

Samuel C. Straight (7638)  
Michael K. Erickson (12503)  
Calvin R. Winder (14369)  
Adam K. Richards (14487)  
RAY QUINNEY & NEBEKER P.C.  
36 South State Street, Suite 1400  
P.O. Box 45385  
Salt Lake City, Utah 84145-0385  
Telephone: (801) 532-1500  
Facsimile: (801) 532-7543  
sstraight@rqn.com  
merickson@rqn.com  
cwinder@rqn.com  
arichards@rqn.com

*Attorneys for Plaintiff Orca Health, Inc.*

---

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

---

ORCA HEALTH, INC., a Delaware  
corporation,

Plaintiff,

v.

3D4MEDICAL LIMITED, an Irish  
corporation; 3D4MEDICAL, INC., a Delaware  
corporation; 3D4MEDICAL.COM, LLC, a  
Nevada limited liability company; and JARED  
HUISH, an individual,

Defendants.

---

**FIRST AMENDED COMPLAINT**

Civil No. 2:17-CV-00005-PMW

Magistrate Judge Paul M. Warner

**JURY DEMAND**

---

Plaintiff Orca Health, Inc. (“Orca Health”) brings this Complaint against Defendants 3D4Medical Limited, 3D4Medical, Inc., 3D4Medical.com, LLC (collectively “3D4Medical”), and Jared Huish (“Huish”) (all Defendants collectively “Defendants”), as follows:

### **INTRODUCTION**

1. Orca Health designs, develops, and distributes industry-leading software apps that empower physicians to educate patients with 3D virtual anatomy as part of their clinical care. Orca Health addresses a fundamental problem documented in a study by the Centers for Disease Control and Prevention on patient education: “86% of patients forget the physician’s instructions within five minutes of an office visit.” Founded in 2010, Orca Health’s goal is to solve the problem of patient education and improve clinical efficiencies in the healthcare industry. Orca Health’s innovative software apps simplify complex medical conditions and treatments with the help of 3D virtual anatomy to improve patient knowledge and comprehension.

2. Beginning in 2013, Orca Health pioneered “Orca Care”—a medical software platform that revolutionizes patient education and clinical efficiencies in the healthcare industry. The “Orca Care” point-of-care app enables healthcare providers to utilize interactive 3D anatomy and multisensory tools while educating patients about their diagnosis and treatment options. While educating a patient with the Orca Care app, a provider identifies specific content—descriptions, pictures, videos, MRIs, medical imagery, personal notes, annotations, and interactive 3D anatomy—to capture attention, educate, and directly engage with the patient. Then, when the office visit concludes, the provider sends the patient a customized “Care Plan,” which includes all of the content related to the diagnosis and treatment the provider selected and demonstrated during the consultation.

3. The patient's Care Plan is a post point-of-care app that extends the in-office interaction by allowing the patient to access diagnosis and treatment information at any time and on any device. The customized Care Plan includes the descriptions, pictures, videos, MRIs, medical imagery, personal notes, annotations, and interactive 3D anatomy, enabling the patient to easily share details about diagnosis and treatment plans with family members and loved ones. As the patient reviews this content, the Care Plan app asks the patient to confirm their understanding of the diagnosis and selected treatment. The Care Plan app also delivers patient satisfaction surveys and patient reported outcome measures as automated "checkups" following the initial Care Plan.

4. A back-end HIPAA-compliant infrastructure and content management system called "Orca Cloud" stores all of the diagnostic and treatment content, including the descriptions, pictures, videos, MRIs, medical imagery, personal notes, annotations, interactive 3D anatomy, patient satisfaction surveys, and patient reported outcome measures.

5. A secure, web-based application called "Orca Dashboard" delivers real-time analytics, reporting, and patient insights to healthcare providers. Using Orca Dashboard, providers can monitor Care Plans sent to and opened by patients, can view the results of patient satisfaction surveys and patient reported outcome measures, and can analyze reports for a specific patient or aggregate patient data across segments within their healthcare system.

6. While employed by Orca Health in 2014 and 2015, Jared Huish learned the details of the confidential and/or proprietary Orca Care Platform. Specifically, Huish had access to all, or a portion, of Orca Health's business plans and market strategies, software research, design, and development; product, market, pricing, and sales research and plans; clinical studies and

hospital trials; and investor, partner, employee, supplier, client, and customer lists, information, prospects, communications, and agreements.

