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8 Attorney for Plaintiffs: MMAS Research, LLC and Dr. Donald E. Morisky

9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**
12

13 MMAS RESEARCH, LLC, a Washington
14 Limited Liability Company; and DR. DONALD
15 E. MORISKY, an individual,

16 Plaintiffs,

17 vs.

18 UNIVERSITY OF EDINBURGH;
19 SAHAR KHONSARI, an individual; and
20 DOES 1-50, inclusive,

21 Defendants.

Case No.: 2:21-cv-03914

COMPLAINT FOR:

1. Breach of Contract
2. Copyright Infringement Under 17 U.S.C. § 101, et seq.
3. Misappropriation of Trade Secrets under the Defend Trade Secrets Act, 18 U.S.C §1836, et seq.
4. Unfair Competition [Business and Professions Code §17200, et seq.

22 **COMES NOW** Plaintiffs and alleges as follows:

23 1. Plaintiff MMAS RESEARCH, LLC (“MMAS RESEARCH”) is a Washington,
24 LLC in good standing which conducts business in Los Angeles County.

25 2. Plaintiff DR. DONALD E. MORISKY (“MORISKY”) is the owner of a

1 Copyright Registration for the "Morisky Medication Adherence Scale (4-item)"
2 ("Morisky MMAS-4 Copyright") (Registration No. TX0008285390, Registration
3 date June 12, 2016), and is also the owner of a Copyright Registration for the
4 "Morisky Medication Adherence Scale (8-item)" ("Morisky MMAS-8
5 Copyright") (Registration No. TX0008632533, Registration date September 21,
6 2018).

7 3. Plaintiff MMAS RESEARCH is the owner of a Copyright Registration for the
8 "MMAS RESEARCH WIDGET CODE", (Registration No. TX 8-816-517,
9 Registration date December 3, 2019, which is used in the Morisky Widget, as
10 discussed below.

11 4. Collectively the copyrights described above may be referenced herein as the
12 "copyrights".

13 5. Defendant UNIVERSITY OF EDINBURGH ("EDINBURGH") is an academic
14 institution located in the United Kingdom. The MMAS-8 and Morisky Widget
15 license agreements between Plaintiff and Defendant provide for jurisdiction in
16 the Courts of Los Angeles County for disputes arising from the agreements
17 between the parties.

18 6. Defendant SAHAR KHONSARI ("KHONSARI") is or was a student at
19 EDINBURGH at all relevant times.

20 7. The true names and capacities, whether individual, corporate, associate or
21 otherwise, of defendants DOES 1-50, inclusive, are unknown to Plaintiff, who
22 therefore sues said Defendants by such fictitious names. Plaintiff is informed
23 and believes and based thereon alleges, that each of the Defendants herein
24 designated as a DOE, are each responsible in some manner for the events and
25 happenings herein referred to, and caused injuries and damages proximately

1 thereby. Plaintiff's will amend this complaint and insert the true names and
2 capacities of said DOE Defendants when the same has been ascertained.

3 8. Plaintiffs are informed and believes and based thereon alleges, that each of
4 the Defendants is responsible in some manner for the events and happenings
5 herein referred to, and caused injuries and damages proximately thereby.

6 9. Plaintiff's are informed and believes, and based thereon alleges, that each of
7 the Defendants was the agent, the partner, and/or the employee of each of its co-
8 Defendants and in doing the things alleged, was acting within the course and
9 scope of such agency, partnership, and/or employment.

10 **JURISDICTION AND VENUE**

11 10. This action arises, in part, under the Copyright Act of 1976, 17 U.S.C. §§
12 101, et. seq., and the Lanham Trademark Act of 1946, 15 U.S.C. § 1051, et seq.,
13 conferring Federal question jurisdiction under 28 U.S.C. § 1331, and
14 supplemental jurisdiction on Plaintiffs' state law claims under 28 U.S.C. § 1367.

15 This Court has original jurisdiction over this controversy for misappropriation
16 of trade secrets claims pursuant to 18 U.S.C. § 1836(c).

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

1 **GENERAL ALLEGATIONS**

2 **MORISKY MEDICATION ADHERENCE SCALES**

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

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

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

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

25 16. The MMAS-8 is a diagnostic adherence assessment instrument which
contains a total of eight (8) items measuring two dimensions of non-adherence,
namely intentional and unintentional non-adherence. Furthermore, the MMAS-8

1 is more than a number defining the magnitude of non- adherence as it also tells
2 the physician “Why” the patient is non-adherent.

