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9 Attorneys for Plaintiffs and Counter-Defendant
10 MASIMO CORPORATION and
MASIMO INTERNATIONAL SARL

11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14 SOUTHERN DIVISION

15 _____
16 MASIMO CORPORATION
a Delaware corporation,
17 and
18 MASIMO INTERNATIONAL SARL, a
corporation of Switzerland
19 Plaintiffs,
20 v.
21 SHENZHEN MINDRAY BIO-MEDICAL
22 ELECTRONICS CO., LTD a corporation
of the People’s Republic of China
23 Defendant.
24
25
26 _____
AND RELATED COUNTERCLAIMS
27
28

) Civil Action No.
) SACV12-02206 CJC (JPRx)
)
) **SECOND AMENDED**
) **COMPLAINT FOR PATENT**
) **INFRINGEMENT OF U.S.**
) **PATENT NOS. 6,002,952;**
) **6,263,222; 6,580,086; 6,699,194;**
) **6,745,060; 7,215,986; 7,489,958,**
) **7,509,154 AND 8,229,533;**
) **BREACH OF CONTRACT;**
) **BREACH OF THE COVENANT**
) **OF GOOD FAITH AND FAIR**
) **DEALING; ACCOUNTING;**
) **TORTIOUS INTERFERENCE**
) **WITH PROSPECTIVE**
) **ECONOMIC ADVANTAGE;**
) **DECLARATORY RELIEF; AND**
) **STATUTORY UNFAIR**
) **COMPETITION**
)
) **DEMAND FOR JURY TRIAL**

1 Plaintiffs Masimo Corporation (“Masimo”) and Masimo International
2 SARL (“Masimo SARL”) (collectively “Plaintiffs”) hereby complain of
3 Defendant Shenzhen Mindray Bio-Medical Electronics Co., Ltd (“Mindray
4 Shenzhen”) and allege as follows:

5 **PARTIES**

6 1. Plaintiff Masimo is a Delaware corporation having its principal
7 place of business at 40 Parker, Irvine, California 92618.

8 2. Masimo is a global medical technology company that develops and
9 manufactures innovative noninvasive patient monitoring technologies.
10 Masimo’s award-winning innovations over nearly twenty years have led to a
11 portfolio of products that have been demonstrated clinically superior in more
12 than 100 independent and objective studies. In addition to a complete array of
13 Masimo-branded monitors, Masimo technology is integrated into more than 90
14 multiparameter monitors and more than 40 monitoring brands throughout the
15 world. Masimo’s pioneering Signal Extraction Technology, Masimo SET®
16 (“Masimo SET”), acquires and detects signals generated by red and infrared
17 light-emitting diodes to extract oxygen saturation and pulse rate values from
18 such signals. Masimo SET is covered by numerous patents worldwide.

19 3. Plaintiff Masimo SARL is a corporation organized and existing
20 under the laws of Switzerland, having its principal place of business at Puits-
21 Godet 10, 2000 Neuchatel, Switzerland. Masimo SARL is a wholly owned
22 subsidiary of Masimo.

23 4. On January 4, 2009, Masimo entered into a Contract
24 Manufacturing Agreement with Masimo SARL, pursuant to which Masimo
25 provides Masimo SARL with Masimo products to sell outside the United States.
26 Masimo receives compensation and profits on the products sold by Masimo
27 SARL outside the United States.

28 5. Upon information and belief, Defendant Mindray Shenzhen is a

1 corporation of the People’s Republic of China having a principal place of
2 business at Mindray Building, Keji 12th Road South, High-Tech Industrial Park,
3 Nanshan, Shenzhen, People’s Republic of China 518057. Mindray Shenzhen
4 has developed, manufactured, and marketed medical devices worldwide,
5 including through its affiliates, Mindray USA Corp., Mindray Medical USA
6 Corp., and Mindray DS USA, Inc. (collectively, “Mindray USA”).

7 **JURISDICTION AND VENUE**

8 6. Plaintiffs repeat, reallege and incorporate by reference the
9 allegations set forth in Paragraphs 1-5 of this Complaint.

10 7. This action also includes claims for patent infringement arising
11 under the patent laws of the United States, 35 U.S.C. § 100 et seq., more
12 particularly, 35 U.S.C. § 271. This Court has subject matter jurisdiction of these
13 claims under 28 U.S.C. § 1338(a).

14 8. This action also includes claims for breach of contract, breach of
15 the covenant of good faith and fair dealing, accounting, interference with
16 prospective economic advantage, declaratory relief, and unfair competition by
17 Mindray Shenzhen against Plaintiffs. This Court has supplemental subject
18 matter jurisdiction under 28 U.S.C. § 1367(a) over the related causes of action
19 arising under the laws of the State of California. These claims stem from the
20 same nucleus of operative facts and are so related to the federal claims that they
21 form part of the same case or controversy.

22 9. The relevant Agreement between Mindray Shenzhen and Plaintiffs
23 includes consent to personal jurisdiction in the Central District of California for
24 any dispute or difference concerning the rights or obligation of either Masimo or
25 Mindray Shenzhen. More specifically the Agreement and Amendments in
26 Section 18 state “any claim or cause of action shall be filed in any court in
27 Orange County, California USA. MASIMO and MINDRAY each consents to
28 personal jurisdiction in any action brought in the United States District Court for

1 the Central District of California”

2 10. Upon information and belief, Mindray Shenzhen conducts business
3 throughout the United States, including in this district, and has committed the
4 acts complained of in this district.

5 11. Venue is proper in this district under 28 U.S.C. §§ 1391, 1400(b)
6 and pursuant to the agreement between Mindray Shenzhen and Plaintiffs.

7 **THE PATENTS-IN-SUIT**

8 12. Plaintiffs repeat, reallege and incorporate by reference the
9 allegations set forth in Paragraphs 1-11 of this Complaint.

10 13. On December 14, 1999, the United States Patent and Trademark
11 Office duly and lawfully issued U.S. Patent No. 6,002,952 (“the ’952 patent”)
12 entitled “Signal Processing Apparatus and Method.” Masimo owns the ’952
13 patent by assignment.