7. On information and belief, beginning in 2015, Huish unlawfully disclosed Orca Health's confidential and/or proprietary Orca Care Platform to 3D4Medical, a direct competitor. Like Orca Health, 3D4Medical designs, develops, and distributes software apps with 3D virtual anatomy. But unlike Orca Health, 3D4Medical's product offerings prioritized medical education apps for anatomy, physical education, and medical students, as well as health and fitness apps for workout enthusiasts. For example, 3D4Medical's website, 3d4medical.com, currently markets its Essential Anatomy 5 app as "The first stop for all students of anatomy," its Complete Anatomy app as "Award-winning under- and post- graduate level anatomy for students," and its Lecture Builder app as "The ultimate teaching tool for anatomy educators." As an example of its health and fitness apps, 3D4Medical markets its iMuscle 2 app as "The essential workout companion for fitness enthusiasts."

8. On information and belief, Huish's unlawful disclosure of Orca Health's confidential and/or proprietary Orca Care Platform coincided with 3D4Medical's development of a software app to cover the entire clinical pathway from patient education to rehabilitation and outcomes, including the capability for healthcare providers to record consultations and share them with patients through a HIPAA-compliant platform.

9. In or around March 2017, 3D4Medical launched its "Complete Ortho" and "Complete Ortho Pro" apps (hereafter, "Complete Ortho"), which 3D4Medical's website markets as "The revolutionary patient education platform for Orthopedic practices." Identical to the Orca Care Platform, 3D4Medical's Complete Ortho includes: (1) a point-of-care app that

providers can use to customize a care plan for patients; (2) a post point-of-care app that enables patients to confirm their understanding, share their care plan with family members and loved ones, and respond to patient satisfaction surveys, and patient reported outcome measures; (3) a HIPAA-compliant infrastructure and content management system to store diagnostic and treatment content, including descriptions, pictures, videos, MRIs, medical imagery, personal notes, annotations, interactive 3D anatomy, patient satisfaction surveys, and patient reported outcome measures; and (4) a “dashboard” for providers to monitor and review patient understanding, satisfaction, and outcomes.

#### **THE PARTIES**

10. Orca Health, Inc. is a Delaware corporation with its principal place of business located at 126 West Sego Lily Drive Suite 195, Sandy, Utah 84070.

11. On information and belief, Defendant 3D4Medical Limited is an Irish corporation with its principal place of business located at 1<sup>st</sup> Floor the Grange, Stillorgan Road, Blackrock, Co. Dublin.

12. On information and belief, Defendant 3D4Medical, Inc. is a Delaware corporation with its principal place of business located at 445 Marine View Avenue, Suite 110, Del Mar, California 92014.

13. On information and belief, Defendant 3D4Medical.com, LLC is a Nevada limited liability company with its principal place of business located at 445 Marine View Avenue, Suite 110, Del Mar, California 92014.

14. Defendants 3D4Medical Limited, 3D4Medical, Inc., and 3D4Medical.com, LLC are collectively referred to herein as “3D4Medical.”

15. On information and belief, Defendant Jared Huish, an individual, has a principal place of residence located at 3827 South Knudsen Street, Salt Lake City, Utah 84109.

### **JURISDICTION AND VENUE**

16. This is a civil action (the “Action”) for misappropriation of trade secrets under the Defense of Trade Secrets Act, 18 U.S.C. § 1831 *et seq.*, misappropriation of trade secrets under Utah Code Ann. § 13-24-1 *et seq.*, interference with economic relations, unfair competition, breach of fiduciary duty, breach of contract, interference with contract, unjust enrichment, trade dress infringement arising under the Lanham Act, 15 U.S.C. § 1125 *et seq.*, patent infringement arising under the Patent Act of the United States, 35 U.S.C. § 1 *et seq.*, and civil conspiracy.

17. This Court has subject matter jurisdiction over the claims for misappropriation of trade secrets, trade dress infringement, and patent infringement founded upon 28 U.S.C. §§ 1331 and 1338(a) and (b). This Court has supplemental subject matter jurisdiction over the claims for misappropriation of trade secrets under Utah law, interference with economic relations, unfair competition, breach of fiduciary duty, breach of contract, interference with contract, unjust enrichment, and civil conspiracy.

18. 3D4Medical is subject to personal jurisdiction in this Court because it markets and conducts sales of its infringing product(s) within the jurisdiction, and, on information and belief, had continual and systematic contact with the State of Utah through its hiring of Jared Huish, a Utah resident.

19. Jared Huish is subject to personal jurisdiction in this Court because he is, on information and belief, a resident of the State of Utah, and was a resident of the State of Utah

during the times associated with the Counts within this Complaint, and the Confidentiality Agreement between Huish and Plaintiff was executed within this jurisdiction.

