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13
14 Attorneys for Plaintiff

15 CAYENNE MEDICAL, INC.

16 IN THE UNITED STATES DISTRICT COURT

17 FOR THE DISTRICT OF ARIZONA

18
19 Cayenne Medical, Inc., a Delaware
corporation,

20 Plaintiff,

21 v.

22 MedShape, Inc., a Georgia corporation;
23 Kurt Jacobus; Ken Gall; Timothy Nash;
and Joshua Ray,

24 Defendants.

) Case No. 2:14-cv-00451-HRH

) **FIRST AMENDED COMPLAINT**

) (Jury Trial Demanded)

1 Plaintiff Cayenne Medical, Inc. (“Cayenne” or “Plaintiff”) hereby files this
2 First Amended Complaint against Defendants MedShape, Inc. (“MedShape”), Kurt
3 Jacobus, Ken Gall, Timothy Nash, and Joshua Ray (collectively, “Defendants”) and
4 alleges as follows:

5 **I. JURISDICTION AND VENUE**

6 1. This is an action for: (1&2) patent infringement under the Patent Laws
7 of the United States, Title 35 of the United States Code; (3) misappropriation of trade
8 secrets; (4) intentional interference with contract; (5) intentional interference with
9 business expectancy; (6) unfair competition; (7) aiding and abetting tortious conduct;
10 (8) conspiracy to commit tortious conduct; (9) breach of contract; and (10) breach of
11 implied covenant of good faith and fair dealing.

12 2. This Court has subject matter jurisdiction over at least the claims that
13 relate to patent infringement and unfair competition pursuant to 28 U.S.C. §§ 1331,
14 1338(a) & (b).

15 3. This Court has subject matter jurisdiction over all claims pursuant to 28
16 U.S.C. § 1332, because the parties are completely diverse (*i.e.*, no Defendant is a
17 resident of the same state as Plaintiff) and the amount in controversy exceeds \$75,000.

18 4. This Court has at least supplemental jurisdiction pursuant to 28 U.S.C. §
19 1367(a) over the claims that arise under state statutory and common law because they
20 are so related to the federal claims that they form part of the same case or controversy
21 and derive from a common nucleus of operative facts.

22 5. MedShape is subject to personal jurisdiction in this Court. In particular,
23 this Court has personal jurisdiction over MedShape because MedShape has a
24 continuous, systematic, and substantial presence within this judicial district, including
25 substantial marketing and sale of products in this judicial district. Further, this Court
26 has personal jurisdiction over MedShape in this case, because MedShape has
27 committed the acts giving rise to Cayenne’s claims within and directed to this district.
28 MedShape has not disputed personal jurisdiction in its Answer to the original

1 Complaint and has filed Counterclaims in this case.

2 6. Kurt Jacobus, Ph.D., is subject to personal jurisdiction in this Court. In
3 particular, this Court has personal jurisdiction over Dr. Jacobus, because Dr. Jacobus
4 has committed the acts giving rise to Cayenne's claims within and directed to this
5 district. Furthermore, this Court has personal jurisdiction over Dr. Jacobus in this case
6 because Dr. Jacobus has intentionally solicited and encouraged MedShape's
7 employees to disclose confidential information of Cayenne, an Arizona company, to
8 gain a business advantage over Cayenne. Dr. Jacobus has also interfered with
9 Cayenne's contracts with employees, distributors, and surgeons. Thus, Dr. Jacobus
10 has directed tortious activities to the forum state by committing intentional acts
11 expressly aimed at a business residing in the forum state knowing that the act will
12 likely cause harm in the forum state.

13 7. Ken Gall, Ph.D., is subject to personal jurisdiction in this Court. In
14 particular, this Court has personal jurisdiction over Dr. Gall, because Dr. Gall has
15 committed the acts giving rise to Cayenne's claims within and directed to this district.
16 Furthermore, this Court has personal jurisdiction over Dr. Gall in this case, because
17 Dr. Gall has intentionally solicited and encouraged MedShape's employees to disclose
18 confidential information of Cayenne, an Arizona company, to gain a business
19 advantage over Cayenne. Dr. Gall has also interfered with Cayenne's contracts with
20 employees, distributors, and surgeons. Thus, Dr. Gall has directed tortious activities
21 to the forum state by committing intentional acts expressly aimed at a business
22 residing in the forum state knowing that the act will likely cause harm in the forum
23 state.

24 8. Timothy Nash is subject to personal jurisdiction in this Court. In
25 particular, this Court has personal jurisdiction over Mr. Nash, because Mr. Nash has
26 committed the acts giving rise to Cayenne's claims within and directed to this district.
27 For example, Mr. Nash formerly resided in Arizona where he was employed by
28 Cayenne and entered into agreements governed by Arizona law with Cayenne. Under

1 these agreements, Mr. Nash has purposefully availed himself of Arizona law by
2 having continuing contractual obligations to Cayenne, a current resident of the forum.
3 Furthermore, this Court has personal jurisdiction over Mr. Nash in this case because
4 Mr. Nash has intentionally misused and disclosed confidential information acquired
5 from Cayenne and interfered with Cayenne's contracts with distributors and surgeons.
6 Thus, Mr. Nash has directed tortious activities to the forum state by committing an
7 intentional act expressly aimed at a business residing in the forum state knowing that
8 the act will likely cause harm in the forum state.

9 9. Joshua Ray is subject to personal jurisdiction in this Court. In particular,
10 this Court has personal jurisdiction over Mr. Ray, because Mr. Ray has committed the
11 acts giving rise to Cayenne's claims within and directed to this district. For example,
12 Mr. Ray was formerly employed by Cayenne and entered into agreements governed
13 by Arizona law with Cayenne. Under these agreements, Mr. Ray specifically
14 consented to personal jurisdiction in this Court. In addition, Mr. Ray has purposefully
15 availed himself of Arizona law by having continuing contractual obligations under
16 these agreements with Cayenne, a current resident of the forum. Furthermore, this
17 Court has personal jurisdiction over Mr. Ray in this case because Mr. Ray has
18 intentionally misused and disclosed confidential information acquired from Cayenne
19 and interfered with Cayenne's contracts with distributors and surgeons. Thus, Mr.
20 Ray has directed tortious activities to the forum state by committing an intentional act
21 expressly aimed at a business residing in the forum state knowing that the act will
22 likely cause harm in the forum state.

23 10. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b)-(d)
24 and 1400(b).

25 **II. THE PARTIES**

26 11. Cayenne is a corporation organized and existing under the laws of the
27 State of Delaware and having a principal place of business at 16597 North 92nd
28 Street, Suite 101, Scottsdale, Arizona, 85260.

12. MedShape is, upon information and belief, a corporation organized and existing under the laws of the State of Georgia, having a principle place of business at 1575 Northside Drive, NW, Suite 440, Atlanta, Georgia, 30318.

13. Dr. Jacobus is, upon information and belief, a resident of the State of Georgia and the President, Chairman, and Chief Executive Officer of MedShape.

14. Dr. Gall is, upon information and belief, a resident of the State of Georgia and the Chief Technology Officer and Director of MedShape.

15. Mr. Nash is, upon information and belief, a resident of the State of Georgia and the Senior Vice President of Sales and Marketing of MedShape.

16. Mr. Ray is, upon information and belief, a resident of the State of Texas and an employee at MedShape responsible for U.S. and International Sales.

III. GENERAL ALLEGATIONS

A. Cayenne's Patents and AperFix

17. On January 26, 2010, the U.S. Patent and Trademark Office ("Patent Office") duly and lawfully issued U.S. Patent No. 7,651,528 entitled "Devices, Systems, and Methods for Material Fixation" (the "'528 Patent"). Cayenne is the owner by assignment of the '528 Patent. A copy of the '528 Patent is attached hereto as Exhibit A.

