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19 Maquet Cardiovascular LLC

20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**

22 MAQUET CARDIOVASCULAR LLC,

23 Plaintiff,

24 v.

25 SAPHENA MEDICAL, INC. and
26 ALBERT CHIN,

27 Defendants.

Case No.: 3:16-cv-07213-WHA

- FIRST AMENDED COMPLAINT FOR**
1. **PATENT INFRINGEMENT**
 2. **BREACH OF WRITTEN CONTRACT**
 3. **FALSE ADVERTISING IN VIOLATION OF THE LANHAM ACT**
 4. **CORRECTION OF INVENTORSHIP OF PATENT**

DEMAND FOR JURY TRIAL

1 Plaintiff Maquet Cardiovascular LLC (“Maquet”), by and through counsel, for its Complaint
2 against Defendants Saphena Medical, Inc. (“Saphena”) and Dr. Albert Chin (collectively
3 “Defendants”) alleges on knowledge as to its actions, and upon information and belief as to the actions
4 of others, as follows:

5 1. Maquet brings this action to stop Saphena and Dr. Chin from continuing their wrongful
6 and unauthorized use of Maquet’s unique, exclusive, and proprietary rights in its inventive
7 technologies, including those that are the subject of Maquet’s U.S. Patent No. 5,916,233, entitled
8 “Vessel Harvesting Method and Instrument Including Access Port” (“the ’233 Patent”) (Exhibit 1
9 hereto), Maquet’s U.S. Patent No. 6,705,986, entitled “Vein Harvesting System and Method” (“the
10 ’986 Patent”) (Exhibit 2 hereto), and Maquet’s U.S. Patent No. 7,534,243, entitled “Dissection and
11 Welding of Tissue” (“the ’243 Patent”) (Exhibit 3 hereto).

12 2. Additionally, Maquet brings this action because of Dr. Chin’s breach of agreements he
13 had with Maquet, and with companies acquired by Maquet, through his failing to maintain the
14 confidentiality of Maquet’s confidential and proprietary information and, upon information and belief,
15 his failing to return Maquet’s confidential and proprietary information at the end of his employment
16 with Maquet, resulting in harm to Maquet. By his breaches of agreements he had with Maquet, Dr.
17 Chin has also improperly been involved in the application for, and Saphena is the improper assignee
18 of, a patent that issued on information for which Dr. Chin is the not the inventor.

19 3. Finally, Maquet brings this action to stop Saphena from engaging in unfair competition
20 through its false and misleading advertising and promotion of the capabilities of Saphena’s Venapax
21 System, to the detriment of Maquet and its competing products.

22 **THE PARTIES**

23 4. Maquet Cardiovascular LLC is a Delaware limited liability company with its principal
24 place of business at 45 Barbour Pond Drive, Wayne, NJ 07470. Maquet has locations throughout the
25 world, including an office located at 120 Baytech Dr., San Jose, CA 95134 (formerly at 170 Baytech
26 Dr. in San Jose). Maquet has conducted and continues to conduct activities at the San Jose location
27 concerning its patented products including its Vasoview products that compete with Saphena’s
28 Venapax System. Maquet’s San Jose facility also supported Dr. Chin’s research while he was

1 employed at Maquet and still maintains records relevant to the claims alleged in this action. Currently,
2 approximately twenty-five employees are resident at Maquet's San Jose facility.

3 5. Maquet develops, markets, and sells innovative treatment solutions, infrastructure
4 functions, and medical devices for hospital departments. Maquet has been developing solutions for
5 hospital departments and more broadly the medical field since the 1830s.

6 6. In the 1980s, Dr. Albert Chin founded a company that was later acquired by Maquet.
7 Throughout his employment, Dr. Chin's researched, *inter alia*, medical devices useful for or
8 complementary to various surgical procedures. Dr. Chin's research included endoscopic vessel
9 harvesting ("EVH") tools and techniques.

10 7. EVH is a niche area into which Maquet has dedicated significant resources and effort
11 and in which Maquet is known as a worldwide market leader. Such resources include providing
12 facilities, equipment, and materials to allow Dr. Chin to conduct animal experiments on a regular
13 basis—a luxury to a researcher that few others provide in the industry. Additionally, Maquet invested
14 heavily in Dr. Chin by supporting his attendance at advisory meetings and conferences in order to
15 allow him to develop expertise and build relationships that would translate into products and solutions
16 that assist Maquet's customers. These investments, and others, by Maquet are what has allowed it to
17 become a worldwide market leader.

18 8. Dr. Chin's research into EVH while at Maquet, and companies acquired by Maquet,
19 included research and development of a one-pass tool for EVH. While at Maquet and companies that
20 Maquet acquired, Chin conducted countless hours of experiments and design and development work
21 relating to one-pass EVH technology that resulted in substantial proprietary Maquet technology and
22 know-how. Maquet has been granted multiple patents that embody certain portions of the results of
23 its and Dr. Chin's research. Additionally, Maquet has kept and protected other portions of its research
24 and know-how, including, for example, portions of Dr. Chin's research and resulting information, as
25 well as knowledge of the patent landscape pertaining to the field of endoscopic vessel harvesting, as
26 confidential, proprietary, and trade secret information.

27 9. Dr. Chin currently resides in Palo Alto, California. Upon information and belief, Dr.
28 Chin has, for all times relevant to this Complaint, resided in California.

1 10. Dr. Chin left his employment with Maquet in October of 2009 and subsequently co-
2 founded a medical device incubator named Pavilion Medical Innovations, LLC (“Pavilion”). While
3 at Pavilion, Dr. Chin co-founded Saphena Medical, Inc. as one of the companies incubated by Pavilion,
4 and focused entirely on one-pass EVH technology.

5 11. Upon information and belief, Saphena Medical, Inc. is a Delaware corporation with its
6 principal place of business in Massachusetts at 375 West Street, West Bridgewater, MA 02379.
7 Saphena’s registered agent for service of process is Corporation Service Company, at 2711 Centerville
8 Road, Suite 400, Wilmington DE 19808.

9 **JURISDICTION AND VENUE**

10 12. This is an action for patent infringement under the Patent Act, 35 U.S.C. § 271.
11 Accordingly, subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338.

12 13. Maquet’s additional claim for breach of contract is sufficiently related to Maquet’s
13 federal law claims that they form part of the same case or controversy under Article III of the United
14 States Constitution. Thus, this Court has supplemental jurisdiction over the state law claim pursuant
15 to 28 U.S.C. § 1367.

16 14. Upon information and belief, this Court has personal jurisdiction over Saphena
17 because Saphena conducts business in the State of California and within this district, including by
18 developing, using, offering for sale, and selling medical devices that are used for operating on
19 California residents, and by inducing and contributing to infringement by others in California.

20 15. Upon information and belief, this Court has personal jurisdiction over Dr. Chin as he
21 resides at 1638 Portola Avenue, Palo Alto, California, 94306.

22 16. Upon information and belief, venue is proper in this Court pursuant to 28 U.S.C. §§
23 1391(b) and 1400(b).

24 17. This Court is also the proper venue because the Confidential Information, and
25 Invention Assignment Agreement, discussed below, between Maquet and Dr. Chin expressly
26 provides for jurisdiction and venue in California.

27 **INTRADISTRICT ASSIGNMENT**

28 18. Because this action is an Intellectual Property Action within the meaning of Civil Rule

1 3-2(c), the action is to be assigned on a district-wide basis.

2 **BACKGROUND**

3 19. Maquet has a history of innovation, and today designs, develops, and sells innovative
4 treatment solutions and infrastructure functions for extremely demanding hospital departments,
5 including operating rooms, hybrid operating rooms, catheter laboratories, and intensive care units as
6 well as intra- and inter-hospital patient transportation. Maquet employs thousands of employees
7 around the world. Maquet maintains and protects its research and development investment with, *inter*
8 *alia*, maintaining proprietary information as confidential and by obtaining a patent portfolio. Maquet's
9 confidential and proprietary information and its patent rights reflect the efforts and innovation of
10 Maquet's employees. Additionally, Maquet enforces its patent and other rights when necessary to
11 protect its research investment and to protect the efforts of its employees from unauthorized use.

12 **A. Dr. Chin's Employment with Maquet**

13 20. Dr. Chin's employment by Maquet, and companies acquired by Maquet, began in 1989
14 with his employment by Origin MedSystems, Inc. ("Origin") as a co-founder and the Vice President
15 of Research. Origin was later acquired by Eli Lilly and, subsequently, spun off as Guidant
16 Corporation. Boston Scientific Corporation ("BSC") later acquired Guidant. In 2008, Maquet bought
17 two business units of Boston Scientific, one of which included Origin. Dr. Chin's employment
18 continued from Origin, and through the acquisitions, to Maquet, resulting in Dr. Chin being employed
19 by Maquet with the title of Chief Innovation Officer of Maquet.