14 14. On July 17, 2001, the United States Patent and Trademark Office
15 duly and lawfully issued U.S. Patent No. 6,263,222 (“the ’222 patent”) entitled
16 “Signal Processing Apparatus.” Masimo owns the ’222 patent by assignment.

17 15. On June 17, 2003, the United States Patent and Trademark Office
18 duly and lawfully issued U.S. Patent No. 6,580,086 (“the ’086 patent”) entitled
19 “Shielded Optical Probe and Method.” Masimo owns the ’086 patent by
20 assignment.

21 16. On March 2, 2004, the United States Patent and Trademark Office
22 duly and lawfully issued U.S. Patent No. 6,699,194 (“the ’194 patent”) entitled
23 “Signal Processing Apparatus and Method.” Masimo owns the ’194 patent by
24 assignment.

25 17. On June 1, 2004, the United States Patent and Trademark Office
26 duly and lawfully issued U.S. Patent No. 6,745,060 (“the ’060 patent”) entitled
27 “Signal Processing Apparatus.” Masimo owns the ’060 patent by assignment.

28 18. On May 8, 2007, the United States Patent and Trademark Office

1 duly and lawfully issued U.S. Patent No. 7,215,986 (“the ’986 patent”) entitled
2 “Signal Processing Apparatus.” Masimo owns the ’986 patent by assignment.

3 19. On February 10, 2009, the United States Patent and Trademark
4 Office duly and lawfully issued U.S. Patent No. 7,489,958 (“the ’958 patent”)
5 entitled “Signal Processing Apparatus and Method.” Masimo owns the ’958
6 patent by assignment.

7 20. On March 24, 2009, the United States Patent and Trademark Office
8 duly and lawfully issued U.S. Patent No. 7,509,154 (“the ’154 patent”) entitled
9 “Signal Processing Apparatus.” Masimo owns the ’154 patent by assignment.

10 21. On July 24, 2012, the United States Patent and Trademark Office
11 duly and lawfully issued U.S. Patent No. 8,229,533 (“the ’533 patent”) entitled
12 “Low-Noise Optical Probes For Reducing Ambient Noise.” Masimo owns the
13 ’533 patent by assignment.

14 22. Masimo has continuously marked its patient monitoring devices
15 manufactured and sold under the ’952, ’222, ’086, ’194, ’060, ’986, ’958, ’154
16 and ’533 patents (the “Asserted Patents”).

17 **GENERAL ALLEGATIONS AS TO PATENT CLAIMS**

18 23. Plaintiffs repeat, reallege and incorporate by reference the
19 allegations set forth in Paragraphs 1-22 of this Complaint.

20 24. Mindray Shenzhen has imported, marketed, sold and distributed
21 medical devices that include noninvasive patient monitoring devices with
22 Mindray Shenzhen technology that do not include Masimo SET (“Mindray
23 SpO2 Technology”). Mindray Shenzhen has also manufactured, imported,
24 marketed, sold and distributed medical devices that include patient monitoring
25 devices that include Masimo SET (“Masimo SET Technology”).

26 25. For example, upon information and belief, at least prior to the
27 acquisition of Datascope Corporation by Mindray Medical International Ltd.
28 (“Mindray Int’l”) in May 2008, Mindray Shenzhen was responsible for

1 conducting substantially all of Mindray Int'l's business worldwide, including in
2 the United States, and including without limitation the sales and distribution of
3 patient monitoring devices that include Mindray SpO2 Technology. Mindray
4 Shenzhen conducted substantial business in the United States, including without
5 limitation importing, marketing, selling, and distributing patient monitoring
6 devices that include Mindray SpO2 Technology. Mindray Shenzhen also
7 actively promoted its patient monitoring devices that include Mindray SpO2
8 Technology in the United States market. For example, Mindray Shenzhen
9 representatives attended United States trade shows where they promoted patient
10 monitoring devices that include Mindray SpO2 Technology. In addition, on
11 pages of its website specifically directed to United States sales, Mindray
12 Shenzhen promoted, sold and offered for sale patient monitoring devices that
13 include Mindray SpO2 Technology. Furthermore, on information and belief,
14 Mindray Shenzhen has imported into the United States patient monitoring
15 devices that include Mindray SpO2 Technology, including in this District.

16 26. Mindray Shenzhen has used, promoted, offered for sale, sold and
17 imported products and systems related to noninvasive patient monitoring
18 technologies that incorporate Mindray SpO2 Technology and do not include
19 Masimo SET Technology, including but not limited to the PM-50 Pulse
20 Oximeter; PM-60 Pulse Oximeter; PM-7000 Patient Monitor; PM-8000 Express
21 Patient Monitor; PM-9000 Express Patient Monitor; VS-800 Vital Signs
22 Monitor; and a series of products or systems known as "BeneView", including
23 without limitation BeneView T Series Patient Monitors, Models T5, T6 and T8
24 (collectively, "Mindray SpO2 Products and Systems"). Mindray SpO2 Products
25 and Systems are covered by one or more claims of the Asserted Patents, have
26 been made especially for use in infringement and are not staple articles of
27 commerce suitable for substantial noninfringing uses.

28 27. Upon information and belief, Mindray Shenzhen has used,

1 promoted, offered for sale, sold and imported Mindray reusable pulse oximetry
2 sensors, including but not limited to DPM SpO2 512F Adult Sensors (“Mindray
3 Reusable Sensors”). Mindray Reusable Sensors are covered by one or more
4 claims of the Asserted Patents, have been made especially for use in
5 infringement and are not staple articles of commerce suitable for substantial
6 noninfringing uses.

7 28. Upon information and belief, Mindray Shenzhen has used,
8 promoted, offered for sale, sold and imported Mindray disposable pulse
9 oximetry sensors, including but not limited to DPM SpO2 520 Sensors
10 (“Mindray Disposable Sensors”). Mindray Disposable Sensors are covered by
11 one or more claims of the Asserted Patents, have been made especially for use
12 in infringement and are not staple articles of commerce suitable for substantial
13 noninfringing uses.