18. On May 7, 2013, the Patent Office duly and lawfully issued U.S. Patent No. 8,435,294 entitled "Devices, Systems, and Methods for Material Fixation" (the "'294 Patent"). Cayenne is the owner by assignment of the '294 Patent. A copy of the '294 Patent is attached hereto as Exhibit B.

19. The '528 and '294 Patents claim, *inter alia*, novel devices, systems, and methods for attaching soft material (*e.g.*, tendon) to bone. The devices and/or methods can be used, for example, in reconstructing or repairing torn or diseased ligaments and tendons.

20. Cayenne markets AperFix® Systems, which are devices and methods for attaching tendon to a bone, *e.g.*, they can be used to reconstruct cruciate ligaments

1 of the knee such as the anterior cruciate ligament (ACL) and others. The AperFix®
2 Systems include the AperFix® II Tibial System, the AperFix® AM Femoral System,
3 and the AperFix® II Femoral System.

4 21. The AperFix Femoral Systems are covered by the '528 and '294 Patents.
5 The product brochure for the AperFix Femoral Systems states that they are "covered
6 by one or more U.S. patents pending."

7 **B. Cayenne's Former Employees and Sales Representatives**

8 **1. Timothy S. Nash**

9 22. Cayenne employed Mr. Nash as its Vice President of Marketing from
10 April 2007 to April 2012.

11 23. On April 2, 2007, Cayenne wrote a formal offer letter to Mr. Nash
12 inviting him to join Cayenne. The letter, signed and accepted by Mr. Nash, stated that
13 "During the term of your employment you will be entrusted with detailed confidential
14 information concerning Cayenne Medicals business operations. Throughout the term
15 of your employment and thereafter, and without limiting any other obligations, you
16 will keep all such information confidential and you will not use any such information
17 other than for the benefit of Cayenne Medical, Inc." A copy of the Nash Offer Letter
18 is attached hereto as Exhibit C.

19 24. On May 29, 2007, Mr. Nash signed a first Employment Agreement with
20 Cayenne. The Agreement included a Confidentiality clause that stated in part:
21 "Executive shall not use any Confidential Information of the Company, directly or
22 indirectly, for Executive's own benefit, or the benefit of any person or entity other
23 than the Company and/or its affiliates, nor shall Executive disclose Confidential
24 Information to any person or entity other than the Company and its employees, either
25 during the Term or at any time thereafter." A copy of the First Nash Employment
26 Agreement is attached hereto as Exhibit D.

27 25. On October 23, 2007, Mr. Nash signed an Employment, Confidential
28 Information, and Invention Assignment Agreement with Cayenne. The Agreement

1 included a Confidentiality clause that stated in part: “I agree at all times during the
2 term of my employment and thereafter, to hold in strictest confidence and not to use,
3 except for the exclusive benefit of the Company, or to disclose to any person, firm or
4 corporation without written authorization of the Board of Directors of the Company,
5 any Confidential Information of the Company.” A copy of the Nash Employment,
6 Confidential Information, and Invention Assignment Agreement is attached hereto as
7 Exhibit E.

8 26. On February 26, 2008, Mr. Nash entered into an Amended and Restated
9 Employment Agreement. The Agreement contained an identical Confidentiality
10 clause to the clause in the First Nash Employment Agreement. A copy of the Nash
11 Amended and Restated Employment Agreement is attached hereto as Exhibit F.

12 27. On February 26, 2008, Mr. Nash also entered a Non-Competition
13 Agreement with Cayenne. Under the Non-Competition Agreement, Mr. Nash agreed
14 that during his employment at Cayenne and for a period of one year thereafter, Mr.
15 Nash would not “directly or indirectly participate . . . in any entity that competes with
16 the then current or demonstratively anticipated business of Cayenne.” Further, Mr.
17 Nash would not “solicit the business or patronage of any past, present or prospective
18 customer, or other business partner of Cayenne with which Employee had contact
19 during Employee’s employment.” A copy of the Nash Non-Competition Agreement is
20 attached hereto as Exhibit G.

21 28. On July 22, 2008, Mr. Nash signed an Acknowledgement of Cayenne’s
22 Employee Handbook. The Cayenne Employee Handbook includes a section outlining
23 Company Property, including Confidential Information Security. A copy of the Nash
24 Signed Acknowledgement of the Cayenne Employee Handbook is attached hereto as
25 Exhibit H.

26 29. Mr. Nash’s employment with Cayenne was terminated effective April 6,
27 2012. Prior thereto, on March 28, 2012, Mr. Nash signed an Employment Separation
28 Agreement General Release and Waiver. The Separation Agreement included a

1 Confidentiality provision reiterating Mr. Nash's previous agreement "not to use any
2 Confidential Information of Cayenne, directly or indirectly, for Nash's own benefit or
3 the benefit of any person or entity other than Cayenne and/or its affiliates." The
4 Separation Agreement also included a Non-Competition provision reiterating Mr.
5 Nash's previous agreement not to directly or indirectly participate in any business that
6 competed against Cayenne or solicit business from any customer or business partner
7 of Cayenne for one year. A copy of the Nash Employment Separation Agreement
8 General Release and Waiver is attached hereto as Exhibit I.

9 **2. Joshua Ray**

10 30. Cayenne employed Mr. Ray as a District Sales Manager from April
11 2008 to March 2012.

12 31. On April 24, 2008, Cayenne wrote a formal offer letter to Mr. Ray
13 inviting him to join Cayenne as the District Sales Manager for the Southwestern
14 Territory. The letter set forth Mr. Ray's confidentiality obligations should he accept
15 employment at Cayenne. A copy of the Ray Offer Letter is attached hereto as
16 Exhibit J.

17 32. On April 28, 2008, Mr. Ray signed an Employment, Confidential
18 Information, and Invention Assignment Agreement with Cayenne. Section 2,
19 "Confidential Information," of the Agreement set forth a definition of confidential
20 information and prohibits Mr. Ray from disclosing that information during or after his
21 employment. Section 2(a)(ii) states: "I agree at all times during the term of my
22 employment and thereafter, to hold in strictest confidence, and not to use, except for
23 the exclusive benefit of the Company, or to disclose to any person, firm or corporation
24 without written authorization of the Board of Directors of the Company, any
25 Confidential Information of the Company." A copy of the Ray Employment,
26 Confidential Information, and Invention Assignment Agreement is attached hereto as
27 Exhibit K.

28 33. The Employment, Confidential Information, and Invention Assignment

1 Agreement also included Section 5, entitled "Returning Company Documents, etc."
2 Section 5 states: "I agree that, at the time of leaving the employ of the Company, I will
3 deliver to the Company (and will not keep in my possession, recreate or deliver to
4 anyone else) any and all . . . documents or property, or reproductions of any
5 aforementioned items developed by me pursuant to my employment with the
6 Company or otherwise belonging to the Company."

7 34. On July 29, 2008, Mr. Ray signed an Acknowledgement of Cayenne's
8 Employee Handbook. The Cayenne Employee Handbook includes a section outlining
9 Company Property, including Confidential Information Security. A copy of the Nash
10 Signed Acknowledgement of the Cayenne Employee Handbook is attached hereto as
11 Exhibit L.

12 35. In March 2012, Mr. Ray resigned from Cayenne.

13 **3. Lindsey (Wolf) Arleth**

14 36. Cayenne employed Lindsey Arleth (formerly Lindsey Wolf) as a District
15 Sales Manager from March 2010 to July 2011.