20 21. In addition to supporting Dr. Chin with market leading resources, Maquet paid
21 substantial consideration to Dr. Chin for his work and for the rights to the results of work he performed
22 while with Maquet and the companies it acquired, including: the right to maintain information as
23 confidential, the right to disclose information to the public, and the right to seek patent production in
24 Maquet's sole discretion, rather than allow Dr. Chin or his subsequent companies to develop
25 competing products.

26 22. Dr. Chin and Maquet, and the companies acquired by Maquet, entered into several
27 written agreements, including a Proprietary Information and Inventions Agreement dated July 12,
28 1989 ("Origin Agreement") (Exhibit 4); a Proprietary Information Agreement dated April 28, 2006

1 (“BSC Agreement”) (Exhibit 5); a Confidential Information, and Invention Assignment Agreement
2 dated May 29, 2008 (“Maquet Agreement”) (Exhibit 6); and a Termination Certification dated October
3 1, 2009 (“Termination Certificate”) (Exhibit 7).

4 23. These agreements required that, *inter alia*, Dr. Chin: (i) recognize that Maquet, and
5 companies acquired by Maquet, have proprietary, confidential, and trade secret information, (ii) hold
6 this information in confidence and not disclose this information during Dr. Chin’s employment or
7 thereafter; (iii) disclose inventions made by Dr. Chin; (iv) assign to Maquet, and companies acquired
8 by Maquet, any invention made by Dr. Chin while employed; and (v) return company documents at
9 the termination of his employment.

10 **1. The Proprietary Information and Inventions Agreement**

11 24. Pursuant to paragraph 1 of the Origin Agreement, Dr. Chin recognized “Proprietary
12 Information”:

13 I recognize that the Company is engaged in a continuous program of research,
14 development and production. I also recognize that the Company possesses or has
15 rights to information (including information developed by me during my
16 employment by the Company) which has commercial value in the Company's
17 business ("Proprietary Information"). For example, Proprietary information
18 includes trade secrets, product ideas, processes, formulas, data and know-how,
19 software and other computer programs and copyrightable materials, mask work
20 rights, marketing plans and strategies, sales and financial reports and forecasts and
21 customer lists.

22 25. Pursuant to paragraph 2 of the Origin Agreement, Dr. Chin agreed that he would keep
23 “Proprietary Information” confidential during and after his employment:

24 I understand and agree that my employment creates a relationship of confidence
25 and trust between me and the Company with respect to (i) all Proprietary
26 Information, and (ii) the confidential information of others with which the
27 Company has a business relationship. At all times both during my employment by
28 the Company and after its termination, I will keep in confidence and trust all such
information, and I will not use or disclose any such information without the written
consent of the Company, except as may be necessary in the ordinary course of
performing my duties to the Company.

29 26. Pursuant to paragraph 3(a) of the Origin Agreement, Dr. Chin agreed that “Proprietary
30 Information” belonged to Origin and assigned to Origin his rights in “Proprietary Information”:

31 All Proprietary Information shall be the sole property of the Company and its

1 assigns, and the Company and its assigns shall be the sole owner of all trade secrets,
2 patents, copyrights, mask work rights and other rights in connection therewith. I
3 hereby assign to the Company any rights I may have or acquire in such Proprietary
4 Information.

5 27. Pursuant to paragraph 3(c) of the Origin Agreement, Dr. Chin agreed that he would
6 disclose all "Inventions":

7 I will promptly disclose to the Company, or any persons designated by it, all
8 improvements, inventions, works of authorship, formulas, ideas, processes,
9 techniques, know-how and data, whether or not patentable (collectively,
10 "Inventions"), made or conceived, reduced to practice or learned by me, either alone
11 or jointly with others, during the term of my employment and for one (1) year
12 thereafter.

13 28. Pursuant to paragraph 3(d) of the Origin Agreement, Dr. Chin agreed to assign
14 "Inventions" related to the company to Origin:

15 All Inventions which I conceive, develop or have developed (in whole or in part,
16 either alone or jointly with others) and (i) use or have used equipment, supplies,
17 facilities or trade secret information of the Company, or (ii) use or have used the
18 hours for which I am to be or was compensated by the Company, or (iii) which
19 relate at the time of conception or reduction to practice thereof to the business of
20 the Company or to its actual or demonstrably anticipated research and development
21 or (iv) which result from any work performed by me for the Company shall be the
22 sole property of the Company and its assigns (and to the fullest extent permitted by
23 law shall deemed works made for hire), and the Company and its assigns shall be
24 the sole owner of all patents, copyrights and other rights in connection therewith. I
25 hereby assign to the Company any rights I may have or acquire in such Inventions.
26 I agree that any Invention required to be disclosed under paragraph (c) above within
27 one (1) year after the term of my employment shall be presumed to have been
28 conceived during my employment. . . .

29. Pursuant to paragraph 2(b) of the Origin Agreement, Dr. Chin agreed to return all
30 materials and property to Origin upon termination:

31 All documents, records, apparatus, equipment and other physical property, whether or not
32 pertaining to Proprietary Information, furnished to me by the Company or produced by me or
33 others in connection with my employment shall be and remain the sole property of the
34 Company. I shall return to the Company all such materials and property as and when requested
35 by the Company. Even if the Company does not so request, I shall return all such materials and
36 property upon termination of my employment by me or by the Company for any reason, and I
37 will not take with me any such material or property or any reproduction thereof upon such
38 termination.

39 30. Pursuant to paragraph 9 of the Origin Agreement, Dr. Chin agreed that the agreement
40 "shall inure to the benefit of the Company, its successors and assigns."

1 31. Dr. Chin signed the Origin Agreement on July 12, 1989. Exhibit 4 at 4.

2 **2. The Proprietary Information Agreement**

3 32. Pursuant to paragraph 1(a) of the BSC Agreement, Dr. Chin agreed, *inter alia*, to hold
4 confidential, proprietary, and trade secret information in confidence:

5 I agree at all times during the term of my employment and thereafter to hold in
6 strictest confidence, not to use, except for the benefit of the Company, or to disclose
7 to any person, firm or corporation, without written authorization of the Board of
8 Directors of the Company, any trade secrets, confidential knowledge, data or other
9 proprietary information relating to products, processes, know-how, designs,
10 formulas, developmental or experimental work, computer programs, databases,
other original works of authorship, customer lists, business plans, financial
information or other subject matter pertaining to any business of the Company or
any of its clients, consultants or licensees.

11 33. Pursuant to paragraph 2(b) of the BSC Agreement, Dr. Chin agreed that he would
12 disclose and assign inventions he conceived related to the company while he was employed by BSC:

13 I agree that I will promptly make full written disclosure to the Company, will hold
14 in trust for the sole right and benefit of the Company, and will assign to the
15 Company all my right, title, and interest in and to any and all inventions, original
16 works of authorship, developments, improvements or trade secrets which I may
solely or jointly conceive or develop or reduce to practice, or cause to be conceived
or developed or reduced to practice, during the period of time I am in the employ
of the Company. . . .

17 34. Pursuant to a paragraph entitled "Returning Company Documents" on page 2 of the
18 BSC Agreement, Dr. Chin agreed to return all materials and property to BSC upon termination:

19 I agree that, at the time of leaving the employ of the Company, I will deliver to the Company
20 (and will not keep in my possession or deliver to anyone else) any and all devices, records,
21 data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints,
22 sketches, materials, equipment, other documents or property or reproductions of any
aforementioned items belong to the Company, its successors or assigns.

23 35. Pursuant to paragraph 6(d) of the BSC Agreement, Dr. Chin agreed that the agreement
24 "will be for the benefit of the Company, its successors, and its assigns."

25 36. Dr. Chin signed the BSC Agreement on April 28, 2006. Exhibit 5 at 2.

26 **3. The Confidential Information, and Invention Assignment Agreement**

27 37. Pursuant to paragraph 3(a) of the Maquet Agreement, Dr. Chin, *inter alia*, recognized
28 Maquet's "Proprietary Information" and agreed to hold this information in confidence:

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I agree that I will not, at any time during my employment or after the termination of my employment, with the Company communicate, disclose, or otherwise make available to any person or entity . . . , or use for my account . . . or for the benefit of any other person or entity, any information or materials proprietary to the Company that relates to the Company's business or affairs which is of a confidential nature ("Proprietary Information"). Proprietary Information means information or material that is commercially valuable to the Company and not generally known in the industry. This includes . . . (b) technical information concerning the Company's products and services, including product data and specifications, diagrams, flow charts, drawings, manuals, proposals, test results, know-how, processes, inventions, research projects and product development; . . . and (f) any other information not generally known to the public which, if misused or disclosed, could reasonably be expected to adversely affect the Company's business. . . . I further agree that I will retain such knowledge and information which I acquire and develop during my employment respecting such Proprietary Information in trust for the sole and exclusive benefit of the Company and its successors and assigns.