14 29. Upon information and belief, Mindray Shenzhen has induced,
15 caused, urged, encouraged, and aided others, including customers in the United
16 States, to directly infringe one or more claims of the Asserted Patents. For
17 example, upon information and belief, Mindray Shenzhen has induced, caused,
18 urged, encouraged, and aided customers in the United States to purchase and use
19 Mindray SpO2 Products and Systems and Mindray Reusable Sensors and
20 Mindray Disposable Sensors that infringe one or more claims of the Asserted
21 Patents. In addition, upon information and belief, Mindray Shenzhen has
22 induced, caused, urged, encouraged, and aided customers in the United States to
23 engage in methods of noninvasive patient monitoring using Mindray SpO2
24 Products and Systems and Mindray Reusable Sensors and Mindray Disposable
25 Sensors that infringe one or more claims of the Asserted Patents. For example,
26 on information and belief, Mindray Shenzhen has provided user manuals to
27 instruct customers in the United States and demonstrated to these customers
28 how to engage in methods of noninvasive patient monitoring using Mindray

1 SpO2 Products and Systems and Mindray Reusable Sensors and Mindray
2 Disposable Sensors that infringe one or more claims of the Asserted Patents.
3 Upon information and belief, Mindray Shenzhen specifically intended
4 customers in the United States to infringe one or more claims of the Asserted
5 Patents and knew that these customers' acts constituted infringement.

6 30. Upon information and belief, Mindray Shenzhen has induced,
7 caused, urged, encouraged, and aided Mindray USA to directly infringe one or
8 more claims of the Asserted Patents. For example, upon information and belief,
9 Mindray Shenzhen has induced, caused, urged, encouraged, and aided Mindray
10 USA to use, sell, offer to sell and/or import Mindray SpO2 Products and
11 Systems and Mindray Reusable Sensors and Mindray Disposable Sensors that
12 infringe one or more claims of the Asserted Patents. For example, Mindray
13 USA has distributed Mindray pulse oximetry products manufactured by
14 Mindray Shenzhen in the United States market. In addition, on information and
15 belief, Mindray Shenzhen has developed and directed Mindray USA activities
16 regarding pulse oximetry products in the United States market. In addition,
17 upon information and belief, Mindray Shenzhen has decided for Mindray USA
18 which products are marketed and sold in the United States. Mindray Shenzhen
19 and Mindray USA have also used the same name, "Mindray," and logo to refer
20 to both corporations in advertising, business cards, and/or in meetings with
21 customers in the United States. On information and belief, Mindray USA has
22 obtained approval from Mindray Shenzhen prior to developing, marketing or
23 selling products, including Mindray SpO2 Products and Systems, Mindray
24 Reusable Sensors and Mindray Disposable Sensors, in the United States. Upon
25 information and belief, Mindray Shenzhen specifically intended Mindray USA
26 to infringe one or more claims of the Asserted Patents and knew that Mindray
27 USA's acts constituted infringement.

28 31. Before bringing suit, Masimo provided notice to Mindray

1 Shenzhen of its infringement of the '952, '222, '086, '194, '060, and '986
2 patents.

3 **GENERAL ALLEGATIONS AS TO NON-PATENT CLAIMS**

4 32. Plaintiffs repeat, reallege and incorporate by reference the
5 allegations set forth in Paragraphs 1-31 of this Complaint.

6 33. On or about November 13, 2002, Masimo and Mindray Shenzhen
7 entered into a Purchasing And Licensing Agreement (“Original Agreement”).

8 34. Section 4.2 of the Original Agreement, among other things,
9 required Mindray Shenzhen to use best efforts to integrate Masimo SET into all
10 products requiring SpO2 measurement and to adopt Masimo SET as Mindray
11 Shenzhen’s primary standard pulse oximetry product offering. Section 4.2
12 further limited Mindray Shenzhen’s non-Masimo SET technology to situations
13 where Nellcor or Mindray technology was demanded. Even when Nellcor or
14 Mindray Technology was demanded, Mindray Shenzhen was required to fully
15 inform customers of the advantages of Masimo SET and to bring in a Masimo
16 representative to convince customers to purchase Masimo SET.

17 35. Section 4.3 of the Original Agreement, among other things,
18 obligated Mindray Shenzhen to promptly and adequately train its sales
19 representatives on the Masimo SET technology and Masimo sensors.

20 36. Section 4.4 of the Original Agreement, among other things,
21 required Mindray Shenzhen to exhibit the features and benefits of Masimo SET
22 in Mindray Shenzhen’s trade show booths.

23 37. Section 4.5 of the Original Agreement required Mindray Shenzhen
24 to promote Masimo SET as the new standard of care in pulse oximetry.

25 38. Section 4.7 of the Original Agreement required Mindray Shenzhen
26 to inform Masimo of all new licensed products prior to their launch.

27 39. On or about November 13, 2003, Masimo and Mindray Shenzhen
28 entered into Amendment Number One To Purchasing And Licensing

1 Agreement (“Amendment One”).

2 40. Among other things, Amendment One set quarterly minimums for
3 Mindray Shenzhen to order Masimo SET kits for the years 2004 to 2006.

4 41. On or about June 23, 2008, Masimo and Mindray Shenzhen entered
5 into Amendment Number Two To Purchasing And Licensing Agreement
6 (“Amendment Two”).

7 42. Among other things, Amendment Two rewrote the first two
8 sentences of Section 4.2 in the Original Agreement to state additional
9 integration commitments by Mindray Shenzhen as follows:

10 During the one year term of this Amendment, Mindray will integrate
11 Masimo SET as the default SpO2 product offering in all of its
12 BENEVIEW monitor devices to be sold in China. Mindray will only ship
13 its BENEVIEW devices providing SpO2 Measurement without Masimo
14 SET if the customer has expressly requested a different SpO2 brand.
15 Outside China, Mindray will make best efforts to make Masimo SET its
16 primary and default SpO2 product offering, except in developing regions
17 for low end products that utilize only the current Mindray all-in-one
18 board. Mindray will use best efforts to integrate Masimo SET into all of
19 its product requiring SpO2 measurement, except for low end products
20 which utilize only the current Mindray all-in-one board. Mindray agrees
21 to adopt Masimo SET as its primary standard pulse oximetry product
22 offering.