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

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

10 19. Plaintiff MMAS RESEARCH licenses, and since January 2017 has licensed,
11 use of the Morisky Widget to score and code the MMAS-4 and MMAS-8 tests.
12 Prior to 2017, individual licenses to the MMAS-4 and MMAS-8 were granted
13 and sold by Plaintiff MORISKY.

14 **COPYRIGHTS**

15 20. In an effort to protect the integrity of the MMAS-4 and protect against
16 counterfeit, infringing, and/or unauthorized use, Plaintiff MORISKY filed for
17 and obtained a Certificate of Registration for the Morisky MMAS-4 Copyright,
18 which is comprised of the text of the MMAS-4 test.

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

23 22. In an effort to protect the integrity of the Morisky Widget and protect
24 against counterfeit, infringing, and/or unauthorized use, Plaintiff MMAS
25 RESEARCH filed for and obtained a Certificate of Registration for the Morisky
Widget Copyright.

1 23. Plaintiff MORISKY has complied in all respects with the Copyright Act of
2 1976, 17 U.S.C. § 101, et. seq., and all other laws governing copyrights as to
3 the MMAS-4, MMAS-8, and the MORISKY COPYRIGHTS.

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

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

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

20 27. Plaintiffs impose restrictions on the use and disclosure of the coding and
21 scoring of the MMAS-4, MMAS-8, and the Morisky Widget not only to protect
22 their federally registered rights, but also to protect patients and health care
23 providers from counterfeit or scientifically incorrect diagnostic assessments and
24 inaccurate results.
25

TRADEMARKS

1
2 28. Plaintiff MORISKY is the creator and owner of the trademarks “Morisky
3 Medication Adherence Scale,” “MMAS,” “MMAS-4,” and “MMAS-8”
4 (hereinafter the “MORISKY MARKS”).

5 29. The “MMAS” trademark is the subject of Federal Trademark Registration No.
6 5837273 and has been used in commerce since at least as early as February 2006.

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

LICENSES

14 31. It is of critical importance the integrity of the MMAS be maintained. This is
15 why a strict licensing regimen is used and disclosure of coding and scoring
16 criteria, and translations not provided by Plaintiffs, are not permitted.

17 32. Plaintiffs have discovered that when someone obtains the MMAS coding and
18 scoring criteria they often make changes that lead to erroneous results. Others
19 obtaining the MMAS from counterfeiters often make further unauthorized
20 revisions, further increasing the risk of harm to patients and misleading
21 healthcare providers. Unlicensed translations are often divulged and used with
22 the coding and scoring criteria which render the results invalid and
23 misunderstood.

24 33. Plaintiffs have spent considerable time and money to develop, maintain, and
25 advance the MMAS described herein and it now can be administered with regard
to one hundred ten (110) medical conditions and thousands of specific

1 medications as of this filing, and in more than eighty (80) languages. The
2 MMAS is used by physicians, hospitals, clinicians, pharmaceutical companies,
3 universities, medical researchers, and health ministries throughout the world,
4 including National Institute of Health funded studies, all to measure medication
5 adherence and identify the reasons for why patients do not take their prescribed
6 medications. MMAS translations are provided by Plaintiffs for a small fee along
7 with a translation certification. Translations of the MMAS without proper
8 authorization are prohibited.

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

16 35. Plaintiffs permit the use of the MORISKY COPYRIGHTS, MORISKY
17 MARKS, the MMAS, and the Morisky Widget only through a licensing program
18 memorialized in a licensing agreement. This ensures uniformity of use in coding
19 and scoring, as well as provides much needed support from Plaintiffs.

20 Modifications of the MMAS, and disclosure of coding and scoring criteria and
21 linguistically certified translations are not permitted.

22 36. Reasonable efforts are taken by Plaintiffs to protect and not to disseminate
23 the MMAS, Morisky Widget, or translated versions to non-authorized users, as
24 well as the coding and scoring. These restrictions not only protect patients and
25 health care providers from counterfeit diagnostic assessments and inaccurate
coding and scoring, but also protect the economic interests of Plaintiffs in the
MORISKY COPYRIGHTS, MORISKY MARKS, the MMAS itself, along with

1 the Morisky Widget diagnostic assessment, as they receive licensing fees and
2 are paid per test administered, unless such fees are waived. In fact, the license
3 agreement expressly provides that coding and scoring may not be disclosed.