38. Pursuant to paragraph 5(b) of the Maquet Agreement, Dr. Chin agreed to disclose any inventions he made to Maquet and assign any interest he may have in such inventions to Maquet:

I agree that I will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and hereby assign to the Company, or its designee, all my right, title, and interest in and to any and all inventions, original works of authorship, developments, concepts, improvements, designs, discoveries, ideas, trademarks, or trade secrets, whether or not patentable or registrable under patent, copyright, or similar laws, which I may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, during the period of time I am in the employ of the Company (including during my off duty hours), or with the use of Company's equipment, supplies, facilities, or Company Proprietary Information (collectively referred to as "Inventions"). . . .

39. Pursuant to paragraph 6 of the Maquet Agreement, in a paragraph entitled "Return of Company Documents," Dr. Chin agreed to return all materials and property to Maquet upon termination:

I will promptly communicate and disclose to the Company all observations made and data obtained by me in the course of my employment by the Company. Upon the termination of my employment (or at such earlier time as the Company may request me to do so), I will promptly deliver the same to the Company or to any party designated by it, without retaining any copies, notes, or excerpts thereof. I agree to render to the Company, or to any party designated by it, such reports of the activities undertaken by me or conducted under-my direction during my employment as the Company may request. . . .

40. Dr. Chin signed the Maquet Agreement on May 29, 2008. Exhibit 6 at 6.

4. The Termination Certification

1 41. Dr. Chin signed the Termination Certificate when his employment with Maquet ended.

2 42. Pursuant to the second paragraph of the Termination Certificate, Dr. Chin agreed that
3 he had complied with the Maquet Agreement:

4 I further certify that I have complied with all the terms of the Company's At-Will
5 Employment, Confidential Information, and Invention Assignment Agreement
6 signed by me, including the reporting of any inventions and original works of
7 authorship (as defined therein) conceived or made by me (solely or jointly with
8 others), as covered by that agreement.

9 43. Pursuant to the third paragraph of the Termination Certificate, Dr. Chin agreed that he
10 would preserve the confidentiality of Maquet's confidential information:

11 I further agree that, in compliance with the At-Will Employment, Confidential
12 Information, and Invention Assignment Agreement, I will preserve as confidential
13 all Company Confidential Information and Associated Third Party Confidential
14 Information, including trade secrets, confidential knowledge, data, or other
15 proprietary information relating to products, processes, know-how, designs,
16 formulas, developmental or experimental work, computer programs, databases,
17 other original works of authorship, customer lists, business plans, financial
18 information, or other subject matter pertaining to any business of the Company or
19 any of its employees, clients, consultants, or licensees.

20 44. Dr. Chin signed the Termination Certificate October 1, 2009. Exhibit 7.

21 **B. Maquet's Confidential and Proprietary Information**

22 45. As an employee of Maquet, and companies acquired by Maquet, Dr. Chin had access
23 to Maquet's confidential, proprietary, and trade secret information. In particular, as Maquet's Chief
24 Innovation Officer, Dr. Chin had access to both his own research and research by others employed at
25 Maquet, in which Maquet holds all right, title and interest.

26 46. Dr. Chin had access to prototypes, designs, animal research facilities and results,
27 conclusions, improvements, etc. derived from using and testing such prototypes and designs in
28 extensive use of Maquet-funded animal studies.

47. Maquet spent substantial amounts of time and money to develop this confidential,
proprietary, and trade secret information, including allowing Dr. Chin to conduct extensive research,
development, and enhancements to, *inter alia*, endoscopic vessel harvesting technologies. Dr. Chin
carried out hundreds of hours of clinical testing in order to develop and optimize endoscopic vessel
harvesting tools, including one-pass EVH technology.

1 48. Additionally, Maquet invested time and money into Dr. Chin's relationships with the
2 users of Maquet's products by, *inter alia*, supporting Dr. Chin's participation in conferences and
3 visitation of customers, including visiting customers with Maquet's sales representatives.

4 49. While at Maquet, Dr. Chin researched, developed, and tested a one-pass device. Dr.
5 Chin spent many years on this device while employed by Maquet and companies acquired by Maquet.
6 Dr. Chin referred to at least one one-pass concept he was working on as the "Torpedo." While Maquet
7 has patented certain inventions conceived from Dr. Chin's research, Maquet choose to keep as
8 confidential other information gained through research.

9 50. Also while at Maquet (then Boston Scientific), Dr. Chin was also briefed on, and had
10 direct access to, a revolutionary Boston Scientific design for a unitary harvesting device with
11 integrated cautery developed by Boston Scientific employee, Thang Thomas Ung, which was part of
12 a larger research effort codenamed Project "Revolution." Whereas conventional vein harvesting
13 devices typically comprised two devices, one for dissection and another for harvesting, the unitary
14 harvesting design developed by Mr. Ung beginning in around April 2006 was an improvement on then
15 available EVH processes because it was capable of performing both dissection and harvesting with
16 the same device, thereby offering several benefits, including without limitation ease of use, the
17 elimination of the need for a vein manipulator, and the enablement of a single pass harvest by
18 containing the vessel in a gated ring.

19 51. Specifically, the unitary harvesting design was an endoscopic cannula based device
20 consisting, in general terms, of (a) a clamping member movable parallel to the center axis of the vein,
21 (b) a second member that received the first member to create pressure, comprising an annular or ring
22 element that could be translated independently, (c) a stationary cone-shaped tip, (d) at least one
23 electrode positioned between the two members to deliver cautery energy, and (e) at least one cutting
24 member that separates the branch or vein. In one variant of the design, the two members form a ring-
25 shaped tool to enclose the vein.

26 52. Dr. Chin had access to the unitary harvesting design during its development. On or
27 around May 26, 2006, Dr. Chin was present during a test at an animal study to evaluate the form factor
28 of the design. Further, in or around April 2007, Dr. Chin tested the unitary harvesting prototype device

1 and approved of its ease of use. Dr. Chin, however, played no role whatsoever in the conception or
2 reduction to practice of Mr. Ung's unitary harvesting design. All information at Boston Scientific
3 regarding Project Revolution, including the unitary harvesting design invented by Mr. Ung, was held
4 and protected as confidential company information.

5 53. Mr. Ung contractually agreed to assign all inventions he conceived of while employed
6 by Boston Scientific, during his employment hours and using Boston Scientific resources, to Boston
7 Scientific (which, as discussed above, was later reorganized into Maquet). Therefore, Mr. Ung's
8 inventorship rights in the unitary harvesting design were contractually assigned to Maquet.

9 **C. Maquet's Patented Inventions at Issue**

10 54. Maquet chose to patent some inventions from its research instead of keeping them
11 confidential, including the '233 Patent (Exhibit 1), the '986 Patent (Exhibit 2), and the '243 Patent
12 (Exhibit 3). Albert K. Chin is the sole inventor of the '233 Patent and is one of four inventors of the
13 '243 Patent.

14 55. Maquet offers multiple endoscopic vessel harvesting products, including the Vasoview
15 Hemopro EVH System, the Vasoview Hemopro 2 EVH System, the Vasoview 6 Pro EVH System,
16 and the Vasoview 7 EVH System. A description of these products taken from Maquet's website is
17 attached hereto as Exhibit 8.

18 **1. The '233 Patent**

19 56. The '233 Patent was duly and lawfully issued by the United States Patent Office on
20 June 29, 1999. Maquet is the lawful owner of all right, title, and interest in and to the '233 Patent,
21 including the right to sue for and recover for infringement thereof. The term of the '233 Patent has
22 not expired.

23 57. The '233 Patent generally "relates to vessel harvesting methods and cannula apparatus
24 including a visualizing tip at a distal end for an endoscope within a lumen of the cannula, and including
25 an access port at the distal end of the cannula aligned with another lumen of the cannula through which
26 surgical instruments may be manipulated." Exhibit 1, col. 1, lns. 12-17. Endoscopic vessel harvesting
27 is a surgical technique for harvesting a vessel (e.g., a vein) of a patient. The technique generally
28 includes inserting a surgical apparatus through an incision near the vessel. The surgical apparatus

1 allows for visually tracking the vessel while dissecting connective tissue along the surface of the
2 vessel. When ready, a dissection instrument is used to harvest (i.e., remove) the desired vessel.

3 58. The claims of the '233 Patent are directed to a surgical apparatus, and a method of
4 using a surgical apparatus, for endoscopic vessel harvesting. As an example, Claim 1 of the '233
5 Patent, in general, claims a surgical apparatus having an elongated cannula with plural lumina, an
6 endoscope disposed within one of the lumina, and a dissection tip attached to the other end of the
7 cannula. Also, in general, the dissection tip includes a transparent tapered tip and includes an access
8 port to permit protrusion of a surgical instrument. Claim 11 generally relates to a method of using a
9 surgical apparatus during endoscopic vessel harvesting that is similar to the apparatus described in
10 Claim 1. The specific limitations of Claims 1 and 11 are available in their entirety in Exhibit 1.