16 37. On March 24, 2010, Cayenne wrote a formal offer letter to Mrs. Arleth
17 inviting her to join Cayenne. The letter, signed and accepted by Mrs. Arleth, stated
18 "During the term of your employment you will be entrusted with detailed confidential
19 information concerning Cayenne Medical's business operations. Throughout the term
20 of your employment and thereafter, and without limiting any other obligations, you
21 will keep all such information confidential and you will not use any such information
22 other than for the benefit of Cayenne Medical, Inc." A copy of the Arleth Offer Letter
23 is attached hereto as Exhibit M.

24 38. In June 2011, Lindsey Arleth resigned from Cayenne effective July 1,
25 2011.

26 **4. Erica (Baum) Burk**

27 39. Upon information and belief, Erica Burk (formerly Erica Baum) worked
28 as a Sales Representative of Matrix Biosurgical from August 2009 to April 2013.

1 40. Upon information and belief, Mrs. Burk sold Cayenne's products
2 through Matrix Biosurgical ("Matrix") from October 2009 to June 2012.

3 41. On November 12, 2009, Matrix signed a Sales Representative
4 Agreement with Cayenne. The Agreement included a Confidentiality clause whereby
5 Matrix or its "Related Parties" agreed to use Cayenne's "Confidential Information
6 solely to further sales of the Products as contemplated by this Agreement and shall not
7 disclose or use any such Confidential Information." The Agreement also included a
8 Non-competition clause, whereby Matrix agreed that it would "refrain from
9 representing, promoting, or otherwise offering to sell within the Territory any lines or
10 products that, in Cayenne Medical's sole discretion, compete with the Products
11 covered by this Agreement." Under the Non-Competition clause, if Matrix "performs
12 services pursuant to this Agreement for more than six (6) months, then the Non-
13 Compete period shall extend for one (1) year after the date of termination of this
14 Agreement."

15 42. The Agreement provided that it continued in force until December 31,
16 2010 with automatic renewal periods of one year thereafter, until terminated.

17 43. Upon information and belief, as an employee of Matrix, Mrs. Burk was
18 required to abide by Matrix's Sales Representative Agreement with Cayenne.

19 44. Matrix resigned from representation of Cayenne on June 6, 2012.

20 **C. Knowledge of Cayenne's Patents**

21 45. During their employment at Cayenne, Mr. Nash, Mr. Ray, and Mrs.
22 Arleth were informed that Cayenne had patents that covered the AperFix System.

23 46. During his employment at Cayenne, Mr. Nash was specifically informed
24 that Cayenne had obtained the '528 Patent in January 2010. Mr. Nash was also aware
25 that Cayenne had filed a continuation patent application related to the '528 Patent
26 (later issued as the '294 Patent). Mr. Nash was informed that the '528 Patent and the
27 pending patent application that later issued as the '294 Patent contained claims that
28 covered the AperFix System.

D. Knowledge of Cayenne's Proprietary and Confidential Information

47. During their employment at Cayenne, Mr. Nash, Mr. Ray, and Mrs. Arleth were privy to and obtained Cayenne's confidential and proprietary information that was of the kind provided only to those few employees at Cayenne having a need to know the information to carry out their work responsibilities.

48. For example, Mr. Nash, Mr. Ray, and Mrs. Arleth gained access to proprietary customer, consultant, and surgeon lists related to the sale and marketing of Cayenne's products. Mr. Nash, Mr. Ray, and Mrs. Arleth also learned of non-public pricing, discounts, and sales distributions for Cayenne's products, and information about the proper design and use of Cayenne's products.

49. During her employment at Matrix, Mrs. Burk was privy to and obtained Cayenne's confidential and proprietary information that was of the kind provided only to those representatives of Cayenne products having a need to know the information to carry out their work responsibilities.

50. For example, Mrs. Burk gained access to customer and surgeon information related to the sales and marketing of Cayenne's products. Mrs. Burk also learned of non-public pricing, discounts, and sales distributions for Cayenne's products.

51. Cayenne's confidential and proprietary information includes, but is not limited to, customer lists, surgeon lists, distributor lists, business plans, financial projections and reports, business strategies, financial information, customer needs, market analysis, technical information, know-how, notes, records, drawings, financial sales and marketing data, nonpublic pricing, customer discounts, compilations of information which relate to Cayenne's business that are not general public information, and other information designated by Cayenne as confidential ("Confidential information"), including information developed, created, discovered, made, written, or obtained by Mr. Nash, Mr. Ray, Mrs. Arleth, Mrs. Burk, and other Cayenne employees and representatives.

1 52. Cayenne has spent valuable time, labor, and substantial sums of money
2 in researching and developing its Confidential Information, which derives independent
3 economic value, actual or potential, from generally not being known to, and not being
4 readily ascertainable by proper means by, other persons who can obtain economic
5 value from its disclosure or use, and that is the subject of efforts reasonable under the
6 circumstances to maintain secrecy.

7 53. Cayenne has made reasonable efforts to protect the confidentiality and
8 secrecy of its Confidential Information, including requiring employees with access to
9 its Confidential Information to sign confidentiality agreements.

10 **E. MedShape's Hiring and Employment of Cayenne's Employees, Former**
11 **Employees, and Former Contractor**

12 **1. Lindsey (Wolf) Arleth**

13 54. On or about July 2011, MedShape hired Mrs. Arleth as Director of Sales
14 for the Southeast territory. MedShape employed Mrs. Arleth from about July 2011
15 until about September 2013.

16 55. During her time as an employee of MedShape, Mrs. Arleth disclosed
17 Cayenne's Confidential Information to MedShape. MedShape used and continues to
18 use Cayenne's Confidential Information to MedShape's economic benefit, for
19 example, to target customers, surgeons, and distributors with past or current business
20 relationships with Cayenne. MedShape knows or has reason to know that Cayenne's
21 Confidential Information was derived from or through Mrs. Arleth, who utilized
22 improper means to acquire it; was acquired under circumstances giving rise to a duty
23 to maintain its secrecy or limit its use; or was derived from or through Ms. Arleth,
24 who owed a duty to Cayenne not to misappropriate Cayenne's Confidential
25 Information.

26 56. Shortly after the commencement of her employment with MedShape,
27 Mrs. Arleth recruited Mr. Ray to leave Cayenne and join MedShape as a sales
28 representative. Upon information and belief, Ms. Arleth did so knowing that Mr. Ray

1 was under an employment contract with Cayenne.

2 **2. Joshua Ray**

3 57. On or about February 8, 2012, MedShape extended Mr. Ray an offer of
4 employment. About March 2012, Mr. Ray commenced working as an employee of
5 MedShape responsible for U.S. and International Sales.

6 58. Shortly after joining MedShape, Mr. Ray began to disclose and
7 continues to disclose Cayenne's Confidential Information, including confidential
8 Cayenne documents, to MedShape. Mr. Ray and MedShape have used and continue
9 to use Cayenne's Confidential Information, for example, to target customers,
10 surgeons, and distributors with past or current business relationships with Cayenne.

11 59. MedShape knows or has reason to know that Cayenne's Confidential
12 Information was derived from or through Mr. Ray, who utilized improper means to
13 acquire it; was acquired under circumstances giving rise to a duty to maintain its
14 secrecy or limit its use; or was derived from or through Mr. Ray, who owed a duty to
15 Cayenne not to misappropriate Cayenne's Confidential Information.

16 **3. Timothy Nash**

17 60. On or about December 12, 2012, Mr. Nash signed an offer letter
18 presented by MedShape, including a term sheet. At least by April 8, 2013, Mr. Nash
19 commenced his formal employment at MedShape as its Senior Vice President of Sales
20 and Marketing and reported directly to Dr. Jacobus. Upon information and belief,
21 however, Mr. Nash directly or indirectly participated in the business of MedShape
22 between at least December 2012 and April 2013, in violation of the Non-Competition
23 clause of his Employment Separation Agreement General Release and Waiver with
24 Cayenne.