20. In light of the matters set forth in paragraphs 1–19 and 21–81 inclusive, venue of this Action is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

### **FACTUAL ALLEGATIONS**

#### **Orca Health Develops the Revolutionary Orca Care Platform**

21. Orca Health expended significant resources researching market demands, patient needs, and product design and development over a number of years to develop the Orca Care Platform, originally known internally as “OrcaMD.”

22. In or around June 2014, Orca Health first made prototype components of OrcaMD available to Orca affiliated healthcare providers. Affiliated providers who obtained access to the Orca Care Platform had confidentiality obligations to Orca Health. Orca Health controlled access and distribution to OrcaMD through the use of password protected login credentials that prevented public disclosure.

23. Orca Health estimates that it invested more than three years and millions of dollars in research, testing, and development to design and implement the Orca Care Platform.

24. As explained above and herein, the Orca Care Platform assists healthcare providers to solve the critical problem of patient education and to improve clinical efficiencies in the healthcare industry.

25. In just a short time since its launch in 2016, the Orca Care Platform has already revolutionized patient education in the health care industry, with healthcare providers reporting

significant measurable improvements in (1) patient comprehension and retention, (2) patient satisfaction, (3) point-of-care efficiency, and (4) surgical retention.

**Huish Obtains the Details of the Orca Care Platform**

26. In or about July 2014, Orca Health began employing Defendant Jared Huish as Vice President of Business Development.

27. On information and belief, prior to his employment with Orca Health, Huish had no work experience in the healthcare industry, 3D human anatomy, or software applications for clinical diagnosis and treatment.

28. In connection with his employment by Orca Health, Huish learned the details of the confidential and/or proprietary Orca Care Platform. Specifically, Huish had access to all, or a portion, of Orca Health's business plans and market strategies, software research, design, and development; product, market, pricing, and sales research and plans; clinical studies and hospital trials; and investor, partner, employee, supplier, client, and customer lists, information, prospects, communications, and agreements.

29. As a result of Huish's employment relationship with Orca Health, Huish had a duty, and knew or should have known he had a duty, not to disclose or use, unless authorized, Orca Health's proprietary and/or confidential information, materials, relationships, concepts, and know-how, including without limitation Orca Health's business plans and market strategies, software research, design, and development; product, market, pricing, and sales research and plans; clinical studies and hospital trials; and investor, partner, employee, supplier, client, and customer lists, information, prospects, communications, and agreements.



30. As a result of Huish's employment relationship with Orca Health, Huish also had a duty of loyalty and other fiduciary duties not to injure or otherwise take action that would conflict with Orca Health's interests or disrupt its operations, relationships, or opportunities.

**Huish's Confidentiality Agreement**

31. In connection with his employment, Huish also executed an "Employee Invention Assignment and Confidentiality Agreement" (the "Confidentiality Agreement"), which is attached hereto as **Exhibit A**.

32. As part of the Confidentiality Agreement, Huish agreed that "all Inventions" that he made, created, conceived, or first reduced to practice during the period of his employment "will be the sole and exclusive property of the Company." The Confidentiality Agreement defined "Inventions" to mean all "inventions, improvements, designs, original works of authorship, formulas, processes, compositions of matter, computer software programs, databases, mask works, confidential information and trade secrets."

33. With respect to Orca Health's proprietary information, Huish agreed:

I understand that my employment by the Company creates a relationship of confidence and trust with respect to any information or materials of a confidential or secret nature that may be made, created or discovered by me or that may be disclosed to me by the Company or a third party in relation to the business of the Company or to the business of any parent, subsidiary, affiliate, customer or supplier of the Company, or any other party with whom the Company agrees to hold such information or materials in confidence (the "***Proprietary Information***"). Without limitation as to the forms that Proprietary Information may take, I acknowledge that Proprietary Information may be contained in tangible material such as writings, drawings, samples, electronic media, or computer programs, or may be in the nature of unwritten knowledge or know-how. Proprietary Information includes, but is not limited to, Assigned Inventions, marketing plans, product plans, designs, data, prototypes, specimens, test protocols, laboratory notebooks, business strategies, financial information, forecasts, personnel information, contract information, customer and supplier

lists, and the non-public names and addresses of the Company's customers and suppliers, their buying and selling habits and special needs.

34. With respect to his duty of confidentiality, Huish agreed:

At all times, both during my employment and after its termination, I will keep and hold all Proprietary Information in strict confidence and trust. I will not use or disclose any Proprietary Information without the prior written consent of the Company in each instance, except as may be necessary to perform my duties as an employee of the Company for the benefit of the Company. Upon termination of my employment with the Company, I will promptly deliver all documents and materials of any nature pertaining to my work with the Company, and I will not take with me or retain in any form any documents or materials or copies containing any Proprietary Information.