11 **2. The '986 Patent**

12 59. The '986 Patent was duly and lawfully issued by the United States Patent Office on
13 March 16, 2004. Maquet is the lawful owner of all right, title, and interest in and to the '986 Patent,
14 including the right to sue for and recover for infringement thereof. The term of the '986 Patent has
15 not expired.

16 60. The '986 Patent generally "relates to a system and a method for harvesting a generally
17 cylindrical tissue structure from the body of a patient." Exhibit 2, col. 1, lns. 8-10. The system of the
18 '986 patent includes "an extendible or telescoping device having desired tools at its distal end. The
19 tools are activated at the proximal end of the telescoping device." *Id.* at col. 2, lns. 55-59. The system
20 allows for "deploying the telescoping device to the length desired to dissect the vein from surrounding
21 tissue." *Id.* at col. 2, lns. 61-62.

22 61. The claims of the '986 Patent are directed to a system, and a method of using the
23 system, for harvesting a section of a vessel, such as a vein. As an example, Claim 17 of the '986
24 Patent, in general, claims a system for harvesting a vessel. The system has a tool used to harvest the
25 vessel, with the tool being sized to be inserted through an incision. Also, the system has a telescoping
26 member connecting to a dissecting tool. The telescoping member has two cylindrical segments with
27 one cylindrical segment sized to fit within the other. The telescoping member telescopes by slidably
28 extending the inner cylindrical segment from a fully collapsed position to a fully extended position.

1 The specific limitations of Claim 17 are available in their entirety in Exhibit 2.

2 **3. The '243 Patent**

3 62. The '243 Patent was duly and lawfully issued by the United States Patent Office on
4 May 19, 2009. Maquet is the lawful owner of all right, title, and interest in and to the '243 Patent,
5 including the right to sue for and recover for infringement thereof. The term of the '243 Patent has
6 not expired.

7 63. The '243 Patent generally relates to a surgical instrument for “welding and severing
8 blood vessels.” Exhibit 3, *Abstract*. The surgical instrument “includes a tapered tissue-dissecting tip
9 disposed at a distal end of an elongated cannula and includes an arm” that moves between an open and
10 closed position. *Id.* at col. 1, lns. 42-44. When the arm is in an open position the tissue welder is
11 exposed for “compressing and welding or cauterizing tissue structures such as blood vessels.” *Id.* at
12 col. 1, lns. 57-57. When the arm is in a closed position “the exterior wall of the tissue-dissecting tip
13 may be configured initially as substantially smooth and devoid of surface protrusions that might
14 undesirably avulse a blood vessel during dissection of tissue in contact with the wall of the tip.” *Id.*
15 at col. 1, lns. 58-62.

16 64. The claims of the '243 Patent are directed to a surgical apparatus for dissecting and
17 welding tissue. As an example, Claim 9 of the '243 Patent, in general, claims a surgical apparatus
18 having an elongated cannula with a tissue-dissecting tip that substantially encloses the distal end of a
19 lumen that extends through the cannula. The tip is transparent and allows for use of an endoscope that
20 can see through the transparent tip. The instrument has an arm that is mounted so the arm moves
21 relative to an exterior wall of the tip, with the movement being between a closed configuration and an
22 open configuration. The open configuration includes the arm being skewed in relation to the walls of
23 the tip. The instrument has a tissue welder that, in a closed configuration, is in a substantially
24 unobtrusive position. In the open configuration the tissue welder is exposed. The instrument also has
25 controls for the arm and tissue welder for moving the arm and energizing the tissue welder. The
26 specific limitations of Claim 9 are available in their entirety in Exhibit 3.

27 **D. Dr. Chin's Work with Saphena**

28 65. After Dr. Chin left Maquet he co-founded a medical device incubator named Pavilion.

1 Dr. Chin, subsequent to co-founding Pavilion, co-founded Saphena in January of 2013 as one of the
2 companies incubated by Pavilion. Saphena's products focus on the one-pass technology, the very
3 same technology Dr. Chin was working on for Maquet.

4 66. While at Pavilion and, later, at Saphena, Dr. Chin was involved with the concept,
5 creation, and design of Saphena's one-pass endoscopic vessel harvesting tool named the Venapax
6 Endoscopic Vessel Harvesting System ("Venapax System").

7 67. Saphena began making, using, offering to sell, and selling the Venapax System for use
8 in endoscopic vessel harvesting, including use and evaluation by customers around the country. Upon
9 information and belief, Dr. Chin utilized prototyping labs and facilities in San Carlos, California
10 during the development of the Venapax System.

11 68. Many of the customers Saphena targets are the same customers and prospects to whom
12 Maquet has marketed and sold products. Thus, Saphena is seeking to deprive Maquet of sales by
13 converting Maquet customers to Saphena products. The customers that Saphena has offered to sell or
14 has sold the Venapax System include hospitals, doctors, and physician assistants, including hospitals,
15 doctors, and physician assistants in California and elsewhere.

16 69. Saphena's targeting of Maquet's customers is intentional. While at Origin and Guidant,
17 Dr. Chin worked with others who have now been recruited to assist Saphena in selling to Maquet
18 customers. Michael Glennon is the President and CEO of Saphena. Mr. Glennon previously worked
19 with Dr. Chin at Origin and Guidant in sales, and was involved selling and managing sales of early
20 Vasoview products—precursors to Maquet's current product offerings. Additionally, sales employees
21 that used to sell for Maquet, and companies acquired by Maquet, are being used by Saphena to sell the
22 Venapax System, including but not limited to Scott Drikakis, Cindy Duwe, and Calvin Magee. Upon
23 information and belief, Saphena is leveraging relationships that Maquet, and companies acquired by
24 Maquet, developed with customers to now develop and sell the Venapax device to Maquet's
25 customers.

26 70. Maquet and Saphena entered into discussions for Maquet to learn details of the
27 Venapax System but no information was discussed until a non-disclosure Agreement was in place,
28 which occurred in late July of 2014.

1 71. It was after the non-disclosure agreement was in place, and after Saphena requested
2 that Maquet consider purchasing its entire business, that Maquet began to discover that Dr. Chin had
3 failed to maintain the confidentiality of Maquet's information, despite his agreement to do so.

4 72. Saphena's Venapax System directly competes with Maquet's products. As noted
5 previously, Saphena and Dr. Chin have been targeting and are continuing to target Maquet's customers
6 and prospects in order to compete with Maquet by offering for sale and selling Saphena's Venapax
7 System products.

8 73. A description of the Venapax System taken from Saphena's website is attached hereto
9 as Exhibit 9. The attached materials describe the Venapax System as a surgical apparatus, "a
10 cardiovascular device," that is used for endoscopic vessel harvesting, and that the Venapax System is
11 for use with "a range of existing rigid endoscopes." *Id.* at 1. The Venapax System "is a single
12 comprehensive [endoscopic vein harvesting] device." *Id.* at 3. Additionally, Saphena's website
13 describes this one-pass system as a "unitary system" with "everything you need is built in so device
14 exchanges are eliminated." *Id.* at 10.

15 74. In addition to the description, the images in the attached materials show the physical
16 characteristics of the Venapax System. These physical characteristics show in general a surgical
17 apparatus having an elongated cannula, an endoscope disposed within the cannula, and a dissection
18 tip attached to the end of the cannula that includes a transparent tapered tip and an access port to permit
19 protrusion of a surgical instrument. *Id.* at 2. The access port allows for "electrodes [to] be easily
20 deployed or retracted as needed during dissection. Precise control is delivered via circumferential
21 rotation of electrodes within a defined arc." *Id.* Upon information and belief, the Venapax system
22 includes an inner cylinder connected to the electrodes that slidably extends such that the electrodes are
23 extended through the access port. As shown, the electrodes are deployed by sliding them through the
24 access port by a user's manipulation of controls at the opposite end of the Venapax System. When
25 the electrodes are extended they are skewed in relation to the walls of the transparent tip such that the
26 "electrode blade edge ligates tissue after cauterization." *Id.* at 2. When the electrodes are retracted,
27 they are disposed in an unobtrusive position. *Compare id.* at 2 with *id.* at 4.

28 75. Also, as shown in Exhibit 10, Saphena provides instructions for using the Venapax

1 System. These instructions direct customers regarding the intended use of the Venapax System along
2 with a customer's endoscope for endoscopic vessel harvesting. Upon information and belief, Saphena
3 developed the Venapax System to utilize the Maquet 7mm endoscope.