25 61. Upon information and belief, between December 2012 and April 2013,
26 Mr. Nash solicited the business of one or more past, present, or prospective business
27 partners of Cayenne, in violation of the Non-Competition clause of his Employment
28 Separation Agreement General Release and Waiver with Cayenne.

62. Mr. Nash has disclosed and continues to disclose Cayenne's Confidential Information to MedShape. Mr. Nash and MedShape have used and continue to use Cayenne's Confidential Information, for example, to target customers, surgeons, and distributors with past or current business relationships with Cayenne. MedShape knows or has reason to know that Cayenne's Confidential Information was derived from or through Mr. Nash, who utilized improper means to acquire it; was acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or was derived from or through Mr. Nash, who owed a duty to Cayenne not to misappropriate Cayenne's Confidential Information.

4. **Erica (Baum) Burk**

63. Upon information and belief, around May 2013, MedShape hired Mrs. Burk as a Regional Sales Manager. Upon information and belief, MedShape employed Mrs. Burk from about May 2013 until about February 2014.

64. Upon information and belief, Mrs. Burk's employment at MedShape from about May 2013 until June 6, 2013 violated the Non-competition clause of the agreement signed between Matrix and Cayenne in October 2009.

65. Upon information and belief, during her time as an employee of MedShape, Mrs. Burk provided MedShape with Cayenne's Confidential Information. MedShape has used and continue to use Cayenne's Confidential Information, for example, to target customers, surgeons, and distributors with past or current business relationships with Cayenne. MedShape knows or has reason to know that Cayenne's Confidential Information was derived from or through Mrs. Burk, who utilized improper means to acquire it; was acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or was derived from or through Mrs. Burk, who owed a duty to Cayenne not to misappropriate Cayenne's Confidential Information.

F. **MedShape's Targeting of Cayenne Distributors, Surgeons, and Customers**

66. MedShape, through Kurt Jacobus, Ken Gall, Timothy Nash, Joshua Ray, and its other employees, has specifically targeted Cayenne distributors, surgeon

1 consultants, and customers. Upon information and belief, MedShape has targeted
2 these individuals using Cayenne's Confidential Information obtained through
3 wrongful means from Cayenne.

4 67. In 2011, MedShape launched the ExoShape® TIBIAL Soft Tissue
5 Fastener (hereinafter "ExoShape Tibial") in direct competition with Cayenne's
6 AperFix II Tibial System. As part of their marketing and sale of ExoShape Tibial,
7 MedShape targeted customers, users, and distributors of the Cayenne AperFix II
8 Tibial System.

9 68. In January 2014, MedShape announced the launch of the ExoShape®
10 FEMORAL Soft Tissue Fastener (also known collectively with the ExoShape Tibial
11 as the ExoShape® Soft Tissue Fastener or the ExoShape® ACL Fixation System)
12 (hereinafter "ExoShape Femoral") in direct competition with Cayenne's AperFix
13 Femoral Systems. As part of their launch of ExoShape Femoral, MedShape targeted
14 its announcement at customers, users, and distributors of the Cayenne AperFix
15 Systems. Mr. Nash and Mr. Ray were directly involved in contacting Cayenne's
16 customers, users, and distributors to promote ExoShape Femoral.

17 **1. Integra Medical**

18 69. In November 2007, Cayenne and Integra Medikal ("Integra") signed a
19 Sales Agreement. Under the Agreement, Integra was granted the exclusive right to
20 sell AperFix ACL products in the country of Turkey with a quarterly quota
21 commitment.

22 70. On April 1, 2012, Cayenne and Integra entered into an International
23 Sales Distribution Agreement Renewal. Under the Renewal Agreement, Integra was
24 granted the exclusive right to sell Cayenne's AperFix, iFix, CrossFix, and Quattro
25 products in the country of Turkey with a yearly quota commitment. The Renewal
26 Agreement included a Non-Compete clause whereby Integra agreed that "[d]uring the
27 Term of this Agreement, Distributor shall not, without Supplier's prior written
28 consent, represent, promote or otherwise try to sell within the Territory any lines or

1 products that, in Supplier's sole judgment, compete with the Products covered by the
2 Agreement." The Non-Compete clause further included a "Restricted Period" of one
3 year after termination of the Agreement, during which the Non-Compete would
4 remain in effect.

5 71. The Renewal Agreement also included a two-year term that would
6 renew automatically for successive one year terms until terminated. The Renewal
7 Agreement currently remains in effect between the parties.

8 72. Upon information and belief, Gokhan Cengiz is a Product Manager for
9 Integra.

10 73. At least as early as December 2012, MedShape solicited Integra through
11 Mr. Gokhan to distribute MedShape's ExoShape Tibial device. In May 2013, Mr.
12 Gokhan represented to MedShape that Integra would agree to act as a distributor for
13 MedShape with respect to the ExoShape product line.

14 74. Upon information and belief, MedShape was aware of the Renewal
15 Agreement between Cayenne and Integra and its non-competition clause. MedShape
16 was at least aware of the Renewal Agreement, for instance, because Mr. Nash was
17 employed at Cayenne during the time that the Renewal Agreement was negotiated and
18 executed between Cayenne and Integra. MedShape was at least aware of the non-
19 competition clause, for instance, because Mr. Nash had knowledge of the content of
20 the Renewal Agreement, including the non-competition clause.

21 75. Upon information and belief, Integra is distributing and selling
22 MedShape's ExoShape products, which are in direct competition with the products
23 covered by the Renewal Agreement, and thus acting in breach of the Non-competition
24 clause of Renewal Agreement.

25 76. Upon information and belief, MedShape intentionally interfered with
26 Cayenne's contractual relationship with Integra, resulting in Integra's breach of the
27 Renewal Agreement. Further, MedShape, through Mr. Nash, wrongfully disclosed,
28 used, and relied on Cayenne's Confidential Information in interfering with Cayenne's

1 contractual relationship with Integra.

2 **2. Precision/ERHM**

3 77. On February 1, 2009, Cayenne and ERHM Orthopedics, Inc.
4 (“ERHM/Precision”) signed a Sales Agency Agreement. Under the Agreement,
5 ERHM/Precision was granted the exclusive right to sell Cayenne’s AperFix, iFix, and
6 CrossFix products in certain territories with a quarterly quota commitment.

7 78. Shortly after MedShape hired Mrs. Arleth in July 2011, Mrs. Arleth
8 solicited ERHM/Precision to sell MedShape products in direct competition with
9 Cayenne products and ERHM/Precision did so.

10 79. On November 13, 2012, Cayenne terminated its Sales Agency
11 Agreement with ERHM/Precision for “failure to meet 80% of its Annual Quota
12 Commitment.”

13 80. Upon information and belief, MedShape was aware of the Sales Agency
14 Agreement between Cayenne and ERHM/Precision. MedShape was at least aware of
15 the Sales Agency Agreement, for instance, because Mrs. Arleth was employed at
16 Cayenne during the time that the Sales Agency Agreement was in effect between
17 Cayenne and ERHM/Precision, and Mrs. Arleth managed the distribution of products
18 through ERHM/Precision while an employee at Cayenne. Mrs. Arleth had knowledge
19 of the Sales Agency Agreement and its contents.

20 81. Cayenne had a justifiable expectation that ERHM/Precision would not
21 sell any sports medicine products that compete with the products it sold for Cayenne.
22 Upon information and belief, Mrs. Arleth was aware of that expectation.