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

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

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

20 **STATEMENT OF FACTS**

21 **EDINBURGH STUDENT LICENSE**

22 40. This action arises as a result of ongoing and defiant behavior by Defendant Edinburgh,
23 Defendant Khonsari, and DOES 1-50 to use, disseminate, and coverup infringements and
24 breaches against Plaintiffs' Copyrights, trade secrets, and License Agreements.

25 41. In or around 2014, a study was published entitled; "Effect of a Reminder System using an
Automated Short Message Service on Medication Adherence Following Acute Coronary

1 Syndrome”. It was published by The European Society of Cardiology and authored by Defendant
2 Sahar Khonsari, Department of Nursing Science, Faculty of Medicine, University of Malaya,
3 Malaysia. The publication revealed its use of data samples that had been collected in or around
4 December 2012 through in or around April 2013, which were scored and coded using the
5 MMAS-8. This study was conducted without the permission of Plaintiff MORISKY to use the
6 MMAS-8 thereby infringing on Plaintiff MORISKY’S intellectual property rights.

7 42. On or about June 10, 2015 Defendant EDINBURGH and DOES 1-50, and Plaintiff
8 MORISKY entered into a written license agreement for use of the MMAS-8. The license issued
9 was a student license, which restricted its use to both a single student as well as a single study
10 (The “Edinburgh Student License”. It provides for jurisdiction and venue in the federal or State
11 Courts of Los Angeles County. Attached hereto and incorporated herein as **Exhibit A** is a true
12 and correct copy of the Edinburgh Student License. This license was authorized for Defendant
13 KHONSARI, who at the time, was a Ph D student at the University of Edinburgh, to conduct her
14 study entitled; “Development of a Mobile Health Intervention for Outpatients Cardiac
15 Rehabilitation: A Feasibility Study to Evaluate Impact on Medication Adherence”. The
16 Edinburgh Student license provides \$5,000 in damages and attorney fees and costs shall be paid
17 to licensor for violation of any copyright rights of Plaintiff Morisky.

18 43. On or around November 10, 2015 Defendant KHONSARI received a Persian translation of
19 the MMAS-8 from Plaintiff MORISKY. The June 10, 2015 written MMAS-8 License
20 Agreement explicitly stated any translation was non-transferable and could not be reproduced,
21 copied or distributed. Upon information and belief, based on a 2020 Wiley article, Defendant
22 KHONSARI gave the Persian translations and the MMAS-8 scoring and coding information to
23 nurse supervisors in three Iranian hospitals, who then administered the MMAS-8 and processed
24 the results for their own use. This was a blatant violation and breach of the Edinburgh Student
25 License Agreement.

44. In or around 2017 Defendant EDINBURGH and Defendant KHONSARI published the
thesis for her student license study. In the thesis, Defendant EDINBURGH, Defendant

1 KHONSARI, and DOES 1-50 breached the Edinburgh Student Licensed by publishing the
2 scoring and coding of the MMAS-8. The thesis was available on the internet for anyone to access
3 and view for a period of no less than through on or around March 7, 2021. Plaintiffs are further
4 informed and believe that Defendant KHONSARI and DOES 1-20 transferred some of her rights
5 pursuant to the student license described herein, to Optuminsight Lifesciences, Inc., without
6 authorization, to assist Defendant KHONSARI and DOES 1-20 with the study resulting in her
7 thesis.

8 EDINBURGH LICENSE

9 45. On or around June 25, 2019 Defendant EDINBURGH and Plaintiff MMAS RESEARCH
10 entered into a written Morisky Widget License (The “Edinburgh License”). Attached hereto and
11 incorporated herein as **Exhibit B** is a true and correct copy of the Edinburgh License. Plaintiff
12 trained and certified agents of Defendant EDINBURGH, which was a requirement under the
13 Edinburgh License. The Edinburgh License prohibited disclosure of coding and scoring used for
14 the Morisky Widget.