4 76. Saphena registered the Venapax System device with the Food and Drug
5 Administration. The FDA registration of the Venapax System is attached as Exhibit 11 (listing
6 premarket submission no. K140603). The Venapax System is associated with Saphena's filing of a
7 Premarket Notification (a.k.a. 510(k)) with the FDA on March 10, 2014. The original filing used the
8 trade name of "OnePass Endoscopic Vessel Harvesting System." The FDA's Premarket Notification
9 decision is attached as Exhibit 12 (bearing premarket submission no. K140603). Upon information
10 and belief, "OnePass Endoscopic Vessel Harvesting System" is the Venapax System.

11 77. The 510(k) filing stated that the "device performance characteristics were evaluated in"
12 multiple studies, including "design verification testing," "compatibility testing with standard 7mm
13 [endoscope]," and "simulated animal testing use evaluation." Exhibit 12 at 2. Further, the filing states
14 that Saphena's device is substantially equivalent to a predicate device—the "Maquet Cardiovascular,
15 LLC Vasoview 6 Pro Endoscopic Harvesting System"—and "is equivalent to the predicate device in
16 terms of intended use, principles of operation, technology, design, materials, and performance." *Id.*
17 The filing, in summary, states that Saphena's product "is substantially equivalent to the predicate
18 device in terms of its intended use, performance characteristics and product labeling. Based on the
19 product technical information provided in this premarket notification, [Saphena's device] has been
20 shown to be substantially equivalent to the currently marketed predicate device." *Id.*

21 78. Saphena's description of the Venapax System being substantially equivalent to
22 Maquet's product is not by coincidence. On information and belief, Dr. Chin, and Saphena through
23 Dr. Chin, used Maquet's patented technology and leveraged Maquet's confidential information that
24 Dr. Chin learned through his years of research at Maquet to develop the Venapax System.

25 79. Saphena began making, using, and, upon information and belief, selling the first
26 generation Venapax System so that the system may be used in tests by doctors around the country.
27 Upon information and belief, Saphena has offered to sell or sold, the Venapax System for use and
28 evaluation by multiple hospitals and doctors in California, and elsewhere in the United States.

1 80. Saphena has, and continues to, develop new generations of the Venapax System.
2 Saphena is currently on the third generation of the product. Upon information and belief, Saphena
3 continues its development based upon use of the Venapax System by customers in California and
4 elsewhere. Saphena continues to offer to sell and sells the Venapax System to hospitals and doctors
5 in California and elsewhere in the United States.

6 **E. Saphena’s False and/or Misleading Marketing of the Venapax System**

7 81. On information and belief, Saphena’s Venapax System is not only the product of
8 wrongdoing by Saphena and Dr. Chin; it is also the subject of inaccurate and/or misleading
9 advertisements and other promotional activities by Saphena. For example, in a marketing PowerPoint
10 slide entitled “Common Arguments Debunked,” Saphena claimed that in the Venapax System,
11 “energy can be concentrated like force can be concentrated” and includes a diagram purporting to
12 show the bipolar RF energy field delivered by the Venapax System when used for EVH, compared to
13 the energy field in a competing Maquet Vasoview Bi-Sector product. On information and belief, the
14 electric field lines in the Saphena diagram for the Venapax System are inaccurate, in that the field
15 lines are incorrectly shown emanating from (or being received into) only the top of the sharp blade
16 electrode, instead of the entire electrode surface. Similarly, Maquet is informed and believes, and on
17 that basis alleges, that the statement about energy concentration is also inaccurate because as tissue
18 heats and becomes dessicated, the field lines will move further outward to areas of lower impedance.

19 82. On information and belief, the “Common Arguments Debunked” presentation slide
20 was delivered by Saphena to potential customers, including without limitation Trinity Group (which
21 consists of OakHill Hospital, Bayonet Point, and Trinity Hospital), both in hard copy delivered in
22 person as well as electronically across state lines.

23 83. In addition, at a presentation given during the 35th Annual Meeting of the Association
24 Of Physician Assistants In Cardiovascular Surgery (APACVS) in or around mid-March 2016
25 (available at <https://www.youtube.com/watch?v=QTxxZug5iHg>), JoAnn Montecalvo, a physician’s
26 assistant, suggests that the Saphena Venapax System does not result in any charring (which she equates
27 with thermal damage) of the vein, unlike conventional EVH solutions. On information and belief, this
28 presentation was sponsored by Saphena, as acknowledged by Ms. Montecalvo at the beginning of the

1 video and the fact that Saphena ostensibly uploaded the video on YouTube.

2 84. Also on information and belief, these statements by Ms. Montecalvo about charring
3 with conventional EVH solutions (including Maquet's HemoPro product) and the relative absence
4 thereof with the Saphena Venapax System, are highly misleading and inaccurate. For example, in a
5 presentation also sponsored by Saphena given at the same 35th Annual Meeting of the APACVS on
6 March 15, 2016, Jerene Bitondo, a physician's assistant, who identified herself as a member of the
7 advisory board to Saphena, showed charring on several vein branches after use of the Saphena
8 Venapax System, as well as visible blanching (which indicates heating) of the branch up to the juncture
9 of the graft conduit during energy application (available at
10 <https://www.youtube.com/watch?v=J4xyaO-65UU>).

11 85. Further, on information and belief, Saphena sponsored a testimonial video (available
12 at <https://www.youtube.com/watch?v=zdC0GF3iqHc>) by Matthew Petrides, a physician's assistant,
13 in which he describes the supposed benefits of the Venapax System. Among those, Mr. Petrides states
14 that "because it's soft, it's not compressing the vein, it's not occluding the vein, it's not damaging the
15 vein in any way while you're doing your dissection." On information and belief, this statement on
16 behalf of Saphena is misleading for at least two reasons. First, although the trocar is made of a flexible
17 elastomeric material, it is rigid enough to collapse the lumen of a vein, which has extremely thin,
18 flaccid walls. Second, pressure exerted on the trocar during manipulation of the cannula of the
19 Venapax System is sufficient to fully collapse the lumen of the vein.

20 **CLAIM 1 – INFRINGEMENT OF U.S. PATENT NO. 5,916,233**

21 86. The allegations contained in Paragraphs 1 through 85 above are incorporated herein by
22 reference.

23 87. Upon information and belief, Saphena has, without authority from the patent holder,
24 infringed the '233 Patent directly, literally and/or under the doctrine of equivalents, within the
25 prohibitions of at least 35 U.S.C. § 271(a), including, but not limited to, independent Claims 1 and 11
26 and continues to do so by having used the Venapax System in the United States. Upon information
27 and belief, Saphena's description and images of the Venapax System, discussed above, demonstrate
28 that the use of the Venapax System meets the limitations of at least Claim 1 of the '233 Patent. Further,

1 upon information and belief, Saphena has infringed the patented method by using its Venapax System
2 in the State of California and elsewhere in the United States. Upon information and belief, Saphena's
3 use of the Venapax System with an endoscope meets the limitations of at least Claims 1 and 11 of the
4 '233 Patent.

5 88. Upon information and belief, Saphena also induced infringement of the '233 Patent by
6 U.S. customers within the prohibitions of at least 35 U.S.C. § 271(b), including, but not limited to,
7 independent Claims 1 and 11 and continues to do so. These customers include, upon information and
8 belief, hospitals in this district, including El Camino Hospital. Saphena has been aware of the '233
9 Patent, and on notice of infringement of the '233 Patent since at least May 19, 2014, which is prior to
10 the filing of this complaint, as shown by a letter from Maquet to Saphena (Exhibit 13 hereto).
11 Additionally, Saphena's awareness of Maquet's intellectual property is acknowledged by Saphena in
12 a response to Maquet's letter indicating Saphena did not believe that Saphena infringed Maquet's
13 intellectual property (Exhibit 14 hereto). Upon information and belief, Saphena has known, or
14 willfully blinded itself to knowing, that providing instructions to its customers about use of the
15 Venapax System would result, and has resulted, in Saphena's customers directly infringing the '233
16 Patent. Further, upon information and belief, Saphena encourages and facilitates infringement of the
17 '233 Patent by instructing customers to use the Venapax System in an infringing manner. Examples
18 of such instructions are attached as Exhibit 10. Additionally, upon information and belief, Saphena's
19 design of the Venapax System induces a customer to infringe the '233 Patent by requiring the Venapax
20 System to be used in an infringing manner. Thus, the use of the Venapax System by Saphena's
21 customers infringe the '233 Patent by practicing at least Claims 1 and 11 of the '233 Patent.