23 82. Upon information and belief, MedShape intentionally interfered with
24 Cayenne’s contractual relationship with ERHM/Precision, resulting in
25 ERHM/Precision’s breach of the Sales Agency Agreement by failing to meet its quota
26 commitment under the Agreement and the termination of Cayenne’s business
27 relationship with EHRM/Precision. Upon information and belief, ERHM/Precision
28 did not meet its quota requirement because it was concurrently selling MedShape

1 products. MedShape, through Mrs. Arleth, wrongfully used and relied on Cayenne's
2 Confidential Information in interfering with Cayenne's contractual relationship with
3 ERHM/Precision. Further, MedShape, through Mr. Nash, continues to wrongfully
4 disclose, use, and rely on Cayenne's Confidential Information in its own business
5 relationship with ERHM/Precision.

6 **3. Dr. John Uribe**

7 83. On February 1, 2010, Dr. John Uribe signed a Consulting Agreement
8 with Cayenne to serve as a medical consultant for Cayenne. In addition to serving as a
9 consultant for Cayenne, Dr. Uribe purchased AperFix products from Cayenne.

10 84. The Uribe Consulting Agreement includes a one-year term that renews
11 automatically for successive one year terms until terminated. The Uribe Consulting
12 Agreement has not been terminated and is still in effect today.

13 85. The Uribe Consulting Agreement includes a confidentiality section that
14 survives the termination of the agreement.

15 86. The Uribe Consulting Agreement also states that "Consultant shall not,
16 during the term of this Agreement, act as a consultant for any other company on the
17 subject matter of this Agreement."

18 87. Shortly after MedShape hired Lindsey Arleth in July 2011, Ms. Arleth
19 solicited Dr. Uribe to consult for MedShape.

20 88. On September 2, 2011, MedShape signed Dr. Uribe to a consultant
21 agreement that obligates Dr. Uribe to assist MedShape "design teams on implant and
22 instrument design for femoral fixation." In addition, Dr. Uribe has repeatedly
23 purchased ExoShape products from MedShape.

24 89. Upon information and belief, MedShape was aware of the Consulting
25 Agreement between Cayenne and Dr. Uribe when it solicited Dr. Uribe to consult for
26 MedShape. MedShape was at least aware of the Agreement, for instance, because
27 Mrs. Arleth was employed at Cayenne during the time that the Agreement was signed
28 and in effect between Cayenne and Dr. Uribe, and Mrs. Arleth had knowledge of the

1 Agreement and its contents, including the Conflict of Interest section.

2 90. MedShape, through Mrs. Arleth, wrongfully used and relied on
3 Cayenne's Confidential Information in interfering with Cayenne's contractual
4 relationship with Dr. Uribe. Further, MedShape continues to wrongfully disclose, use,
5 and rely on Cayenne's Confidential Information in its own business relationship with
6 Dr. Uribe.

7 **4. AMG Medical Distributor, Inc.**

8 91. On May 1, 2011, Cayenne and AMG Medical Distributor ("AMG"),
9 through owner Ramiro Parra, signed a Sales Representative Agreement. Under the
10 Agreement, AMG was granted the exclusive right to sell Cayenne's AperFix, iFix, and
11 CrossFix products in certain territories with a quarterly quota commitment. The
12 Agreement included a Conflict of Interest Clause where "Representative represents
13 and warrants to Cayenne Medical that it does not currently represent or promote any
14 lines or products that compete with the Products." The Agreement also included a
15 Non-Competition clause whereby AMG agreed that it would not represent, promote,
16 or offer to sell any product that in Cayenne's sole discretion competed with Cayenne's
17 products and would not encourage any Cayenne customer to patronize any entity that
18 competed with Cayenne during the term of the Agreement and for 1 year thereafter.

19 92. On July 13, 2011 Cayenne and America Media Group (owned by
20 Ramiro Parra and related to AMG Medical Distributor) entered into an International
21 Sales Distribution Agreement. Under the Agreement, Cayenne granted AMG the
22 exclusive right to sell Cayenne's AperFix, iFix, and CrossFix products in certain
23 international territories with a yearly quota commitment. The Agreement included a
24 Non-Competition clause whereby AMG agreed that it would not represent, promote,
25 or offer to sell any product that in Cayenne's sole discretion competed with Cayenne's
26 products and would not encourage any Cayenne customer to patronize any entity that
27 competed with Cayenne during the term of the Agreement and for 1 year thereafter.

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1 93. In June 2013, MedShape, through Mr. Nash, met with AMG and
2 conspired with AMG to begin selling MedShape's products.

3 94. Ramiro Parra of AMG established or directed the establishment of a new
4 company, ArthroShape, LLC, in order to conceal from Cayenne that it was selling
5 MedShape products in violation of the non-competition clause of the Cayenne-AMG
6 Agreements. Mr. Parra and AMG conspired with MedShape, Mr. Jacobus, Mr. Gall,
7 and Mr. Nash to establish ArthroShape, LLC to conceal the breach of the AMG
8 Agreements with Cayenne.

9 95. Upon information and belief, MedShape was aware of the Cayenne-
10 AMG Agreements, and MedShape was aware that those agreements contained non-
11 compete clauses. MedShape was at least aware of the Agreements and their contents,
12 for instance, because Cayenne employed Mr. Nash as its Vice President of Sales at the
13 time that Cayenne executed the Sales Representative Agreement with AMG and he
14 had knowledge of its contents. Further, Mr. Parra informed Mr. Nash, Dr. Jacobus,
15 Dr. Gall, and MedShape that AMG was under contract with Cayenne and that contract
16 included a non-compete clause. Mr. Parra further informed Mr. Nash, Dr. Jacobus,
17 Dr. Gall, and MedShape that AMG could not operate under the same business name
18 when selling MedShape's products due to its agreements with Cayenne.

19 96. Upon information and belief, MedShape, Mr. Nash, Dr. Jacobus, and Dr.
20 Gall intentionally interfered with Cayenne's contractual relationship with AMG,
21 resulting in AMG's breach of the Agreements by violating the Non-Competition
22 clause of the agreements. MedShape, Mr. Nash, Dr. Jacobus, and Dr. Gall wrongfully
23 used and relied on Cayenne's Confidential Information in interfering with Cayenne's
24 contractual relationship with AMG. Further, MedShape, Mr. Nash, Dr. Jacobus, and
25 Dr. Gall continue to wrongfully disclose, use, and rely on Cayenne's Confidential
26 Information in its own business relationship with AMG.

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1 **5. Other Surgeon Consultant, Distributor, and Customer Targets**

2 97. Upon information and belief, MedShape has interfered, and continues to
3 interfere, with Cayenne's business relationships beyond those enumerated above.

4 98. For example, upon information and belief, MedShape has targeted
5 inventors of the '528 and '294 Patents among those individuals who have business
6 relationships with Cayenne.

7 99. In another example, upon information and belief, MedShape has targeted
8 other distributors of Cayenne, including Mark Herzan in San Diego and Ron Emmett
9 of Tri City Medical.

10 100. Upon information and belief, MedShape's interference in Cayenne's
11 valid business expectancies is intentional, improper, and specifically calculated to
12 interfere with those business expectancies.

13 101. Upon information and belief, MedShape, through Dr. Jacobus, Dr. Gall,
14 Mr. Nash, and Mr. Ray, has disclosed and used, and continues to disclose and use,
15 Cayenne's Confidential Information in order to target individuals and companies with
16 whom Cayenne has business contracts, relationships, and expectancies. Such
17 disclosure and use has allowed MedShape to wrongfully interfere with those
18 Cayenne's business contacts in establishing their own agreements with these
19 individuals and companies.

20 **IV. FIRST CLAIM FOR RELIEF**

21 **(Infringement of U.S. Patent No. 7,651,528 – Against MedShape)**

22 102. Cayenne repeats, realleges, and incorporates by reference the allegations
23 set forth in paragraphs 1 through 101 of this Complaint.