35. With respect to Orca Health's physical property, Huish agreed that "[a]ll documents, supplies, equipment and other physical property furnished to me by the Company or produced by me or others in connection with my employment will be and remain the sole property of the Company." Huish also agreed, "Even if the Company does not so request, I will upon termination of my employment return to the Company all Company property, and I will not take with me or retain any such items."

36. With respect to his duty not to compete with Orca Health, Huish agreed:

During the period of my employment, I will at all times devote my best efforts to the interests of the Company, and I will not, without the prior written consent of the Company, engage in, or encourage or assist others to engage in, any other employment or activity that: (i) would divert from the Company any business opportunity in which the Company can reasonably be expected to have an interest; (ii) would directly compete with, or involve preparation to compete with, the current or future business of the Company; or (iii) would otherwise conflict with the Company's interests or could cause a disruption of its operations or prospects.

37. With respect to his duty not to solicit Orca Health's employees or consultants, Huish agreed: "During my employment with the Company and for a one (1) year period thereafter, I will not directly or indirectly solicit away employees or consultants of the Company

for my own benefit or for the benefit of any other person or entity, nor will I encourage or assist others to do so.”

38. With respect to any breach of the Confidentiality Agreement, Huish agreed that such a breach “may cause the Company to suffer irreparable harm and that the Company will therefore be entitled to injunctive relief to enforce this Agreement.”

**Huish Obtains the Details of Orca Health’s Negotiations with the Mayo Clinic**

39. Prior to Huish’s employment, Orca Health developed a relationship with representatives of the Mayo Clinic who visited Orca Health’s facilities in the spring of 2014.

40. In connection with his employment responsibilities, Orca Health introduced Huish to representatives of the Mayo Clinic when Huish accompanied other Orca Health personnel to a meeting at the Mayo Clinic in or around October 2014. On information and belief, Huish had no prior relationship with Mayo Clinic personnel.

41. As a result of negotiations over a period of time, Orca Health and the Mayo Clinic reached an agreement in principle for Orca Health to display the Mayo Clinic’s patient education content in Orca’s “Decide” apps and to use Mayo Clinic’s trademark with promotional materials—i.e., “powered by the Mayo Clinic.”

42. Under subsequent supervision by Huish, however, Orca Health’s licensing negotiations with the Mayo Clinic later fell apart.

43. As a result of his participation and, at times, supervision of licensing negotiations with the Mayo Clinic, Huish obtained the details of Orca Health’s contacts, communications, negotiations, draft agreements, strategies, business plans, and other proprietary and/or

confidential information and materials arising from Orca Health's relationship with the Mayo Clinic.

**3D4Medical Unlawfully Acquires Orca Health's Innovations from Huish**

44. Huish knew that 3D4Medical was Orca Health's competitor.

45. On information and belief, Huish also knew that 3D4Medical was not prioritizing the market for patient education apps for clinical diagnosis and treatment, and further knew that 3D4Medical could overcome this deficiency with access to Orca Health's innovations, including significantly the Orca Care Platform.

46. 3D4Medical knew that, as a result of Huish's employment, Huish had access to Orca Health's proprietary and/or confidential information, materials, relationships, concepts, and know-how, including without limitation Orca Health's business plans and market strategies, software research, design, and development; product, market, pricing, and sales research and plans; clinical studies and hospital trials; and/or investor, partner, employee, supplier, client, and customer lists, information, prospects, communications, and agreements.

47. On information and belief, during the period of his employment with Orca Health and thereafter, Huish made plans to join 3D4Medical; prepared to take Orca Health's proprietary and/or confidential information, materials, relationships, concepts, and know-how to 3D4Medical; and contacted some of Orca Health's investors, partners, employees, suppliers, clients, or customers in connection with his plans, preparations, and actions to take Orca Health's innovations and relationships to 3D4Medical.

48. On information and belief, 3D4Medical knew that Huish's foregoing plans, preparations, and contacts violated Huish's duties and obligations to Orca Health as an employee and/or further violated Huish's Confidentiality Agreement with Orca Health.

49. On information and belief, as a consequence of Huish's unauthorized contacts, Orca Health has lost investors, partners, employees, suppliers, clients, and/or customers, which has caused Orca Health to lose investment capital, business opportunities, and/or sales revenues.

50. Beginning in or about August 2015, Huish stopped arriving for work at Orca Health's offices without any notification. For a period of time, Orca Health assumed that Huish was taking an extended leave of absence for health related reasons. In the ensuing months, however, Huish never informed Orca Health of any change in his employment.