22 89. Upon information and belief, Saphena also contributorily infringed the '233 Patent
23 within the prohibitions of at least 35 U.S.C. § 271(c), including, but not limited to, independent Claims
24 1 and 11 and continues to do so. The Venapax System, due to its specific design, discussed above,
25 constitutes a material part of the claims of the '233 Patent and has no substantial non-infringing uses.
26 Specifically, as shown on Saphena's website (Exhibit 9) and discussed above, the Venapax System is
27 specifically made to be used, and it has been used, in endoscopic vessel harvesting and it is a surgical
28 apparatus, that when used, has an elongated cannula with plural lumina, an endoscope disposed within

1 the cannula, and a dissection tip having a transparent tapered tip and an access port to permit protrusion
2 of a surgical instrument. Thus, upon information and belief, the Venapax System is known by Saphena
3 to be especially made or especially adapted for use in a manner that infringes the '233 Patent. Further,
4 Saphena does not describe or advertise the Venapax System to be capable of any other uses. Thus,
5 upon information and belief, Saphena contributed to the direct infringement of Saphena's customers.
6 Further, upon information and belief, Saphena knew that the providing materials regarding using the
7 Venapax System to its customers would result, and has resulted, in Saphena's U.S. customers directly
8 infringing the '233 Patent, including at least Claims 1 and 11 of the '233 Patent.

9 90. Upon information and belief, Dr. Chin is a corporate officer of Saphena and has
10 personally used, taken part in, actively and knowingly assisted with, and/or aided and abetted
11 inducement of others, including Saphena's U.S. customers, to directly infringe at least Claims 1 and
12 11 of the '233 Patent. Dr. Chin, as the inventor of the '233 Patent, had knowledge of the '233 Patent
13 and, upon information and belief, was on notice that use of the Venapax System infringed the '233
14 Patent since at least May 20, 2014—the date of the letter from Maquet to Saphena regarding Saphena's
15 infringement (Exhibit 13 hereto). Upon information and belief, Dr. Chin has known, or at least
16 willfully blinded himself to knowing, that providing instructions to its customers about use of the
17 Venapax System would result, and has resulted, in Saphena's customers directly infringing the '233
18 Patent. Upon information and belief, Dr. Chin has used the Venapax device and has proctored doctors
19 in using the Venapax device in operating rooms that are located in this district and elsewhere in the
20 United States, including providing instructions regarding using the Venapax System in an infringing
21 manner.

22 91. Upon information and belief, Saphena's and Dr. Chin's infringement of the '233 Patent
23 has been willful and deliberate, despite an objectively high likelihood that its actions constitute
24 infringement of the '233 Patent.

25 92. Maquet has been and will continue to be damaged and irreparably injured unless this
26 Court enjoins Saphena's and Dr. Chin's infringing activities.

27 93. Maquet seeks damages in an amount adequate to compensate for Saphena's and Dr.
28 Chin's infringement, a permanent injunction barring Saphena and Dr. Chin from continuing to infringe

1 Maquet's patents, and attorneys' fees and costs associated with this action.

2 **CLAIM 2 – INFRINGEMENT OF U.S. PATENT NO. 6,705,986**

3 94. The allegations contained in Paragraphs 1 through 93 above are incorporated herein by
4 reference.

5 95. Upon information and belief, Saphena has, without authority from the patent holder,
6 infringed the '986 Patent directly, literally and/or under the doctrine of equivalents within the
7 prohibitions of at least 35 U.S.C. § 271(a), including, but not limited to, independent Claim 17 and
8 continues to do so by having made, used, offered to sell, and sold the Venapax System in the United
9 States. Upon information and belief, Saphena's description and images of the Venapax System,
10 discussed above, demonstrate that the Venapax System meets the limitations of at least Claim 17 of
11 the '986 Patent Further, upon information and belief, Saphena has infringed the patent by using the
12 Venapax System in the State of California and elsewhere in the United States. Upon information and
13 belief, Saphena's use of the Venapax System with an endoscope meets the limitations of at least Claim
14 17 of the '986 Patent.

15 96. Upon information and belief, Saphena also induced infringement of the '986 Patent by
16 U.S. customers within the prohibitions of at least 35 U.S.C. § 271(b), including, but not limited to,
17 independent Claim 17 and continues to do so. These customers include, upon information and belief,
18 hospitals in this district, including El Camino Hospital. Upon information and belief, Saphena has
19 been aware of the '986 Patent, and its infringement of the '986 Patent prior to the filing of this
20 complaint. The '986 Patent was submitted to the U.S. Patent and Trademark Office on March 21,
21 2013 in an information disclosure statement that lists the '986 Patent as prior art to a patent application
22 filed on behalf of Albert Chin that was assigned to Saphena Medical (Exhibit 15 at 5 and 8). Upon
23 information and belief, Saphena has known, or willfully blinded itself to knowing, that providing
24 instructions to its customers about use of the Venapax System would result, and has resulted, in
25 Saphena's customers directly infringing the '986 Patent. Further, upon information and belief,
26 Saphena encourages and facilitates infringement of the '986 Patent by instructing customers to use the
27 Venapax System in an infringing manner. Examples of such instructions are attached as Exhibit 10.
28 Additionally, upon information and belief, Saphena's design of the Venapax System induces a

1 customer to infringe the '986 Patent by requiring the Venapax System to be used in an infringing
2 manner. Thus, the use of the Venapax System by Saphena's customers infringes the '986 Patent by
3 practicing at least Claim 17 of the '986 Patent.

4 97. Upon information and belief, Saphena also contributorily infringed the '986 Patent
5 within the prohibitions of at least 35 U.S.C. § 271(c), including, but not limited to, independent Claim
6 17 and continues to do so. The Venapax System, due to its specific design, discussed above,
7 constitutes a material part of the claims of the '986 Patent and has no substantial non-infringing uses.
8 Specifically, as shown on Saphena's website (Exhibit 9) and discussed above, the Venapax System is
9 specifically made to be used, and it has been used, in endoscopic vessel harvesting and it is a surgical
10 tool that is sized to be inserted through an incision and that has a dissecting tool connected to a
11 telescoping member made of two cylindrical segments, one segment fitting inside the other, that
12 slidably extends the inner segment from a fully collapsed position to a fully extended position. Thus,
13 upon information and belief, the Venapax System is known by Saphena to be especially made or
14 especially adapted for use in a manner that infringes the '986 Patent. Further, Saphena does not
15 describe or advertise the Venapax System to be capable of any other uses. Thus, upon information
16 and belief, Saphena contributed to the direct infringement of Saphena's customers. Further, upon
17 information and belief, Saphena knew that the providing materials regarding using the Venapax
18 System to its customers would result, and has resulted, in Saphena's U.S. customers directly infringing
19 the '986 Patent, including at least Claim 17 of the '986 Patent.

20 98. Upon information and belief, Dr. Chin is a corporate officer of Saphena and has
21 personally used, taken part in, actively and knowingly assisted with, and aided and abetted inducement
22 of others, including Saphena's U.S. customers, to directly infringe at least Claim 17 of the '986 Patent.
23 Dr. Chin, upon information and belief, had knowledge of the '986 Patent since at least March 21, 2013
24 when it was submitted to the U.S. Patent and Trademark Office in an information disclosure statement
25 listing the '986 Patent as prior art to a patent application filed on behalf of Albert Chin that was
26 assigned to Saphena Medical (Exhibit 15 at 5 and 8). Upon information and belief, Dr. Chin has
27 known, or willfully blinded himself to knowing, that providing instructions to Saphena's customers
28 about use of the Venapax System would result, and has resulted, in Saphena's customers directly

1 infringing the '986 Patent. Upon information and belief, Dr. Chin has used and proctored doctors in
2 using the Venapax device in operating rooms that are located in this district, including providing
3 instructions regarding using the Venapax System in an infringing manner.

4 99. Upon information and belief, Saphena's and Dr. Chin's infringement of the '986 Patent
5 has been willful and deliberate, despite an objectively high likelihood that its actions constitute
6 infringement of the '986 Patent.

7 100. Maquet has been and will continue to be damaged and irreparably injured unless this
8 Court enjoins Saphena's infringing activities.

9 101. Maquet seeks damages in an amount adequate to compensate for Saphena's
10 infringement, a permanent injunction barring Saphena from continuing to infringe Maquet's patents,
11 and attorneys' fees and costs associated with this action.

12 **CLAIM 3 – INFRINGEMENT OF U.S. PATENT NO. 7,534,243**

13 102. The allegations contained in Paragraphs 1 through 101 above are incorporated herein
14 by reference.

15 103. Upon information and belief, Saphena has, without authority from the patent holder,
16 infringed the '243 Patent directly, literally and/or under the doctrine of equivalents, within the
17 prohibitions of at least 35 U.S.C. § 271(a), including, but not limited to, independent Claim 9 and
18 continues to do so by having made, used, offered to sell, and sold the Venapax System. Upon
19 information and belief, Saphena's description and images of the Venapax System, discussed above,
20 demonstrate that the Venapax System meets the limitations of at least Claim 9 of the '243 Patent.
21 Further, upon information and belief, Saphena has infringed the patent by using the Venapax System
22 in the State of California and elsewhere in the United States. Upon information and belief, Saphena's
23 use of the Venapax System with an endoscope meets the limitations of at least Claim 9 of the '243
24 Patent.