24 103. This is a claim for patent infringement that arises under the Patent Laws
25 of the United States, Title 35 of the United States Code.

26 104. MedShape has been, and currently is, directly infringing the '528 Patent,
27 contributing to the infringement of the '528 Patent, and/or inducing infringement of
28 the '528 Patent by directly or indirectly making, using, selling and/or offering to sell

1 in the United States, and/or importing into the United States tissue fixation systems
2 including, but not limited to, ExoShape Femoral, that is covered by at least one claim
3 of the '528 Patent. MedShape's acts constitute infringement of the '528 Patent in
4 violation of 35 U.S.C. § 271.

5 105. MedShape has contributed to infringement of the '528 Patent by, *inter*
6 *alia*, marketing and selling ExoShape Femoral, because ExoShape Femoral is not a
7 staple article or commodity of commerce suitable for substantial non-infringing use,
8 and is known by MedShape to be especially made or especially adapted for use in
9 infringement of the '528 Patent. As a result, MedShape's customers and physicians
10 have used ExoShape in a manner that directly infringes the '528 Patent.

11 106. MedShape has knowingly and actively induced infringement of the '528
12 Patent by, *inter alia*, marketing and selling ExoShape Femoral knowing and intending
13 that MedShape's customers and physicians use it in a manner that infringes the '528
14 Patent. To that end, MedShape provides instructions and teachings to their customers
15 and physicians that such systems and devices be used in the manner claimed in the
16 '528 Patent. As a result, MedShape's customers and physicians have used ExoShape
17 Femoral in a manner that directly infringes the '528 Patent.

18 107. MedShape has been and is currently committing these acts of
19 infringement without license or authorization from Cayenne.

20 108. MedShape's infringement has been and continues to be intentional,
21 knowing, willful, and deliberate, with full knowledge of Cayenne's rights.

22 109. Upon information and belief, MedShape's infringement will continue
23 unless enjoined by this Court.

24 110. Upon information and belief, MedShape has derived and received, and
25 will continue to derive and receive, gains, profits, and advantages from the aforesaid
26 acts of infringement in an amount that is not presently known to Cayenne.

27 111. As a direct and proximate consequence of MedShape's infringement of
28 the '528 Patent, Cayenne has suffered, and will continue to suffer, damages in an

1 amount not yet determined.

2 112. Because of the aforesaid infringing acts, Cayenne has suffered and
3 continues to suffer great and irreparable injury, for which Cayenne has no adequate
4 remedy at law.

5 **V. SECOND CLAIM FOR RELIEF**

6 **(Infringement of U.S. Patent No. 8,435,294 – Against MedShape)**

7 113. Cayenne repeats, realleges, and incorporates by reference the allegations
8 set forth in paragraphs 1 through 112 of this Complaint.

9 114. This is a claim for patent infringement that arises under the Patent Laws
10 of the United States, Title 35 of the United States Code.

11 115. MedShape has been, and currently is, directly infringing the '294 Patent,
12 contributing to the infringement of the '294 Patent, and/or inducing infringement of
13 the '294 Patent by directly or indirectly making, using, selling and/or offering to sell
14 in the United States and/or importing into the United States tissue fixation systems,
15 including, but not limited to, ExoShape Femoral, that is covered by at least one claim
16 of the '294 Patent. MedShape's acts constitute infringement of the '294 Patent in
17 violation of 35 U.S.C. § 271.

18 116. MedShape has contributed to infringement of the '294 Patent by, *inter*
19 *alia*, marketing and selling ExoShape Femoral, because ExoShape Femoral is not a
20 staple article or commodity of commerce suitable for substantial non-infringing use,
21 and is known by MedShape to be especially made or especially adapted for use in
22 infringement of the '294 Patent. As a result, MedShape's customers and physicians
23 have used ExoShape in a manner that directly infringes the '294 Patent.

24 117. MedShape has knowingly and actively induced infringement of the '294
25 Patent by, *inter alia*, marketing and selling ExoShape Femoral knowing and intending
26 that MedShape's customers and physicians use it in a manner that infringes the '294
27 Patent. To that end, MedShape provides instructions and teachings to their customers
28 and physicians that such systems and devices be used in the manner claimed in the

1 '294 Patent. As a result, MedShape's customers and physicians have used ExoShape
2 Femoral in a manner that directly infringes the '294 Patent.

3 118. MedShape has been and is currently committing these acts of
4 infringement without license or authorization from Cayenne.

5 119. MedShape's infringement has been and continues to be intentional,
6 knowing, willful, and deliberate, with full knowledge of Cayenne's rights.

7 120. Upon information and belief, MedShape's infringement will continue
8 unless enjoined by this Court.

9 121. Upon information and belief, MedShape has derived and received, and
10 will continue to derive and receive, gains, profits, and advantages from the aforesaid
11 acts of infringement in an amount that is not presently known to Cayenne.

12 122. As a direct and proximate consequence of MedShape's infringement of
13 the '294 Patent, Cayenne has suffered, and will continue to suffer, damages in an
14 amount not yet determined.

15 123. Because of the aforesaid infringing acts, Cayenne has suffered and
16 continues to suffer great and irreparable injury, for which Cayenne has no adequate
17 remedy at law.

18 **VI. THIRD CLAIM FOR RELIEF**

19 **(Misappropriation of Trade Secrets Under AUTSA – Against All Defendants)**

20 124. Cayenne repeats, realleges, and incorporates by reference the allegations
21 set forth in paragraphs 1 through 123 of this Complaint.

22 125. Cayenne is the owner of Confidential Information.

23 126. Cayenne's Confidential Information constitutes protectable trade secrets
24 under the Arizona Uniform Trade Secrets Act ("AUTSA"), A.R.S. § 44-401 *et seq.*

25 127. Cayenne's Confidential Information derives independent economic
26 value, actual and potential, from not being generally known to the public or other
27 persons who can obtain economic value from their disclosure or use.

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1 128. Cayenne has made reasonable and appropriate efforts to protect the
2 secrecy of its Confidential Information.

3 129. Cayenne's Confidential Information cannot be readily ascertained by
4 any of the proper, usual, and ordinary methods employed in competitive business.

5 130. MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash and Mr. Ray, and each of
6 them, knowingly and willfully acquired, disclosed, misused, and/or misappropriated
7 the Confidential Information by disclosing the Confidential information to MedShape
8 and/or using the Confidential Information for their and MedShape's benefit and to
9 Cayenne's detriment. Mr. Nash and Mr. Ray were fully aware of the confidentiality
10 and secrecy of the information they misappropriated, and understood by virtue of their
11 contracts with Cayenne that they were obligated to keep the information secret.
12 MedShape, Dr. Jacobus, and Dr. Gall were fully aware that Mr. Nash and Mr. Ray had
13 acquired Cayenne's Confidential Information under circumstances giving rise to a
14 duty to keep the Confidential Information secret.

15 131. Mr. Nash and Mr. Ray are using and disclosing Confidential Information
16 of Cayenne, obtained by virtue of their relationships with Cayenne, for their benefit
17 and the benefit of others, including MedShape. MedShape, Dr. Jacobus, and Dr. Gall
18 are accepting and using Confidential Information of Cayenne, obtained by virtue of
19 MedShape's employees' relationships with Cayenne, for their benefit and the benefit
20 of others, including MedShape.

21 132. As a proximate result of Defendants' disclosure, misuse, and
22 misappropriation, Cayenne has been harmed and Defendants have been unjustly
23 enriched.

24 133. As a proximate result of Defendants' disclosure, misuse, and
25 misappropriation, Cayenne has sustained, and will continue to sustain, damages in an
26 amount according to proof at trial. Furthermore, as a proximate result of Defendants'
27 disclosure, misuse, and misappropriation, Defendants have been unjustly enriched,
28 and will continue to be unjustly enriched, in an amount according to proof at trial.