23 43. Further, Section 4.5 of Amendment Two established a guaranty
24 purchase requirement by Mindray Shenzhen of Masimo SET boards and
25 competitive pricing requirements for devices incorporating Masimo SET,
26 including a requirement that Mindray Shenzhen purchase and ship to third party
27 customers 3,000 Masimo SET boards in China and a total of 6,000 Masimo SET
28 boards overall.

1 44. Section 4.5 of Amendment Two also required Mindray Shenzhen
2 to “charge no more than \$250 for Masimo SET options in Mindray’s Licensed
3 Devices, in comparison to a device without SpO2 functionality.” Mindray
4 Shenzhen further represented and warranted that “the pricing it charges for
5 Masimo SET will be no more than the pricing it charges for other third party
6 SpO2 offerings.”

7 45. In addition, Amendment Two deleted Section 7.6 of the Original
8 Agreement and replaced that section to require a quarterly certificate under
9 penalty of perjury regarding Mindray Shenzhen’s compliance with terms of the
10 Original Agreement, specifically related to product positioning and pricing.

11 46. On or about January 1, 2010, Masimo, Masimo SARL and Mindray
12 Shenzhen entered into Amendment Number Three To Purchasing and Licensing
13 Agreement (“Amendment Three”).

14 47. Among other things, Amendment Three extended the terms of the
15 Original Agreement and prior amendments to March 31, 2010.

16 48. On or about April 1, 2010, Masimo, Masimo SARL and Mindray
17 Shenzhen entered into Amendment Number Four To Purchasing and Licensing
18 Agreement (“Amendment Four”).

19 49. Among other things, Amendment Four extended the terms of the
20 Original Agreement and prior amendments to March 31, 2011, including the
21 minimum purchases of Masimo SET boards.

22 50. On or about April 20, 2011, Masimo, Masimo SARL and Mindray
23 Shenzhen entered into Amendment Number Five To Purchasing and Licensing
24 Agreement (“Amendment Five”).

25 51. Among other things, Amendment Five extended the terms of the
26 Original Agreement and prior amendments to March 31, 2012, including the
27 guaranteed minimum purchases of 6,000 Masimo SET boards.

28 52. On or about April 1, 2012, Masimo, Masimo SARL and Mindray

1 Shenzhen entered into Amendment Six To Purchasing and Licensing
2 Agreement (“Amendment Six”), which among other things, extended the terms
3 of the Original Agreement and prior amendments to June 30, 2012.

4 53. On or about July 1, 2012, Masimo, Masimo SARL and Mindray
5 Shenzhen entered into Amendment Seven To Purchasing and Licensing
6 Agreement (“Amendment Seven”), which among other things, extended the
7 terms of the Original Agreement and prior amendments to August 31, 2012.

8 54. All of the above agreements and amendments thereto are subject to
9 a dispute resolution clause in Section 18 of the original Purchasing And
10 Licensing Agreement dated November 13, 2002. Section 18 provides that “any
11 claim or cause of action shall be filed in any court in Orange County, California
12 USA. MASIMO and MINDRAY each consents to personal jurisdiction in any
13 action brought in the United States District Court for the Central District of
14 California and to service of process upon it in the manner set forth in Section
15 19.6 [sic] (“Notice”).

16 55. On November 9, 2011, Masimo sent an Official Intent to Audit to
17 Mindray Shenzhen pursuant to Section 7.7 of the original Purchasing And
18 Licensing Agreement dated November 13, 2002 in order to conduct a contract
19 audit.

20 56. On February 27, 2012, Masimo notified Mindray Shenzhen of a
21 dispute between Masimo and Mindray under Section 18 of the Purchasing and
22 Licensing Agreement between Mindray Shenzhen and Masimo, including a
23 notice of breach of such agreement.

24 57. Subsequently, Masimo endeavored to resolve the dispute with
25 Mindray Shenzhen through multiple discussions and correspondence. On May
26 14, 2012, Masimo provided additional detail in a letter describing certain
27 breaches of the agreement. Masimo and Mindray Shenzhen have been unable to
28 resolve their differences.

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FIRST CLAIM FOR RELIEF

INFRINGEMENT OF U.S. PATENT NO. 6,002,952

58. Plaintiffs repeat, reallege and incorporate by reference the allegations set forth in Paragraphs 1-57 of this Complaint.

59. This is a claim for patent infringement and arises under the Patent Laws of the United States, Title 35 of the United States Code.

60. Upon information and belief, Mindray Shenzhen has infringed and/or actively induced others to infringe and/or contributed to others' infringement of the '952 patent by actions alleged in Paragraphs 25-30 of this Complaint and/or by using, selling, offering to sell and/or importing Mindray SpO2 Products and Systems patient monitoring devices covered by one or more claims of the '952 patent in violation of 35 U.S.C. § 271(a), (b), and (c).

61. Upon information and belief, Mindray Shenzhen's infringement of the '952 patent has been deliberate and willful.

62. Upon information and belief, Mindray Shenzhen has derived and received gains, profits and advantages from the aforesaid acts of infringement in an amount that is not presently known to Masimo. Due to Mindray Shenzhen's infringement of the '952 patent, Masimo has been damaged and is entitled to monetary relief in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF

INFRINGEMENT OF U.S. PATENT NO. 6,263,222

63. Plaintiffs repeat, reallege and incorporate by reference the allegations set forth in Paragraphs 1-62 of this Complaint.

64. This is a claim for patent infringement and arises under the Patent Laws of the United States, Title 35 of the United States Code.