25 104. Upon information and belief, Saphena also induced infringement of the '243 Patent by
26 U.S. customers within the prohibitions of at least 35 U.S.C. § 271(b), including, but not limited to,
27 independent Claim 9 and continues to do so. These customers include, upon information and belief,
28 hospitals in this district, including El Camino Hospital. Saphena has been aware of the '243 Patent,

1 and on notice of infringement of the '243 Patent since at least May 19, 2014, which is prior to the
2 filing of this complaint, as shown by a letter from Maquet to Saphena (Exhibit 13 hereto).
3 Additionally, Saphena's awareness of Maquet's intellectual property is acknowledged by Saphena in
4 a response to Maquet's letter indicating Saphena did not believe that Saphena infringed Maquet's
5 intellectual property (Exhibit 14 hereto). Upon information and belief, Saphena has known, or
6 willfully blinded itself to knowing, that providing instructions to its customers about use of the
7 Venapax System would result, and has resulted, in Saphena's customers directly infringing the '243
8 Patent. Further, upon information and belief, Saphena encourages and facilitates infringement of the
9 '243 Patent by instructing customers to use the Venapax System in an infringing manner. Examples
10 of such instructions are attached as Exhibit 10. Additionally, upon information and belief, Saphena's
11 design of the Venapax System induces a customer to infringe the '243 Patent by requiring the Venapax
12 System to be used in an infringing manner. Thus, the use of the Venapax System by Saphena's
13 customers infringe the '243 Patent by practicing at least Claim 9 of the '243 Patent.

14 105. Upon information and belief, Saphena also contributorily infringed the '243 Patent
15 within the prohibitions of at least 35 U.S.C. § 271(c), including, but not limited to, independent Claim
16 9 and continues to do so. The Venapax System, due to its specific design, discussed above, constitutes
17 a material part of the claims of the '243 Patent and has no substantial non-infringing uses. Specifically,
18 as shown on Saphena's website (Exhibit 9) and discussed above, the Venapax System is specifically
19 made to be used, and it has been used, in endoscopic vessel harvesting and it is a surgical tool having
20 an elongated cannula with a tissue-dissecting tip that substantially encloses the end of a lumen
21 extending through the cannula and allows for an endoscope to see through the tip. Additionally, an
22 arm is mounted to the tool such that it moves between a closed configuration and an open
23 configuration, with the open configuration having the arm skewed in relation to the walls of the tip.
24 Also, the tool has controls for moving the arm and for controlling a tissue welder that is in a
25 substantially unobtrusive position when in the closed configuration and is exposed when in the open
26 configuration. Thus, upon information and belief, the Venapax System is known by Saphena to be
27 especially made or especially adapted for use in a manner that infringes the '243 Patent. Further,
28 Saphena does not describe or advertise the Venapax System to be capable of any other uses. Thus,

1 upon information and belief, Saphena contributed to the direct infringement of Saphena's customers.
2 Further, upon information and belief, Saphena knew that the providing materials regarding using the
3 Venapax System to its customers would result, and has resulted, in Saphena's U.S. customers directly
4 infringing the '243 Patent, including at least Claim 9 of the '243 Patent.

5 106. Upon information and belief, Dr. Chin is a corporate officer of Saphena and has
6 personally taken part in, actively and knowingly assisted with, and aided and abetted Saphena's
7 inducement of U.S. customers to directly infringe at least Claim 9 of the '243 Patent. Dr. Chin, as one
8 of the inventors of the '243 Patent, had knowledge of the '243 Patent and, upon information and belief,
9 was on notice that use of the Venapax System infringed the '243 Patent since at least May 20, 2014—
10 the date of the letter from Maquet to Saphena regarding Saphena's infringement (Exhibit 13 hereto).
11 Upon information and belief, Dr. Chin has known, or willfully blinded himself to knowing, that
12 providing instructions to its customers about use of the Venapax System would result, and has resulted,
13 in Saphena's customers directly infringing the '243 Patent. Upon information and belief, Dr. Chin has
14 used and proctored doctors in using the Venapax device in operating rooms that are located in this
15 district and elsewhere in the United States, including providing instructions regarding using the
16 Venapax System in an infringing manner.

17 107. Upon information and belief, Saphena's and Dr. Chin's infringement of the '243 Patent
18 has been willful and deliberate, despite an objectively high likelihood that its actions constitute
19 infringement of the '243 Patent.

20 108. Maquet has been and will continue to be damaged and irreparably injured unless this
21 Court enjoins Saphena's and Dr. Chin's infringing activities.

22 109. Maquet seeks damages in an amount adequate to compensate for Saphena's and Dr.
23 Chin's infringement, a permanent injunction barring Saphena and Dr. Chin from continuing to infringe
24 Maquet's patents, and attorneys' fees and costs associated with this action.

25 **CLAIM 4 – BREACH OF WRITTEN CONTRACT**

26 110. The allegations contained in Paragraphs 1 through 109 above are incorporated herein
27 by reference.

28 111. Pursuant to the Origin Agreement, Dr. Chin was obligated to, *inter alia*, keep

1 “Proprietary Information” confidential during and after his employment, disclose and assign all
2 inventions related to his research, and return company documents at the termination of employment.

3 112. Pursuant to the BSC Agreement, Dr. Chin was obligated to, *inter alia*, keep confidential
4 and proprietary information confidential during and after his employment, disclose and assign all
5 inventions related to his research, and return company documents at the termination of employment.

6 113. Pursuant to the Maquet Agreement, Dr. Chin was obligated to, *inter alia*, keep
7 “Proprietary Information” confidential during and after his employment, disclose and assign all
8 inventions related to his research, and return company documents at the termination of employment.

9 114. Pursuant to the Termination Certificate, Dr. Chin contractually promised, *inter alia*,
10 that he had complied with the Maquet Agreement and that he would preserve the confidentiality of
11 Maquet’s information.

12 115. Upon information and belief, Dr. Chin breached his contractual obligations to keep
13 Maquet’s confidential information confidential by using Maquet’s confidential information regarding
14 customer product pricing to price Saphena’s Venapax system to the same customers in a manner that
15 undercuts the price of Maquet’s products.

16 116. Upon information and belief, Dr. Chin breached each of his above contractual
17 obligations by retaining Maquet materials at the time of his termination, including but not limited to
18 materials related to prototypes Dr. Chin developed while at Maquet.

19 117. Upon information and belief, in breach of his contractual obligations, Dr. Chin kept
20 confidential information belonging to Maquet after he left his employment at Maquet. After having
21 spent years at Maquet, and companies it acquired, working on EVH technologies and one-pass
22 products, all at great expense to Maquet, Dr. Chin was obligated to keep the results of his work
23 confidential. Dr. Chin co-founded the companies of Pavilion and Saphena soon after leaving Maquet,
24 and upon information and belief began to develop Saphena’s Venapax System that is being marketed
25 in competition with Maquet using information developed while at Maquet. Thus, Dr. Chin breached
26 his contractual obligations by, upon information and belief, using Maquet’s confidential and
27 proprietary information for the benefit of Saphena to assist in, *inter alia*, the development of the
28 Venapax System, including information regarding development of a one-pass endoscopic vessel

1 harvesting device.

2 118. Upon and information and belief, Dr. Chin also breached his contractual obligations,
3 including in particular the confidentiality obligations imposed by the BSC Agreement, by improperly
4 keeping with him confidential information about the Revolution unitary harvesting design after his
5 employment with Maquet ended. Specifically, on December 23, 2011, Pavilion filed in the USPTO
6 provisional application No. 61/580,107, entitled “Unitary Endoscopic Vessel Harvesting Devices,”
7 listing Dr. Chin as the sole inventor. On December 21, 2012, Pavilion filed non-provisional
8 application No. 13/723,676, which resulted in the issuance of US Patent No. 9,119,900 (the “900
9 Patent”) on September 1, 2015. A true and correct copy of the 900 Patent is attached as Exhibit 16.
10 The 900 Patent lists Dr. Chin as the sole inventor and Saphena as the assignee. Upon information and
11 belief, the invention claimed in the 900 Patent, including the provisional and non-provisional
12 applications leading thereto, is, or at a minimum is directly derived from, Maquet’s unitary harvesting
13 design developed by Mr. Ung and improperly taken by Dr. Chin for the benefit of a company other
14 than Maquet. The 900 Patent claims and discloses each of the elements of the harvesting device with
15 integrated cautery developed by Mr. Ung and which Dr. Chin tested while he was employed by Boston
16 Scientific and later Maquet. Discovery is needed to determine whether Dr. Chin improperly took
17 physical confidential materials about Project Revolution, including the unitary harvesting device, with
18 him when he left Maquet, in further breach of his contractual obligations.