134. As a further direct and proximate result of Defendants' misappropriation of trade secrets, Cayenne has suffered and will continue to suffer great and irreparable harm unless and until Defendants' wrongful conduct is enjoined. Thus, due to the inadequacy of monetary damages to compensate Cayenne for Defendants' continuing misappropriation of Cayenne's Confidential Information, Cayenne is entitled to injunctive relief in accordance with A.R.S. § 44-402, enjoining Defendants from further disclosure, misuse, and misappropriation of Cayenne's Confidential Information.

135. Defendants' conduct in disclosing, misusing, and misappropriating Cayenne's Confidential Information was willful and malicious, and Defendants acted with a conscious and wanton disregard of Cayenne's rights and with intent to injure Cayenne and improve the business of their current employer, MedShape. Cayenne is, therefore, entitled to punitive and exemplary damages in accordance with A.R.S. § 44-403 and statutory attorney's fees under A.R.S. § 44-404.

VII. FOURTH CLAIM FOR RELIEF

(Intentional Interference with Contract – Against All Defendants)

136. Cayenne repeats, realleges, and incorporates by reference the allegations set forth in paragraphs 1 through 135 of this Complaint.

137. Cayenne has and/or had valid contractual relationships with various distributors, consultants, employees, and other third parties. For example and more specifically, Cayenne has and/or had contractual relationships with Matrix Biosurgical, Integra Medikal, EHRM Orthopedics, Dr. Uribe, AMG Medical Distributor, Inc./Ramiro Parra, Joshua Ray, Lindsey Arleth, and Timothy Nash among others.

138. Defendants MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray knew about Cayenne's contractual relationships with these parties.

139. Defendants MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray (individually and collectively) intentionally and improperly interfered with Cayenne's

1 contractual relationships with one or more of Matrix Biosurgical, Integra Medikal,
 2 EHRM Orthopedics, Dr. Uribe, AMG Medical Distributor, Inc./Ramiro Parra, Joshua
 3 Ray, Lindsey Arleth, and Timothy Nash, causing these parties to breach their
 4 agreements with Cayenne, for example, by breaching confidentiality clauses of their
 5 agreements, by breaching non-competition clauses of their agreements by selling and
 6 distributing MedShape's products or working for a company in direct competition
 7 with Cayenne, or otherwise causing these parties to terminate their relationships with
 8 Cayenne.

9 140. Defendants MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray
 10 acted improperly in intentionally interfering with Cayenne's contractual relationships
 11 to advance the business interests of Cayenne's competitor, MedShape.

12 141. Defendants MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray
 13 have caused Cayenne damage in an amount to be proven at trial.

14 142. By reason of the acts alleged herein, Cayenne has suffered and continues
 15 to suffer irreparable damage. Unless MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and
 16 Mr. Ray are restrained, the damage and irreparable harm to Cayenne will increase.
 17 Cayenne has no adequate remedy at law, therefore, Cayenne is entitled to preliminary
 18 and permanent injunctive relief.

19 **VIII. FIFTH CLAIM FOR RELIEF**

20 **(Intentional Interference with Business Expectancy – Against All Defendants)**

21 143. Cayenne repeats, realleges, and incorporates by reference the allegations
 22 set forth in paragraphs 1 through 142 of this Complaint.

23 144. Cayenne has and/or had valid business expectancies with respect to its
 24 contracts with individuals and companies relating to its products and business. For
 25 instance, Cayenne has and/or had valid business expectancies with various
 26 distributors, consultants, employees, and other third parties. Cayenne also had a valid
 27 business expectancy that the individuals and companies with whom it entered into
 28 agreements would not work with companies in competition with Cayenne, based on

1 the contractual agreements between Cayenne and these parties. For example and more
2 specifically, Cayenne had business expectancies with Matrix Biosurgical, Integra
3 Medikal, EHRM Orthopedics, Dr. Uribe, AMG Medical Distributor, Inc./Ramiro
4 Parra, Joshua Ray, Lindsey Arleth, and Timothy Nash among others.

5 145. Defendants MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray
6 knew about Cayenne's business expectancies with one or more of Matrix Biosurgical,
7 Integra Medikal, EHRM Orthopedics, Dr. Uribe, AMG Medical Distributor,
8 Inc./Ramiro Parra, Joshua Ray, Lindsey Arleth, and Timothy Nash among others.

9 146. Defendants MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray
10 intentionally and improperly interfered with Cayenne's business expectancies with
11 these parties. For instance, Defendants caused these parties to breach their
12 expectancies with Cayenne, for example, by breaching confidentiality clauses of their
13 agreements, by breaching non-competition clauses of their agreements by selling and
14 distributing MedShape's products or working for a company in direct competition
15 with Cayenne, or otherwise causing these parties to terminate their relationships with
16 Cayenne.

17 147. Defendants MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray
18 acted improperly in intentionally interfering with Cayenne's business expectancies to
19 advance the business interests of Cayenne's competitor, MedShape.

20 148. Defendants MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray
21 have caused Cayenne damage in an amount to be proven at trial.

22 149. By reason of the acts alleged herein, Cayenne has suffered and continues
23 to suffer irreparable damage. Unless MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and
24 Mr. Ray are restrained, the damage and irreparable harm to Cayenne will increase.
25 Cayenne has no adequate remedy at law, therefore, Cayenne is entitled to preliminary
26 and permanent injunctive relief.

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IX. SIXTH CLAIM FOR RELIEF

(Unfair Competition – Against All Defendants)

150. Cayenne repeats, realleges, and incorporates by reference the allegations set forth in paragraphs 1 through 149 of this Complaint.

151. Defendants MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray engage in direct competitive business with Cayenne.

152. Defendants MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray have unfairly competed with Cayenne through their tortious interference with Cayenne's valid contractual relationships and business expectancies.

153. These tortious activities have given Defendants MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray an unfair competitive advantage over Cayenne.

154. Defendants MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray have also unfairly competed against Cayenne by misappropriating Cayenne's Confidential Information, including Confidential Information that does not rise to the level of a trade secret under A.R.S. § 44-401.

155. Cayenne's Confidential Information was acquired by Cayenne through investment of substantial time, money, and resources.

156. Defendants MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray have taken Cayenne's Confidential Information for profit to use as their own, at little or no cost to Defendants.

157. Such unfair competition and misappropriation of Confidential Information has caused damage to Cayenne in an amount to be proven at trial.

X. SEVENTH CLAIM FOR RELIEF

(Aiding and Abetting Tortious Conduct – Against All Defendants)

158. Cayenne repeats, realleges, and incorporates by reference the allegations set forth in paragraphs 1 through 157 of this Complaint.

159. Defendants MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray have committed torts that have caused injury to Cayenne. For instance, Defendants

1 MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray have infringed Cayenne's
2 patents, misappropriated Cayenne's trade secrets, tortuously interfered with Cayenne's
3 contracts and business expectancies, and unfairly competed against Cayenne.

4 160. Defendants MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray,
5 and each of them, know that the conduct of the other named Defendants constitutes a
6 breach of duty to Cayenne.

7 161. Defendants MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray,
8 and each of them, have substantially assisted and encouraged each of the other named
9 Defendants in the achievement of the tortious conduct directed against Cayenne.

10 162. The encouragement and assistance of Defendants MedShape, Dr.
11 Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray, and each of them, in the tortious conduct
12 against Cayenne caused the tortious conduct to occur.

13 163. The tortious conduct achieved through the aiding and abetting of
14 Defendants MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray has caused
15 damages to Cayenne in an amount to be proven at trial.