65. Upon information and belief, Mindray Shenzhen has infringed and/or actively induced others to infringe and/or contributed to others' infringement of the '222 patent by actions alleged in Paragraphs 25-30 of this

1 Complaint and/or by using, selling, offering to sell and/or importing Mindray
2 SpO2 Products and Systems covered by one or more claims of the '222 patent in
3 violation of 35 U.S.C. § 271(a), (b) and (c).

4 66. Upon information and belief, Mindray Shenzhen's infringement of
5 the '222 patent has been deliberate and willful.

6 67. Upon information and belief, Mindray Shenzhen has derived and
7 received gains, profits and advantages from the aforesaid acts of infringement in
8 an amount that is not presently known to Masimo. Due to Mindray Shenzhen's
9 infringement of the '222 patent, Masimo has been damaged and is entitled to
10 monetary relief in an amount to be determined at trial.

11 **THIRD CLAIM FOR RELIEF**

12 **INFRINGEMENT OF U.S. PATENT NO. 6,580,086**

13 68. Plaintiffs repeat, reallege and incorporate by reference the
14 allegations set forth in Paragraphs 1-67 of this Complaint.

15 69. This is a claim for patent infringement and arises under the Patent
16 Laws of the United States, Title 35 of the United States Code.

17 70. Upon information and belief, Mindray Shenzhen has in the past and
18 is currently infringing and/or actively inducing others to infringe and/or
19 contributing to others' infringement of the '086 patent by the actions alleged in
20 Paragraphs 25-30 of this Complaint and/or by using, selling, offering to sell
21 and/or importing Mindray Reusable Sensors covered by one or more claims of
22 the '086 patent in violation of 35 U.S.C. § 271(a), (b) and (c).

23 71. Upon information and belief, Mindray Shenzhen's infringement of
24 the '086 patent has been and continues to be deliberate and willful. Upon
25 information and belief, Mindray Shenzhen's infringement will continue unless
26 enjoined by this Court.

27 72. Upon information and belief, Mindray Shenzhen has derived,
28 received, and will continue to derive and receive gains, profits and advantages

1 from the aforesaid acts of infringement in an amount that is not presently known
2 to Masimo. Due to Mindray Shenzhen's infringement of the '086 patent,
3 Masimo has been damaged and is entitled to monetary relief in an amount to be
4 determined at trial.

5 73. Unless Mindray Shenzhen is enjoined from infringing the '086
6 patent, Masimo will continue to suffer irreparable injury for which it has no
7 adequate remedy at law.

8 **FOURTH CLAIM FOR RELIEF**

9 **INFRINGEMENT OF U.S. PATENT NO. 6,699,194**

10 74. Plaintiffs repeat, reallege and incorporate by reference the
11 allegations set forth in Paragraphs 1-73 of this Complaint.

12 75. This is a claim for patent infringement and arises under the Patent
13 Laws of the United States, Title 35 of the United States Code.

14 76. Upon information and belief, Mindray Shenzhen has infringed
15 and/or actively induced others to infringe and/or contributed to others'
16 infringement of the '194 patent by actions alleged in Paragraphs 25-30 of this
17 Complaint and/or by using, selling, offering to sell and/or importing Mindray
18 SpO2 Products and Systems covered by one or more claims of the '194 patent in
19 violation of 35 U.S.C. § 271(a), (b) and (c).

20 77. Upon information and belief, Mindray Shenzhen's infringement of
21 the '194 patent has been deliberate and willful.

22 78. Upon information and belief, Mindray Shenzhen has derived and
23 received gains, profits and advantages from the aforesaid acts of infringement in
24 an amount that is not presently known to Masimo. Due to Mindray Shenzhen's
25 infringement of the '194 patent, Masimo has been damaged and is entitled to
26 monetary relief in an amount to be determined at trial.

27 **FIFTH CLAIM FOR RELIEF**

28 **INFRINGEMENT OF U.S. PATENT NO. 6,745,060**

1 79. Plaintiffs repeat, reallege and incorporate by reference the
2 allegations set forth in Paragraphs 1-78 of this Complaint.

3 80. This is a claim for patent infringement and arises under the Patent
4 Laws of the United States, Title 35 of the United States Code.

5 81. Upon information and belief, Mindray Shenzhen has infringed
6 and/or actively induced others to infringe and/or contributed to others'
7 infringement by actions alleged in Paragraphs 25-30 of this Complaint and/or by
8 using, selling, offering to sell and/or importing Mindray SpO2 Products and
9 Systems covered by one or more claims of the '060 patent in violation of 35
10 U.S.C. § 271(a), (b) and (c).

11 82. Upon information and belief, Mindray Shenzhen's infringement of
12 the '060 patent has been deliberate and willful.

13 83. Upon information and belief, Mindray Shenzhen has derived and
14 received gains, profits and advantages from the aforesaid acts of infringement in
15 an amount that is not presently known to Masimo. Due to Mindray Shenzhen's
16 infringement of the '060 patent, Masimo has been damaged and is entitled to
17 monetary relief in an amount to be determined at trial.

18 **SIXTH CLAIM FOR RELIEF**

19 **INFRINGEMENT OF U.S. PATENT NO. 7,215,986**

20 84. Plaintiffs repeat, reallege and incorporate by reference the
21 allegations set forth in Paragraphs 1-83 of this Complaint.

22 85. This is a claim for patent infringement and arises under the Patent
23 Laws of the United States, Title 35 of the United States Code.

24 86. Upon information and belief, Mindray Shenzhen has infringed
25 and/or actively induced others to infringe and/or contributed to others'
26 infringement of the '986 patent by actions alleged in Paragraphs 25-30 of this
27 Complaint and/or by using, selling, offering to sell and/or importing Mindray
28 SpO2 Products and Systems covered by one or more claims of the '986 patent in

1 violation of 35 U.S.C. § 271(a), (b) and (c).

2 87. Upon information and belief, Mindray Shenzhen's infringement of
3 the '986 patent has been deliberate and willful.

