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12 Attorneys for Plaintiffs,
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13 **IN THE UNITED STATES DISTRICT COURT**
 14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
 15 **SOUTHERN DIVISION**

17 MASIMO CORPORATION,
 a Delaware corporation; and
 18 CERCACOR LABORATORIES, INC.,
 a Delaware corporation

19 Plaintiffs,

20 v.

21 APPLE INC., a California corporation
 22 Defendant.

Case No. 8:20-cv-00048-JVS-JDE

**DECLARATION OF ADAM B.
 POWELL IN SUPPORT OF MOTION
 FOR RECONSIDERATION OF THE
 COURT'S JUNE 10 ORDER
 DENYING MOTION TO COMPEL
 DISCOVERY FROM TIM COOK
 (DKT. 455)**

[Discovery Document: Referred to
 Magistrate Judge John D. Early]

Date: August 19, 2021
 Time: 10:00 a.m.
 Ctrm: 6A

Discovery Cut-Off: 3/7/2022
 Pre-Trial Conference: 11/21/2022
 Trial: 12/6/2022

EXHIBIT 6

MASITC_01060863

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11 Attorneys for Plaintiffs,
 12 Masimo Corporation and
 13 Cercacor Laboratories, Inc.

14 **IN THE UNITED STATES DISTRICT COURT**
 15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
 16 **SOUTHERN DIVISION**

17 MASIMO CORPORATION, a
 18 Delaware corporation; and
 19 CERCACOR LABORATORIES, INC.,
 20 a Delaware corporation,

21 Plaintiffs/Counterdefendants,

22 v.

23 TRUE WEARABLES, INC., a
 24 Delaware corporation; and
 25 MARCELO LAMEGO, an individual,

26 Defendants/Counterclaimants.

) Case No. 8:18-CV-02001-JVS-JDE
)
) **PLAINTIFFS' EXHIBITS 3-5, 8,**
) **AND 10 TO THE**
) **DECLARATION OF MARK D.**
) **KACHNER IN SUPPORT OF**
) **OPPOSITION TO APPLE INC.'S**
) **MOTION TO QUASH AND FOR**
) **A PROTECTIVE ORDER**

) **Hon. James V. Selna**
) **Hon. Magistrate John D. Early**

) **[Discovery Document: Referred to**
) **Magistrate Judge John D. Early]**

) **Hearing: June 24, 2021**
) **Time: 10:00 a.m.**
) **Court: Room: 6A**

27
 28 UNREDACTED VERSION OF DOCUMENTS FILED PURSUANT TO ORDER OF THE
 COURT DATED JUNE 24, 2021 (DKT. NO. 311)

Exhibit 6

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MASITC_01060864

EXHIBIT 4

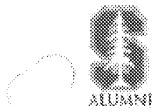
[TRUE016520-522]

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Exhibit 6

-79-

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https://mail.google.com/mail/u/0?ik=4082d4e25e&view=pt&search=...+msg-f%3A1447769352243174174&siml=msg-f%3A1447769352243174174

The three equations

Marcelo Lamego <mmlamego@stanfordalumni.org>
To: tcook@apple.com

Wed, Oct 2, 2013 at 12:54 AM

Dear Tim Cook,

I was approached by Apple in the beginning of this year (by David Affourtit and James Foster) and was asked if I would like to join the executive technical team. Because I did not want to sign the Apple's NDA for an onsite interview, the process came to a halt. I felt that it was not appropriate to receive confidential information from or disclose confidential information to Apple given my fiduciary responsibilities as the Chief Technical Officer of Cercacor.

I have developed several medical devices in the last 10 years and I am positively sure I could add a significant value to the Apple team, if I was given the chance of becoming part of it in a senior technical executive position and without conflicting with the large IP I have developed for Masimo and Cercacor during the same period.

What I am sure Apple soon will realize is that medical, wellness and fitness technologies are very deceptive in the sense that they are easy to develop for products that work in most (~80%) of the users. Getting the same technology to work in almost the entire population is a problem extremely more complex. This is the very reason most medical device startups become insolvent. Knowing Apple's reputation, I am sure you would not settle for even 99%, imagine then, 80%.

As you probably know, regulatory barriers are another important consideration when dealing with medical technologies in general. If the FDA or any other regulatory agency worldwide (i.e., Canada, Japan, Korea, Europe, etc.) believe your product should be regulated by their standards then, the choice of intended use combined with the technology realization strategy can make the development shorten or longer by several years.

The reason I feel attracted by Apple as a company is not related to the things most people are interested in, i.e., brand recognition, great culture, great products, great people. It has to do with the fact that, as an engineer, I realized that there are three important equations to be solved in order to create a competitive global medical, wellness and fitness product portfolio:

- (i) The user equation - Apple has solved it and created the industry standard. With a brand recognition similar to the ones from luxury products, everybody is interested in understanding and using Apple's intuitive interfaces.
- (ii) The patient equation - This is the deceptive part.
- (iii) The connectivity equation - This can only be solved with scale and brand recognition, which are synonymous for Apple. Reliable wireless technology and device interoperability will become a must in the medical device segment.

EXHIBIT 4

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Exhibit 6

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