16 **XI. NINTH CLAIM FOR RELIEF**

17 **(Conspiracy to Commit Tortious Conduct – Against All Defendants)**

18 164. Cayenne repeats, realleges, and incorporates by reference the allegations
19 set forth in paragraphs 1 through 163 of this Complaint.

20 165. Defendants MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray,
21 and each of them, have agreed and conspired with at least one other person (such as
22 each other, Ms. Arleth, Ms. Burk, and/or the various distributors and consultants
23 named herein) to accomplish tortious conduct. Such conduct includes, for instance,
24 infringement of Cayenne's patents, misappropriation of Cayenne's trade secrets,
25 tortious interference with Cayenne's contracts and business expectancies, and unfair
26 competition against Cayenne.

27 166. Defendants MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray,
28 and each of them, with at least one other person (such as each other, Ms. Arleth, Ms.

Burk, and/or the various distributors and consultants named herein), have accomplished their tortious conduct.

167. Based on the accomplishment of their tortious conduct, Defendants MedShape, Dr. Jacobus, Dr. Gall, Mr. Nash, and Mr. Ray, and each of them, have caused damage to Cayenne in an amount to be proven at trial.

XII. TENTH CLAIM FOR RELIEF

(Breach of Contract – Against Timothy Nash and Joshua Ray)

168. Cayenne repeats, realleges, and incorporates by reference the allegations set forth in paragraphs 1 through 167 of this Complaint.

169. As stated herein, Mr. Nash and Mr. Ray are parties to agreements with Cayenne that obligate them to maintain the confidentiality of Cayenne's Confidential Information. *See supra* ¶¶ 22-35.

170. Mr. Nash was party to Agreements with Cayenne that obligated Mr. Nash not to engage in competitive business with Cayenne for at least one year after the termination of his business relationship with Cayenne.

171. Cayenne has performed, or been excused from performing by reason of Mr. Nash and Mr. Ray's breaches, each, every, and all of the obligations required to be performed by Cayenne under the Agreements.

172. Mr. Nash and Mr. Ray have breached the Agreements by failing to maintain the confidentiality of Cayenne's Confidential Information and by taking, using, and disclosing that information for the benefit of Mr. Nash, Mr. Ray, and MedShape.

173. Mr. Nash has also breached the Agreements by directly or indirectly participating in the business of Cayenne's competitor, MedShape, prior to the expiration of his non-competition period.

174. Mr. Nash has also breached the Agreements by soliciting the business of past, present, or prospective customers, or other business partner of Cayenne, prior to the expiration of his non-competition period.

175. As a result of Mr. Nash and Mr. Ray's breaches of the Agreements, Cayenne has been damaged in an amount to be proven at trial.

XIII. ELEVENTH CLAIM FOR RELIEF

**(Breach of Covenant of Good Faith and Fair Dealing –
Against Timothy Nash and Joshua Ray)**

176. Cayenne repeats, realleges, and incorporates by reference the allegations set forth in paragraphs 1 through 175 of this Complaint.

177. As stated herein, Mr. Nash and Mr. Ray are parties to Agreements with Cayenne that obligate them to maintain the confidentiality of Cayenne's Confidential Information.

178. Mr. Nash was party to Agreements with Cayenne that obligated Mr. Nash not to engage in competitive business with Cayenne for at least one year after the termination of his business relationship with Cayenne.

179. Cayenne had justifiable expectations under its Agreements with Mr. Nash and Mr. Ray.

180. Mr. Nash and Mr. Ray's actions in disclosing confidential information and Mr. Nash's action in violating the terms of the non-competition clauses of the Agreements are inconsistent with Cayenne's justifiable expectations under the Agreements.

181. As a result of Mr. Nash and Mr. Ray's actions, Cayenne has been damaged in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Cayenne seeks relief as follows:

- A. That MedShape be adjudged to have infringed the '528 Patent.
- B. That MedShape be adjudged to have infringed the '294 Patent.
- C. That MedShape be adjudged to have willfully and deliberately infringed the '528 and '294 Patents.

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1 D. That MedShape, its respective officers, directors, agents, servants,
2 employees and attorneys, and all those persons in active concert or participation with
3 them who receive actual notice of the Order, be preliminarily and permanently
4 enjoined from directly or indirectly infringing the '528 and '294 Patents.

5 E. That a judgment be entered against MedShape awarding Cayenne all
6 damages proven at trial, and in no event less than a reasonable royalty for
7 infringement of the '528 and '294 Patents.

8 F. That the damages in this judgment be trebled for MedShape's knowing,
9 intentional, and willful infringement of the '528 Patent and '294 Patent pursuant to 35
10 U.S.C. § 284.

11 G. That this be judged an "exceptional" case within the meaning of 35
12 U.S.C. § 285, and that Cayenne be awarded its attorneys' fees pursuant thereto,
13 recoverable from MedShape.

14 H. That Defendants be adjudged to have misappropriated Cayenne's trade
15 secrets in violation of A.R.S. § 44-401 *et seq.*

16 I. That Defendants and their agents, servants, and employees, and all
17 persons, acting under, in concert with, or for Defendants, be enjoined preliminarily
18 and permanently from using, disclosing, marketing, or delivering trade secrets or
19 Confidential Information belonging to Cayenne.

20 J. That Defendants' conduct in disclosing, misusing, and misappropriating
21 Cayenne's trade secrets be adjudged willful and malicious, and that Cayenne be
22 entitled to punitive and exemplary damages in accordance with A.R.S. § 44-403 and
23 statutory attorney's fees under A.R.S. § 44-404.

24 K. That Defendants be adjudged to have intentionally interfered with
25 Cayenne's contracts with third parties.

26 L. That Defendants be preliminarily and permanently enjoined from
27 intentionally interfering with Cayenne's contracts with third parties.

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1 M. That Defendants be adjudged to have intentionally interfered with
2 Cayenne's business expectancies with third parties.

3 N. That Defendants be preliminarily and permanently enjoined from
4 intentionally interfering with Cayenne's business expectancies with third parties.

5 O. That Defendants be adjudged to have unfairly competed with Cayenne.

6 P. That Defendants be adjudged to have aided and abetted tortious conduct
7 against Cayenne.

8 Q. That Defendants be adjudged to have conspired to commit tortious
9 conduct against Cayenne.

10 R. That Mr. Nash and Mr. Ray be adjudged to have breached their contracts
11 with Cayenne and that Cayenne established a just claim such that Cayenne be entitled
12 to an award of reasonable attorney's fees to mitigate the burden of the expense of
13 litigation under A.R.S. § 12-341.01.

14 S. That Mr. Nash and Mr. Ray be adjudged to have breached their
15 covenants of good faith and fair dealing pursuant to their contracts with Cayenne and
16 that Cayenne established a just claim such that Cayenne be entitled to an award of
17 reasonable attorney's fees to mitigate the burden of the expense of litigation under
18 A.R.S. § 12-341.01.

19 T. That Cayenne be awarded all costs expended or incurred in this litigation
20 pursuant to A.R.S. § 12-341.

21 U. That there be an assessment of pre-judgment and post-judgment interest
22 and costs against MedShape and in favor of Cayenne, and an award of this interest and
23 costs to Cayenne.

24 V. For such other and further relief as this Court may deem just.

25 **DEMAND FOR JURY TRIAL**

26 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff
27 Cayenne Medical, Inc. demands a trial by jury of all issues raised by the pleadings
28 which are triable by jury.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: January 27, 2015

By: /s/ Christy G. Lea

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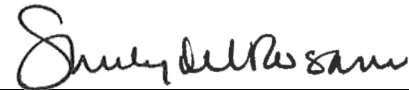
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CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2015, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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