiff MORISKY's copyright in the MMAS-
18 4 and MMAS-8, in accordance with proof at trial;
- 19 2. For actual damages in an amount according to proof at trial, and for any additional
20 profits attributable to infringements of Plaintiff MORISKY'S MARKS, in accordance
21 with proof at trial;
- 22 3. For statutory damages for copyright infringement and/or willful copyright
23 infringement of the MMAS-8 by Defendants UMASS, D. MCMANUS,
- 24
25

1 FITZGIBBONS, TORRES, and SHAW, and of the MMAS-4 by Defendants UMASS,
2 FARRELL, and CARRERA;

3 4. For statutory damages for trademark infringement and/or willful trademark
4 infringement of the MORISKY MARKS by Defendants UMASS, D. MCMANUS,
5 FITZGIBBONS, TORRES, and SHAW, and of the MMAS-4 by Defendants
6 UMASS, FARRELL, and CARRERA;

7
8 5. For issuance of preliminary and permanent injunctive relief against Defendants, and
9 each of them, and their respective officers, agents, representatives, servants,
10 employees, attorneys, successors and assigns, and all others in active concert or
11 participation with Defendants, enjoining them to:

12 a. Refrain from using the MMAS-4, MMAS-8, the Morisky Widget, or the
13 MORISKY MARKS until a license is obtained, including the maintenance on
14 websites, posted on the Internet, or in any publication, the articles, publications,
15 and reports described herein, or any such articles, publication, and reports in the
16 future which use or reference the MMAS-4, MMAS-8, the Morisky Widget, or the
17 MORISKY MARKS;

18 b. Refrain from selling, offering to sell, advertising, promoting, or passing off,
19 inducing, or enabling others to sell, offer to sell, advertise, promote, or pass off
20 any diagnostic tools like the Morisky Widget provided by Plaintiffs under a name
21 or mark the same as the MORISKY MARKS;

22 c. Refrain from otherwise unfairly competing with Plaintiffs in any manner,
23 including but not limited to, infringing usage of the MORISKY MARKS, or any
24 confusingly similar marks;

- 1 d. Remove incorrect MMAS coding and scoring criteria from Defendants'
2 publication, and/or issue corrigenda to correct such incorrect coding and scoring
3 criteria; and
4 e. Deliver upon oath, to be impounded during the pendency of this action, and for
5 destruction pursuant to judgment herein, all originals, copies, facsimiles,
6 reproductions, or duplicates of any work shown by the evidence to infringe any of
7 the MORISKY COPYRIGHTS.

- 8 6. 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 Defendants,
10 under oath, setting forth that Defendants have complied with the injunction, as well as
11 the steps they have taken to comply;
12 7. For compensatory damages in an amount according to proof at trial;
13 8. For costs of suit herein incurred;
14 9. For attorneys' fees;
15 10. For prejudgment interest in the amount of ten percent (10%) per annum or the
16 maximum amount allowed by law; and
17 11. For such other and further relief the Court deems just and proper.

18
19 Dated: April 12, 2021

KENNETH I. GROSS & ASSOCIATES

20
21 By: S/ Kenneth I. Gross

22 Kenneth I. Gross, Esq.
23 Kimberly L. Fong, Esq.
24 SF TECH ATTORNEY, PC
25 Attorneys for Plaintiffs
MMAS Research LLC
and Dr. Donald E. Morisky