15 46. On or around November 7, 2019 Defendant EDINBURGH, DOES 1-50, and Dr.
16 Mohammed Meah in collaboration with the British Heart Foundation, published a study called;
17 “SCOT-Heart 2 Trials on Lifestyle” on the internet website, clinicaltrials.gov. It remained
18 accessible online for a period up to an including at least May 22, 2020 and revealed the scoring
19 and coding of the MMAS-4, which was prohibited by the Edinburgh License. Furthermore, the
20 study required a valid sub-license which was never obtained. The Edinburgh License states in
21 relevant part, “Licensee acknowledges and agrees that any person at University Court of the
22 University of Edinburgh that uses the Morisky Widget shall be trained and certified on the
23 Morisky Widget and the Morisky Medication Adherence Protocol”. Meah had not be trained
24 and certified which was a breach of the Edinburgh License.
25

1 scored and coded MMAS-8 results in three hospitals. Plaintiffs learned of this
2 breach in or about fall of 2020.

3 54. Defendant EDINBURGH, Defendant KHONSARI, and DOES 1-50 further
4 breached the Edinburgh Student License by failing to include the required
5 citations and footnotes in the published research studies as required. Edinburgh
6 Student License states in section 4, “The footnote must be noted”, and section 7,
7 “further specific requirements, e.g., citations required in publications”. By
8 failing to include proper citations and footnotes, the Defendants breached the
9 Edinburgh Student License.

10 **MORISKY WIDGET MMAS LICENSE AGREEMENT**

11 55. On or about April 3, 2019 Defendant EDINBURGH and DOES 1-50, and
12 Plaintiff MMAS RESEARCH entered into the Edinburgh License.

13 56. The Edinburgh License specifically prohibits disclosure of the scoring and
14 coding of the MMAS.

15 57. Further, the Edinburgh License requires that all tests administered pursuant
16 to the Edinburgh License be scored in the Morisky Widget.

17 58. On or about November 7, 2019, Defendant EDINBURGH and DOES 1-50
18 breached the Edinburgh License by posting to the clinicaltrials.gov website
19 scoring and coding for the MMAS-4, said scoring remaining on that website for
20 approximately a year. Further, the scoring disclosed on the clinicaltrials.gov
21 website, was scientifically inaccurate, which poses a serious risk to patient
22 health, if said scoring is adopted and used by others viewing the posting, and
23 damages the credibility of Plaintiffs. In addition, Defendant EDINBURGH
24 further breached the Edinburgh License by failing and refusing to score MMAS
25 tests administered, in the Widget and other breaches according to proof.

1 59. As a result of the breach of Defendant EDINBURGH and DOES 1-50 as
2 described herein, Plaintiffs have been damaged in a sum according to proof and
3 patient health is endangered due to uncorrected errors. In addition, Plaintiff's
4 seek injunctive relief to correct the scientifically incorrect scoring and to
5 prevent further posting and publication of scoring and coding of the MMAS-4.

6 60. As a further direct and proximate result of the breach of Defendant
7 EDINBURGH and DOES 1-50 as described herein, Plaintiffs have incurred costs
8 for professionals, including attorneys, and incurred other incidental expenses
9 and costs, all in a sum according to proof.

10 **SECOND CAUSE OF ACTION**

11 **COPYRIGHT INFRINGEMENT [17 U.S.C. §101, et seq]**

12 **(Against all Defendants)**

13 61. Plaintiff realleges paragraphs 1-60 of the complaint and incorporates them
14 by this reference as though fully set forth herein.

15 62. At all times relevant hereto, Plaintiffs have been the owner of all copyright
16 rights or rights to assert copyright claims for the MMAS-4, MMAS-8, and the
17 Morisky Widget. Plaintiffs have complied in all respects with the Copyright Act
18 of 1976, 17 U.S.C. §101 *et seq.*, and all other laws governing copyright.

19 **EDINBURGH STUDENT LICENSE**

20 63. Defendant KHONSARI infringed on Plaintiff MORISKY'S rights by giving
21 supervisors in three Iranian hospitals, Plaintiff MORISKY'S copyrighted work
22 without authorization, and they subsequently made use of.

23 64. Additionally, Defendant KHONSARI infringed on Plaintiff MORISKY'S
24 copyrights when she failed to include the required citations and footnotes in her
25 published research studies as required. Edinburgh Student License states in

1 section 4, “The footnote must be noted”, and section 7, “further specific
2 requirements, e.g., citations required in publications”. By failing to include
3 proper citations and footnotes, the author poses the copyrighted information as
4 their own thus infringing on Plaintiff MORISKY’S legal rights.

5 **EDINBURGH LICENSE**

6 65. Plaintiff MORISKY copyrights were further infringed when Defendant
7 EDINBURGH posted the MMAS-4 copyrighted information on the
8 clinicaltrials.gov website for public viewing.