4 88. Upon information and belief, Mindray Shenzhen has derived and
5 received gains, profits and advantages from the aforesaid acts of infringement in
6 an amount that is not presently known to Masimo. Due to Mindray Shenzhen's
7 infringement of the '986 patent, Masimo has been damaged and is entitled to
8 monetary relief in an amount to be determined at trial.

9 **SEVENTH CLAIM FOR RELIEF**

10 **INFRINGEMENT OF U.S. PATENT NO. 7,489,958**

11 89. Plaintiffs repeat, reallege and incorporate by reference the
12 allegations set forth in Paragraphs 1-88 of this Complaint.

13 90. This is a claim for patent infringement and arises under the Patent
14 Laws of the United States, Title 35 of the United States Code.

15 91. Upon information and belief, Mindray Shenzhen has infringed
16 and/or actively induced others to infringe and/or contributed to others'
17 infringement of the '958 patent by actions alleged in Paragraphs 25-30 of this
18 Complaint and/or by using, selling, offering to sell and/or importing Mindray
19 SpO2 Products and Systems covered by one or more claims of the '958 patent in
20 violation of 35 U.S.C. § 271(a), (b) and (c).

21 92. Upon information and belief, Mindray Shenzhen's infringement of
22 the '958 patent has been deliberate and willful.

23 93. Upon information and belief, Mindray Shenzhen has derived and
24 received gains, profits and advantages from the aforesaid acts of infringement in
25 an amount that is not presently known to Masimo. Due to Mindray Shenzhen's
26 infringement of the '958 patent, Masimo has been damaged and is entitled to
27 monetary relief in an amount to be determined at trial.

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EIGHTH CLAIM FOR RELIEF

INFRINGEMENT OF U.S. PATENT NO. 7,509,154

94. Plaintiffs repeat, reallege and incorporate by reference the allegations set forth in Paragraphs 1-93 of this Complaint.

95. This is a claim for patent infringement and arises under the Patent Laws of the United States, Title 35 of the United States Code.

96. Upon information and belief, Mindray Shenzhen has infringed and/or actively induced others to infringe and/or contributed to others' infringement of the '154 patent by actions alleged in Paragraphs 25-30 of this Complaint and/or by using, selling, offering to sell and/or importing Mindray SpO2 Products and Systems covered by one or more claims of the '154 patent in violation of 35 U.S.C. § 271(a), (b) and (c).

97. Upon information and belief, Mindray Shenzhen's infringement of the '154 patent has been deliberate and willful.

98. Upon information and belief, Mindray Shenzhen has derived and received gains, profits and advantages from the aforesaid acts of infringement in an amount that is not presently known to Masimo. Due to Mindray Shenzhen's infringement of the '154 patent, Masimo has been damaged and is entitled to monetary relief in an amount to be determined at trial.

NINTH CLAIM FOR RELIEF

INFRINGEMENT OF U.S. PATENT NO. 8,229,533

99. Plaintiffs repeat, reallege and incorporate by reference the allegations set forth in Paragraphs 1-98 of this Complaint.

100. This is a claim for patent infringement and arises under the Patent Laws of the United States, Title 35 of the United States Code.

101. Upon information and belief, Mindray Shenzhen has in the past and is currently infringing and/or actively inducing others to infringe and/or contributing to others' infringement of the '533 patent by actions alleged in

1 Paragraphs 25-30 of this Complaint and/or by using, selling, offering to sell
2 and/or importing Mindray Disposable Sensors that are covered by one or more
3 claims of the '533 patent in violation of 35 U.S.C. § 271(a), (b) and (c).

4 102. Upon information and belief, Mindray Shenzhen has derived,
5 received, and will continue to derive and receive gains, profits and advantages
6 from the aforesaid acts of infringement in an amount that is not presently known
7 to Masimo. Due to Mindray Shenzhen's infringement of the '533 patent,
8 Masimo has been damaged and is entitled to monetary relief in an amount to be
9 determined at trial.

10 103. Unless Mindray Shenzhen is enjoined from infringing the '533
11 patent, Masimo will continue to suffer irreparable injury for which it has no
12 adequate remedy at law.

13 **TENTH CLAIM FOR RELIEF**

14 **BREACH OF CONTRACT**

15 104. Plaintiffs repeat, reallege and incorporate by reference the
16 allegations set forth in Paragraphs 1-103 of this Complaint.

17 105. Mindray Shenzhen entered into a contractual relationship with
18 Plaintiffs as a result of the Original Agreement and all Amendments thereto.

19 106. The Original Agreement and all Amendments thereto, including the
20 obligations of Mindray Shenzhen, existed and continued as of the filing of this
21 lawsuit.

22 107. Upon information and belief, Mindray Shenzhen materially
23 breached its contractual obligations, including Sections 4.2, 4.3, 4.4, 4.5, 4.7,
24 and 7.6 of the Original Agreement and all Amendments thereto. For example,
25 Mindray Shenzhen materially breached as follows:

26 A. **Material Breaches of Section 4.2:**

27 1. Mindray Shenzhen failed to use best efforts to make Masimo
28 SET its primary and default SpO2 product.

1 2. Mindray Shenzhen failed to use best efforts to integrate Masimo
2 SET into all of its products requiring SpO2 measurement.

3 3. Mindray Shenzhen failed to adopt Masimo SET as its primary
4 standard pulse oximetry product offering.

5 4. Mindray Shenzhen failed to fully inform customers of the
6 advantages of Masimo SET and to bring in a Masimo representative to
7 convince customers to purchase Masimo SET in situations where Nellcor or
8 Mindray technology was demanded.

9 5. Mindray Shenzhen failed to use best efforts to ensure that its
10 sales force was fully trained in the use, advantages and technical competence
11 underlying Masimo SET.

12 6. Mindray Shenzhen failed to adequately incentivize its sales
13 force to encourage customers to use Masimo SET.