19 119. Additionally, upon information and belief, Dr. Chin breached his contractual
20 obligations by failing to keep confidential information regarding Maquet’s prototypes and Maquet’s
21 contracts. For example, Dr. Chin gave a lecture, which was uploaded to the internet, in which, upon
22 information and belief, images of confidential and proprietary Maquet prototypes have been used and
23 confidential information was disclosed. *See Albert Chin: The Life of a Physician-Medical Device*
24 *Inventor* (June 7, 2014), available at (<https://www.youtube.com/watch?v=D7TiB30GdQg>) (showing
25 prototype images at minute 16:45 before going on to discuss confidential information regarding
26 Maquet’s medical devices, including the research he performed in testing different types of devices
27 and differences in testing devices in animals versus humans, and confidential terms regarding the value
28 of Maquet’s contracts and patents). Upon information and belief, the images of the prototypes shown

1 during Dr. Chin's presentation were materials of Maquet that Dr. Chin should have returned, per his
2 agreements, to Maquet at his termination.

3 120. As a direct and proximate result of Dr. Chin's breach Maquet has suffered damage, an
4 exact amount to be determined at trial.

5 121. Maquet will be continue to be directly and proximately damaged, and its good will
6 irreparably harmed, if Dr. Chin is not enjoined from further violation of these agreements, and if Dr.
7 Chin is not directed to comply therewith, and prohibited from using and disclosing Maquet's
8 confidential and proprietary information. Maquet has no remedy at law as money damages alone will
9 not fully compensate Maquet, and injunctive relief is warranted to prevent further irreparable harm to
10 Maquet.

11 122. Maquet accordingly seeks damages and permanent injunctive relief.

12 **CLAIM 5 – CORRECTION OF INVENTORSHIP OF PATENT**

13 **[35 U.S.C. 256(b)]**

14 123. The allegations contained in Paragraphs 1 through 122 above are incorporated herein
15 by reference.

16 124. As described above, the invention claimed in U.S. Patent 9,119,900 was developed by
17 Mr. Ung while employed by, and on behalf of, Boston Scientific, which ultimately became Maquet.
18 Because the invention claim in the 900 Patent was not invented by Dr. Chin, Dr. Chin is incorrectly
19 listed as the inventor of the 900 Patent.

20 125. Maquet, as the true and correct owner and inventor of the 900 Patent, has been injured
21 by the issuance of a patent listing the incorrect inventor and owner, and hence asks the Court to correct
22 the inventorship of the 900 Patent pursuant to 35 U.S.C. § 256(b). Maquet thus respectfully requests
23 that the Court order the Director of the USPTO to issue a certificate accordingly.

24 **CLAIM 6 – FALSE ADVERTISING IN VIOLATION OF SECTION 43(a) OF THE**

25 **LANHAM ACT**

26 **[15 U.S.C. § 1125]**

27 126. The allegations contained in Paragraphs 1 through 125 above are incorporated herein
28 by reference.

1 127. As described in detail above, Saphena has made or caused to be made several
2 statements, in commercial advertisements and other promotional videos and materials, concerning
3 alleged advantages and benefits of Saphena's Venapax System, including with regard to the bipolar
4 RF energy field and concentration of energy, the absence of thermal charring to the vein in comparison
5 with other EVH solutions (including Maquet's HemoPro), and the occlusive and atraumatic nature of
6 the trocar.

7 128. On information and belief, these statements, reproduced and/or described above, are
8 false or misleading statements of fact for the reasons described earlier.

9 129. On information and belief, the false and misleading statements made by and/or on
10 behalf of Saphena either deceived or had the capacity to deceive a substantial segment of the intended
11 consumers of the relevant consumers of EVH solutions because they were detailed and they claimed
12 significant benefits of Venapax over currently available EVH solutions.

13 130. On information and belief, the deception to medical professionals and other consumers
14 of EVH solutions was likely to influence their purchasing decision because of the medical importance
15 of choosing the best EVH solution, at least as advertised, for patients.

16 131. Maquet is informed and believes, and on that basis alleges, that the Saphena Venapax
17 System, which is the subject of the false or misleading advertising and promotional representations
18 made by and/or on behalf of Saphena, is sold in multiple states and thus is in interstate commerce.

19 132. Maquet's EVH solutions directly compete with Saphena's Venapax System. On
20 information and belief, Saphena's false and/or misleading advertising concerning the Venapax System
21 has injured, and is likely to continue injuring, Maquet in an amount to be proven at trial.

22 **PRAYER FOR RELIEF**

23 1. Enter judgment for Maquet and against Saphena and Dr. Chin for infringement of the
24 '233 Patent;

25 2. Enter judgment for Maquet and against Saphena and Dr. Chin for infringement of the
26 '986 Patent;

27 3. Enter judgment for Maquet and against Saphena and Dr. Chin for infringement of the
28 '243 Patent;

1 4. Enter judgment that the infringement of Saphena and Dr. Chin was and is willful;

2 5. Permanently enjoin Saphena, its officers, directors, principals, agents, sales
3 representatives, servants, employees, successors, assigns, affiliates, subsidiaries, and all those acting
4 in concert or participation with them, from directly or indirectly infringing, inducing infringements,
5 or contributing to the infringement of any claim of the '233 Patent;

6 6. Permanently enjoin Dr. Chin from directly or indirectly infringing any claim of the
7 '233 Patent;

8 7. Permanently enjoin Saphena, its officers, directors, principals, agents, sales
9 representatives, servants, employees, successors, assigns, affiliates, subsidiaries, and all those acting
10 in concert or participation with them, from directly or indirectly infringing, inducing infringements,
11 or contributing to the infringement of any claim of the '986 Patent;

12 8. Permanently enjoin Dr. Chin from directly or indirectly infringing any claim of the
13 '986 Patent;

14 9. Permanently enjoin Saphena, its officers, directors, principals, agents, sales
15 representatives, servants, employees, successors, assigns, affiliates, subsidiaries, and all those acting
16 in concert or participation with them, from directly or indirectly infringing, inducing infringements,
17 or contributing to the infringement of any claim of the '243 Patent;

18 10. Permanently enjoin Dr. Chin from directly or indirectly infringing any claim of the
19 '243 Patent;

20 11. Enter judgment in favor of Maquet and against Saphena and Dr. Chin for an amount
21 that will adequately compensate it for Saphena's and Dr. Chin's infringement, but under no
22 circumstances an amount less than a reasonable royalty for Saphena's and Dr. Chin's use of Maquet's
23 patented inventions;

24 12. Enter judgment in favor of Maquet and against Saphena and Dr. Chin pursuant to 35
25 U.S.C. § 154(d) for reasonable royalties for Saphena's and Dr. Chin's use of Maquet's patented
26 inventions after the publications of applications that issued as the '233 Patent;

27 13. Enter judgment in favor of Maquet and against Saphena and Dr. Chin pursuant to 35
28 U.S.C. § 154(d) for reasonable royalties for Saphena's and Dr. Chin's use of Maquet's patented

1 inventions after the publications of applications that issued as the '986 Patent;

2 14. Enter judgment in favor of Maquet and against Saphena and Dr. Chin pursuant to 35
3 U.S.C. § 154(d) for reasonably royalties for Saphena's and Dr. Chin's use of Maquet's patented
4 inventions after the publications of applications that issued as the '243 Patent;

5 15. Enter judgment in favor of Maquet and against Saphena and Dr. Chin for pre-judgment
6 interest on all damages awarded;

7 16. Enter judgment in favor of Maquet and against Saphena and Dr. Chin for three times
8 the amount of damages pursuant to 35 U.S.C. § 284 because of their willful infringement;

9 17. Enter judgment in favor of Maquet and against Saphena and Dr. Chin for Maquet's
10 attorneys' fees and costs pursuant to 35 U.S.C. § 285;

11 18. Enter judgment in favor of Maquet and against Dr. Chin for breach of contract for an
12 exact amount to be determined at trial;

13 19. Permanently enjoin Dr. Chin from revealing Maquet's confidential and proprietary
14 information;

15 20. Find that Maquet, not Saphena, is the true and correct inventor and owner of the
16 invention claimed in U.S. Patent 9,119,900, and order the Director of the USPTO to issue a certificate
17 of correction accordingly pursuant to 35 U.S.C. § 256(b);

18 21. Award Saphena's profits on the Venapax System, and/or damages suffered by Maquet,
19 as well as Maquet's costs of this action, to remedy Saphena's false and/or misleading advertising in
20 violation of Section 43(a) of the Lanham Act;

21 22. Enter judgment in favor of Maquet and against Saphena and Dr. Chin for Maquet's
22 costs of suit; and

23 23. Enter such other and further relief as the Court may deem just and proper.

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DATED: February 6, 2017

ALSTON & BIRD LLP

/s/ Xavier M. Brandwajn

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury to decide all issues so triable in this case.

DATED: February 6, 2017

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