9 66.The Edinburgh License specifically prohibited disclosure of the protected
10 information. Section 2 of the Edinburgh License states in part, “Licensee is
11 forbidden from publicizing MMAS Coding and Scoring criteria in any form
12 without the expressed, written consent from Licensor”. Defendant EDINBURGH
13 shared the scoring and coding details with unauthorized and unlicensed
14 individuals.

15 67. Plaintiffs are informed and believe and thereon allege that Defendants
16 without authorization, have infringed and will continue to infringe the
17 copyrights by using, copying, counterfeiting, distributing, or otherwise
18 exploiting same without a license to do so.

19 68. By means of the actions complained of herein, Defendants, and each of them,
20 have infringed, and will continue to infringe, the copyrights.

21 69. Plaintiffs are entitled to an injunction restraining Defendants, and each of
22 them, and all persons acting in concert with them, from engaging in further such
23 acts in violation of the copyright laws.

24 70. As a direct result of Defendants’ infringement, Plaintiffs have sustained
25 damages in an amount to be determined at trial.

1 71. Pursuant to 17 U.S.C. §§ 502, 503, 504, and 505, Plaintiffs are entitled to an
2 award of actual or statutory damages, injunctive relief, the impoundment and
3 destruction of the infringing materials, and his attorney's fees and costs.

4 72. Plaintiffs are also entitled to damages, pursuant to the Copyright Act of
5 1976, 17 U.S.C. §101. *et. seq.*, for Defendants' willful and continued
6 infringements of the Morisky Copyright.

7 **THIRD CAUSE OF ACTION**

8 **MISAPPROPRIATION OF TRADE SECRETS UNDER THE DEFEND**

9 **TRADE SECRETS ACT [18 U.S.C. §1836 *et seq.*]**

10 **(Against all Defendants)**

11 73. Plaintiffs reallege paragraphs 1-72 of the complaint and incorporate them by
12 this reference as though fully set forth herein.

13 74. Plaintiffs own confidential information, proprietary and trade secret
14 information, as alleged above, including but not limited to the MMAS coding
15 and scoring criteria.

16 75. Plaintiffs confidential, proprietary, and trade secret information relates to
17 products and services used, sold, shipped and/or ordered in, or intended to be
18 used, sold, shipped, and/or ordered in, interstate or foreign commerce.

19 76. Plaintiffs take reasonable efforts to protect and not to disseminate or permit
20 the use of their trade secrets to non-authorized users, as well as efforts to make
21 sure the scoring and coding is not disclosed. For example, Plaintiffs require any
22 licensee of the MORISKY COPYRIGHTS to contractually agree to maintain the
23 confidentiality of the coding and scoring criteria.

24 77. In fact, Plaintiffs required Defendants EDINBURGH and DOES 1-50 to
25 contractually agree to maintain the confidentiality of the coding and scoring

1 criteria of the MMAS-8 and MMAS in the Edinburgh License and Edinburgh
2 Student License.

3 78. Plaintiffs' confidential, proprietary, and trade secret information derives
4 independent economic value from not being generally known to, and not being
5 readily ascertainable through proper means by, another person who can obtain
6 economic value from the disclosure or use of the information.

7 79. Defendants EDINBURGH and DOES 1-50 misappropriated Plaintiffs'
8 confidential, proprietary, and trade secret information by disclosing MMAS-4
9 coding criteria on the website clinicaltrials.gov, contrary to the terms of the
10 Edinburgh License Agreement. Defendants EDINBURGH and DOES 1-50's
11 misappropriation of Plaintiffs' confidential, proprietary, and trade secret
12 information was intentional, knowing, willful, and malicious.

13 80. Defendants misappropriated Plaintiff's trade secrets when they gave
14 unauthorized individuals access and use of the protected MMAS-8 and when
15 they disclosed coding and scoring of the MMAS in publications as described
16 herein.

17 81. Defendants KHONSARI and DOES 1-50 misappropriated Plaintiffs'
18 confidential, proprietary, and trade secret information by disclosing MMAS-8
19 coding criteria and the Persian translation to nurse supervisors in three Iranian
20 hospitals. Defendants KHONSARI and DOES 1-50's misappropriation of
21 Plaintiffs' confidential, proprietary, and trade secret information was intentional,
22 knowing, willful, and malicious. Defendants KHONSARI and DOES 1-50 have
23 attempted and continue to attempt to conceal their misappropriation.