14 7. Over the last several years, Plaintiffs experienced a significant
15 drop in Mindray Shenzhen's purchasing of Masimo SET boards. Over this
16 same period, Plaintiffs' share of the market for pulse oximetry monitors has
17 increased significantly. Mindray Shenzhen's significantly reduced purchase
18 volumes over a period of Plaintiffs' increasing market presence is a material
19 breach of Section 4.2 of the Original Agreement and the Amendments
20 thereto.

21 B. Material Breach of Section 4.3:

22 1. Mindray Shenzhen failed to adequately train its sales
23 representatives on the Masimo SET technology and Masimo sensors.

24 C. Material Breach of Section 4.4:

25 1. Mindray Shenzhen failed to exhibit the features and benefits of
26 Masimo SET in Mindray Shenzhen's trade show booths and kiosks.

27 D. Material Breach of Section 4.5:

28 1. Mindray Shenzhen failed to promote Masimo SET as the new

1 standard of care in pulse oximetry and failed to meet its guaranteed minimum
2 purchase and shipment amounts.

3 2. Mindray Shenzhen charged a premium of several hundred dollars
4 for its monitors when equipped with Masimo SET versus the same monitors
5 equipped with Mindray pulse oximetry.

6 E. Material Breach of Section 4.7:

7 1. Mindray Shenzhen failed to inform Masimo of a description and
8 model number of each licensed product prior to launch.

9 2. Mindray Shenzhen failed to provide Plaintiffs with all customer
10 product literature and technical specifications on each licensed product.

11 F. Material Breach of Section 7.6:

12 1. Mindray Shenzhen failed to supply a certificate from an officer of
13 Mindray Shenzhen on a quarterly basis under penalty of perjury that Mindray
14 Shenzhen was in compliance with the terms set forth in Amendment Two to the
15 Original Agreement.

16 108. The consideration of all of the covenants entered into by Mindray
17 Shenzhen was fair and reasonable.

18 109. Plaintiffs have performed all conditions, covenants, and promises
19 required in accordance with the terms and conditions of the Original Agreement
20 and all Amendments thereto.

21 110. As a result of Mindray Shenzhen's material breaches, Plaintiffs have
22 been injured in their business or property through the loss of past, present and
23 future profits, by the loss of business opportunities, by the loss of customers and
24 potential customers, and by the loss of good will and product image.

25 111. Plaintiffs have suffered and continue to suffer actual damages as a
26 result of Mindray Shenzhen's actions and is entitled to monetary relief in an
27 amount to be determined at trial. The amount of damages exceeds \$75,000.

28 112. In addition, Mindray Shenzhen's breaches, including its continuing

1 efforts to market and promote its own SpO2 products to the detriment of Plaintiffs
2 have caused and will continue to cause irreparable harm to Plaintiffs, unless
3 enjoined by the Court.

4 113. Plaintiffs are therefore entitled to injunctive relief or specific
5 performance, as provided by law.

6 **ELEVENTH CLAIM FOR RELIEF**
7 **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR**
8 **DEALING**

9 114. Plaintiffs repeat, reallege and incorporate by reference the allegations
10 set forth in Paragraphs 1-113 of this Complaint.

11 115. In the Original Agreement and all Amendments thereto there was an
12 implied promise of good faith and fair dealing.

13 116. Mindray Shenzhen entered into a contractual relationship with
14 Plaintiffs as a result of the Original Agreement and all Amendments thereto.

15 117. The Original Agreement and all Amendments thereto include the
16 obligations of Mindray Shenzhen. Plaintiffs have performed all conditions,
17 covenants, and promises required in accordance with the terms and conditions of
18 the Original Agreement and all Amendments thereto.

19 118. All conditions for the performance under the Original Agreement and
20 all Amendments thereto by Mindray Shenzhen have occurred.

21 119. Mindray Shenzhen, by its acts, unfairly interfered with Plaintiffs'
22 rights to receive the benefits of the Original Agreement and all Amendments
23 thereto.

24 120. Plaintiffs were harmed by Mindray Shenzhen's conduct.

25 121. As a proximate result of the actions by Mindray Shenzhen, Plaintiffs
26 have suffered and continues to suffer actual damages and is entitled to monetary
27 relief in an amount to be determined at trial. The amount of damages exceeds
28 \$75,000.

1 **TWELFTH CLAIM FOR RELIEF**

2 **ACCOUNTING**

3 122. Plaintiffs repeat, reallege and incorporate by reference the allegations
4 set forth in Paragraphs 1-121 of this Complaint.

5 123. Upon information and belief, Mindray Shenzhen has breached the
6 Original Agreement and the Amendments thereto resulting in gains, profits, and
7 advantages which are due to Plaintiffs.

8 124. The amount of money due from Mindray Shenzhen to Plaintiffs is
9 unknown to Plaintiffs and cannot be ascertained without an accounting of all
10 gains, profits, and advantages derived by Mindray Shenzhen's breach of the
11 Original Agreement and the Amendments thereto.

12 125. Upon information and belief, however, Plaintiffs allege that the
13 amount owed exceeds \$75,000.

14 **THIRTEENTH CLAIM FOR RELIEF**

15 **INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

16 126. Plaintiffs repeat, reallege and incorporate by reference the allegations
17 set forth in Paragraphs 1-125 of this Complaint.

18 127. Mindray Shenzhen entered into a binding contractual relationship
19 with Plaintiffs as a result of the Original Agreement and all Amendments thereto.

20 128. As a result of Mindray Shenzhen's contractual obligations regarding
21 minimum purchase guarantee and integration commitments under the Original
22 Agreement and all Amendments thereto, Plaintiffs had a prospective economic
23 opportunity to sell Masimo's pulse oximetry products to Mindray Shenzhen's
24 present and future customers. Mindray Shenzhen was aware of this opportunity.

25 129. By virtue of Mindray Shenzhen's breach of its contractual
26 commitments, Mindray Shenzhen has interfered with Plaintiffs' economic
27 opportunity, secured by the Original Agreement and all Amendments thereto, to
28 sell Masimo's products to Mindray Shenzhen's present and future customers.

