

1 Plaintiffs MASIMO CORPORATION (“Masimo”) and CERCACOR
2 LABORATIES, INC. (“Cercacor”) hereby complain of Defendant APPLE INC.
3 (“Apple”), and allege as follows:

4 **I. THE PARTIES**

5 1. Plaintiff Masimo is a Delaware corporation having its principal
6 place of business at 52 Discovery, Irvine, California 92618.

7 2. Plaintiff Cercacor is a Delaware corporation having its principal
8 place of business at 15750 Alton Pkwy, Irvine, California 92618.

9 3. Upon information and belief, Defendant Apple is a California
10 corporation having a principal place of business at One Apple Park Way,
11 Cupertino, California, 95014.

12 **II. JURISDICTION AND VENUE**

13 4. This civil action includes claims for patent infringement arising
14 under the patent laws of the United States, 35 U.S.C. §§ 100, *et seq.*, more
15 particularly, 35 U.S.C. §§ 271 and 281. This Complaint further alleges trade
16 secret misappropriation and seeks a declaration of ownership of certain patents
17 and patent applications, and, pursuant to 35 U.S.C. § 256, correction of
18 inventorship of certain patents.

19 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
20 §§ 1331, 1338(a), and 1367(a).

21 6. Apple has its principal place of business in California. Apple is
22 subject to personal jurisdiction in California and has committed the acts
23 complained of in this Judicial District.

24 7. Venue is proper in the Southern Division of the Central District of
25 California pursuant to 28 U.S.C. § 1400(b) with respect to patent infringement
26 because Defendant has a regular and established place of business in the County
27 of Orange within the Central District of California and has committed acts of
28 infringement in this Judicial District. Defendant also has committed acts of

1 misappropriation in this Judicial District. Thus, venue is proper pursuant to 28
2 U.S.C. §§ 1391(b) because a substantial part of the events or omissions giving
3 rise to the claim occurred in this Judicial District.

4 **III. STATEMENT OF THE CASE**

5 8. This action seeks relief for the theft of Plaintiffs' highly
6 confidential information and trade secrets, and infringement of Masimo's
7 patents by Defendant, and ownership of patents assigned to or filed by Apple on
8 subject matter that belongs to Masimo.

9 **IV. STATEMENT OF FACTS**

10 9. Masimo is a medical technology company that revolutionized non-
11 invasive monitoring of physiological parameters, such as pulse rate, arterial
12 oxygen saturation and many others.

13 10. Most of these parameters are measured using light that is
14 transmitted through the body tissue. The received light, that has been attenuated
15 by the various components of the body tissue, including the blood, is known in
16 the industry as a photoplethysmograph or "PPG." The transmission and receipt
17 of these light signals is typically accomplished through a sensor that is applied
18 to a body part such as a finger, arm, toe, forehead or ear.

19 11. Before Masimo, these non-invasive measurements from the PPG
20 were plagued by unreliability, often when the measurement was needed most,
21 due to the person moving or having low peripheral blood flow (known as "low
22 perfusion"). The industry had essentially given up on solving these problems,
23 concluding they were largely unsolvable. In the medical context, clinicians had
24 to live with the results – patient monitors gave excessive false alarms, froze
25 their measurements for prolonged periods of time despite potential changes in
26 the physiological parameter (e.g., oxygen saturation or pulse rate), delayed
27 notification of alarms due to long averaging times of sensor data, produced
28 inaccurate measurements, or were unable to obtain data on the most critical

1 patients and babies who cannot be instructed to stay still. Masimo’s pioneering
2 technology, known as Masimo Signal Extraction Technology (“Masimo SET”),
3 solved this problem and dramatically improved the reliability of monitoring and
4 reporting physiological signals derived from the PPG.

5 12. Following its initial success with Masimo SET, Masimo invested
6 heavily in developing additional breakthrough measurement technologies, such
7 as non-invasively measuring total hemoglobin, carboxyhemoglobin, and
8 methemoglobin. Masimo has continued to innovate, succeeding where others
9 have consistently failed. Masimo was the first, and remains the only, company
10 delivering these game-changing technologies to hospitals in the United States.
11 Use of Masimo’s technology in the clinical setting has been proven to reduce
12 blindness in premature infants, detect congenital heart disease in infants, save
13 lives on the general care floor and post-surgery, and improve transfusion
14 management, while saving money.

15 13. From its inception, Masimo has continuously developed cutting-
16 edge noninvasive patient monitoring technologies. Masimo sought and received
17 numerous U.S. patents for many of its inventions. Masimo’s revolutionary
18 technology was a key to its gaining significant market praise and penetration.
19 After introduction into the market, many competitors, much larger than
20 Masimo, used Masimo’s technology without a license, resulting in patent
21 infringement lawsuits that ultimately confirmed the validity of Masimo’s
22 innovations. But, Masimo maintains some technology as trade secrets. Masimo
23 also closely guards its future product and market plans. Only select employees
24 have knowledge of and access to these guarded secrets.

25 14. Masimo’s innovations also include important advances in sensor
26 technologies that work together as part of Masimo’s system and algorithms.
27 Masimo’s sensors are integral to the success of the revolutionary technologies
28 Masimo has developed.

1 15. In 1998, Masimo spun certain technologies off into a new
2 company, Masimo Laboratories, Inc. or “Masimo Labs,” to further research and
3 develop the technologies. The name of the company was later changed to
4 “Cercacor.” Cercacor and Masimo have a cross-license agreement to facilitate
5 confidential collaboration between the companies. Cercacor is not owned by
6 Masimo.

7 16. Like Masimo, Cercacor is an innovator of non-invasive monitoring
8 technologies. Cercacor is on the frontline of understanding how measuring,
9 tracking, and analyzing physiological parameters can impact pre-diabetic and
10 diabetic patients, sports training and performance and overall health and
11 wellness principally in the consumer market. Cercacor continued the
12 development that started at Masimo on non-invasive total hemoglobin (SpHb),
13 methemoglobin (SpMet), and carboxyhemoglobin (SpCO®) and other non-
14 invasive physiological parameters.

15 17. Leading hospitals around the world use Cercacor technology
16 licensed to Masimo and sold under the name Masimo rainbow SET. Like
17 Masimo, Cercacor also maintains some technology as trade secrets, and
18 Cercacor closely guards its future product and market plans. Only select
19 employees have knowledge of and access to these guarded secrets.

20 18. Masimo and Cercacor carefully guard the secrecy of their
21 confidential information and documents. For example, Masimo and Cercacor
22 have policies regarding labeling confidential information and documents as
23 “CONFIDENTIAL AND PROPRIETARY.” They also restrict these
24 documents and information from disclosure to third parties and employees on a
25 need-to-know basis. Masimo and Cercacor also have policies in place regarding
26 the use of computers and related equipment that govern how their computer
27 systems may be used. Those policies also govern the protection of Masimo’s
28 and Cercacor’s confidential information. Both Masimo and Cercacor have

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