24 82. Defendants knew they had a duty to maintain the secrecy Plaintiff's trade
25 secrets and the restrictions of use and disclosure pursuant to the Edinburgh

1 License and Edinburgh Student License Agreements. Defendants breached their
2 duty by the acts alleged herein.

3 83. As the direct and proximate result of Defendants EDINBURGH, KHONSARI,
4 and DOES 1-50's conduct, Plaintiffs have suffered and, if Defendants
5 EDINBURGH, KHONSARI, and DOES 1-50's conduct is not stopped, will
6 continue to suffer, severe competitive harm, irreparable injury, and significant
7 damages, in an amount to be proven at trial. Because Plaintiffs' remedy at law is
8 inadequate, Plaintiffs seek, in addition to damages, temporary, preliminary, and
9 permanent injunctive relief to recover and protect their confidential, proprietary,
10 and trade secret information and to protect other legitimate business interests.
11 Plaintiffs' business operates in a competitive market and will continue suffering
12 irreparable harm absent injunctive relief.

13 84. Plaintiffs have been damaged by all of the foregoing and pursuant to 18
14 U.S.C. §1836(3), Plaintiffs are entitled to an award of actual damages,
15 injunctive relief, damages for unjust enrichment, exemplary damages, and
16 attorney's fees and costs.

17 **FOURTH CAUSE OF ACTION**

18 **UNFAIR BUSINESS PRACTICES [B&P §17200, et seq]**

19 **(Against all Defendants)**

20 85. Plaintiffs reallege paragraphs 1-84 of the complaint and incorporates them
21 by this reference as though fully set forth herein.

22 86. Defendants' acts and practices as detailed above constitute acts of unlawful,
23 unfair or fraudulent business acts and practices within the meaning of California
24 Business and Professions Code §17200.

25 87. Pursuant to California Business and Professions Code §17203, Plaintiff

1 seeks an order from this Court prohibiting defendants from engaging or
2 continuing to engage in the unlawful, unfair, or fraudulent business acts or
3 practices set forth herein.

4 88. Plaintiffs additionally request an order from this Court requiring that
5 Defendants disgorge profits and return or pay to Plaintiffs all of Defendants'
6 profits from the illegal transactions described herein, and/ or pay restitution,
7 including the amount of money that would have been paid to Plaintiffs for the
8 sales or tests contemplated and consummated by Defendants as a result of the
9 acts described herein, including through the use of Plaintiffs' assets, trade
10 secrets, trade names and trademarks.

11
12 **WHEREFORE**, Plaintiff prays for judgment against Defendants as
13 follows:

- 14 1. For compensatory damages in an amount according to proof at trial;
- 15 2. For statutory damages in an amount according to proof at trial;
- 16 3. For actual damages in an amount according to proof at trial;
- 17 4. For exemplary damages in an amount according to proof at trial;
- 18 5. For damages pursuant to the license agreement;
- 19 3. For issuance of preliminary and permanent injunctive relief against
20 Defendants, and each of them, and their respective officers, agents,
21 representatives, servants, employees, attorneys, successors and assigns, and all
22 others in active concert or participation with Defendants, enjoining and
23 restraining them from:
 - 24 a. Using the MMAS-4, MMAS-8 or the Morisky Widget until
25 a license is obtained including the maintenance on websites, posted on the

1 Internet, or in any publication, the articles, publications, and reports described
2 herein, or any such articles, publication, and reports in the future which use or
3 reference the MMAS-4, MMAS-8, the Morisky Widget, or the MORISKY
4 MARKS and the breaches identified with regard to the Morisky Widget license
5 herein have been remedied;

6 b. Granting any sublicenses to use the Widget;

7 c. Assisting, aiding, or abetting any other person or business
8 in engaging in or performing any of the above activities;

9 4. Order that Defendants file with this Court and serve upon Plaintiff
10 within thirty (30) days after service on Defendants of an injunction in this
11 action, a report by Defendants, under oath, setting forth that Defendants have
12 complied with the injunction, as well as the steps they have taken to comply;

13 5. For costs of suit herein incurred;

14 6. For attorney fees;

15 7. For prejudgment interest in the amount of ten percent (10%) per annum
16 or the maximum amount allowed by law; and

17 8. For such other and further relief the Court deems just and proper.

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21 Dated: May 7, 2021

KENNETH I. GROSS & ASSOCIATES

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24 By 

Kenneth I. Gross, Esq.
Attorney for Plaintiffs