1 Shenzhen is in material breach of its contractual obligations, including Sections
2 4.2, 4.3, 4.4, 4.5, 4.7, and 7.6, whereas Mindray Shenzhen disputes these
3 contentions.

4 138. Plaintiffs desire a judicial determination of the respective rights and
5 duties of Plaintiffs and Mindray Shenzhen under the Original Agreement and the
6 Amendments thereto, and a declaration that Mindray Shenzhen is in material
7 breach of the Original Agreement and the Amendments thereto.

8 139. A judicial declaration is necessary and appropriate at this time under
9 the circumstances in that Plaintiffs may ascertain their rights and duties with
10 respect to the Original Agreement and the Amendments thereto.

11 **FIFTEENTH CLAIM FOR RELIEF**
12 **UNFAIR COMPETITION UNDER CALIFORNIA BUSINESS &**
13 **PROFESSIONS CODE § 17200**

14 140. Plaintiffs repeat, reallege and incorporate by reference the allegations
15 set forth in Paragraphs 1-139 of this Complaint.

16 141. This is a cause of action for statutory unfair competition under the
17 California Business & Professions Code § 17200, et seq.

18 142. The acts of Mindray Shenzhen alleged herein, including, but not
19 limited to, failure to satisfy minimum purchase requirements and failure to satisfy
20 integration commitments, constitute unlawful, unfair and fraudulent business
21 practices in violation of the California Business & Professions Code § 17200, et
22 seq.

23 143. As a result of Mindray Shenzhen's acts, Plaintiffs have been injured
24 in their business or property through the loss of past, present and future profits, by
25 the loss of business opportunities, by the loss of customers and potential
26 customers, and by the loss of good will and product image.

27 144. Plaintiffs have suffered and continue to suffer actual damages as a
28 result of Mindray Shenzhen's actions and further, that similar acts by Mindray

1 Shenzhen will, unless restrained, cause irreparable injury and damage to Plaintiffs.

2 145. Plaintiffs are informed and believe that Mindray Shenzhen's acts
3 were willful, malicious, oppressive, and undertaken with the intent of harming
4 Plaintiffs.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs pray for the following relief:

7 A. An Order adjudging Mindray Shenzhen to have infringed, directly
8 and indirectly, each of the '952, '222, '086, '194, '060, '986, '958,'154 and '533
9 patents;

10 B. A permanent injunction enjoining Mindray Shenzhen, as well as its
11 officers, agents, servants, employees, and attorneys and those persons in active
12 concert or participation with Mindray Shenzhen, from infringing each of the
13 '086 and '533 patents;

14 C. An accounting of all gains, profits, and advantages derived by
15 Mindray Shenzhen's infringement of each of the '952, '222, '086, '194, '060,
16 '986, '958, '154 and '533 patents and for damages adequate to compensate
17 Masimo for Mindray Shenzhen's infringement of each of the '952, '222, '086,
18 '194, '060, '986, '958,'154, and '533 patents;

19 D. An Order adjudging Mindray Shenzhen to have willfully infringed
20 one or more of the '952, '222, '086, '194, '060, and '986 patents;

21 E. An Order trebling damages due to Mindray Shenzhen's willful
22 infringement under 35 U.S.C. § 284;

23 F. An Order declaring this to be an exceptional case under 35 U.S.C.
24 § 285, and an award to Plaintiffs of their attorneys' fees incurred in connection
25 with this action;

26 G. An award of pre-judgment and post-judgment interest and costs of
27 this action against Mindray Shenzhen;

28 H. Judgment that Mindray Shenzhen has breached the Original

1 Agreement and the Amendments thereto;

2 I. Judgment that Mindray Shenzhen has tortiously interfered with
3 Plaintiffs' prospective economic advantage;

4 J. Judgment that Mindray Shenzhen competed unfairly with Plaintiffs
5 under California Business & Professions Code § 17200, et seq., and that
6 Mindray Shenzhen's actions in doing so be adjudged as intentional and willful;

7 K. Judgment that Mindray Shenzhen competed unfairly with Plaintiffs
8 under the common law of the State of California and that Mindray Shenzhen's
9 actions in doing so be adjudged as intentional and willful;

10 L. An accounting of all gains, profits, and advantages derived by
11 Mindray Shenzhen, and an award of such gains, profits and advantages to
12 Plaintiffs;

13 M. Judgment in the form of specific performance to require Mindray
14 Shenzhen to perform under its contractual obligations;

15 N. For an order that interest be awarded on all applicable damages
16 resulting from Mindray Shenzhen's breach of contract under California Civil
17 Code § 3289;

18 O. For a recovery of reasonable attorneys' fees for Mindray
19 Shenzhen's tortious interference with prospective advantage;

20 P. For a recovery of punitive damages for Mindray Shenzhen's
21 wrongful conduct;

22 Q. An award to Plaintiffs of all damages sustained on account of
23 Mindray Shenzhen's wrongful conduct, in an amount to be proven at trial;

24 R. Preliminary and permanent injunctive relief enjoining Mindray
25 Shenzhen, its officers, agents, servants, employees and attorneys, and those
26 persons in active concert or participation with them from engaging in any act or
27 practice that: 1) constitutes a breach of the Original Agreement and the
28 Amendments therefore, 2) intentionally interferences with Plaintiffs'

1 prospective economic advantage, 3) constitutes unfair competition against
2 Plaintiffs; and

3 S. Such other and further relief as the Court may deem just and
4 proper.

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KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: July 7, 2014 By: /s/ Stephen W. Larson

Joseph R. Re
Jon W. Gurka
Stephen W. Larson
Nicholas A. Belair

Attorneys for Plaintiffs and Counter-Defendant
Masimo Corporation and
Masimo International SARL

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DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Masimo Corporation hereby demands a trial by jury on all issues so triable.

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: July 7, 2014 By: /s/ Stephen W. Larson

Joseph R. Re
Jon W. Gurka
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Nicholas A. Belair

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Masimo Corporation and
Masimo International SARL

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