51. On information and belief, at some point in 2015, Huish became a 3D4Medical employee and/or contractor. Significantly, Huish intentionally concealed from Orca Health his employment by 3D4Medical.

52. Beginning in 2015, after his departure from Orca Health, and extending into 2016, Huish had scores of phone calls with one or more Orca Health employees.

53. On information and belief, Huish unlawfully disclosed to 3D4Medical, during and/or after his employment with Orca Health, Orca Health's proprietary and/or confidential information, materials, relationships, concepts, and know-how, including without limitation Orca Health's business plans and market strategies, software research, design, and development; product, market, pricing, and sales research and plans; clinical studies and hospital trials; and/or investor, partner, employee, supplier, client, and customer lists, information, prospects, communications, and agreements.

54. Subsequent to his departure from Orca Health, Huish returned a laptop, and later two iPads, all of which Orca Health provided to Huish in connection with his employment with Orca Health. On information and belief, Huish deleted, or caused to be deleted, content from the electronic devices prior to returning them to Orca Health, in an attempt to obfuscate Huish's unlawful disclosure of Orca Health's innovations to 3D4Medical, including Huish's disclosure of the Orca Care Platform.

55. On information and belief, Huish, while employed by 3D4Medical, used his knowledge and acquisition of Orca Health's proprietary and/or confidential information and materials to contact some of Orca Health's investors, partners, employees, suppliers, clients, or customers. And as a consequence of Huish's unauthorized contacts, Orca Health has lost investors, partners, employees, suppliers, clients, and/or customers, which has caused Orca Health to lose investment capital, business opportunities, and/or sales revenues.

56. On information and belief, 3D4Medical also employs Spencer Robinson, a former Orca Health salesman, as a sales manager. While employed by Orca Health, Robinson had access to Orca Health's customer list. On information and belief, 3D4Medical has contacted Orca Health's customers.

57. During the March 2016 meeting of the American Academy of Orthopedic Surgeons (AAOS), Orca Health distributed promotional materials to promote the anticipated launch of the Orca Care Platform later that year.

58. Huish attended the 2016 AAOS for 3D4Medical, and on information and belief, it was the first time 3D4Medical had ever sent representatives to AAOS. Huish first attended AAOS in 2015 in connection with his employment by Orca Health.

59. During the 2016 conference, Huish approached Orca Health personnel and made reference to a change in Orca Health's expected pricing for the Orca Care Platform, which Huish unlawfully obtained knowing or having reason to know that such pricing information was proprietary and confidential to Orca Health. On information and belief, 3D4Medical acquired and used Huish's knowledge of Orca Health's pricing information to undercut Orca Health's position in the market by subsequently offering a competing product at a lower price.

60. On April 18, 2016, Orca Health, through its counsel, informed 3D4Medical of Huish's Confidentiality Agreement with Orca Health and of his ongoing contractual obligations under that agreement. A copy of the letter sent to 3D4Medical is attached hereto as **Exhibit B**.

61. Also on April 18, 2016, Orca Health, through its counsel, informed and reminded Huish of his ongoing obligations under the Confidentiality Agreement and of Orca Health's concern that Huish had already broken several of the provisions of the Confidentiality Agreement. A copy of the letter sent to Huish is attached hereto as **Exhibit C**.

62. On information and belief, 3D4Medical terminated Huish's employment shortly after receiving Orca Health's letter concerning Huish's contractual obligations to Orca Health.

### **3D4Medical Launches "Complete Ortho" Based on the Orca Care Platform**

63. In or around October 10, 2016, Orca Health publicly launched the Orca Care Platform for licensing by healthcare providers. After entering an agreement with Orca Care, licensed providers can use the "Orca Care" app for clinical diagnosis and treatment, and send patients the customized "Care Plan" app for their individual use. Licensed providers also have access to the "Orca Dashboard" and make use of the HIPAA-compliant "Orca Cloud."

64. Just a few months before, in or around August 2016, 3D4Medical announced a forthcoming “Complete Consultation” app, which 3D4Medical marketed to physicians as a tool to revolutionize patient education, engagement, and retention by providing patients with a customized “Careplan” shared through a HIPAA-secure portal. 3D4Medical also announced its partnership with the Mayo Clinic’s patient education library.

65. Subsequently, during the March 2017 AAOS conference, 3D4Medical launched its commercial product Complete Ortho to compete directly with the Orca Care Platform.

66. This was not the first time that 3D4Medical followed Orca Health into the market for patient education apps. Orca Health first launched its “Decide” apps for patient education in 2010, and 3D4Medical followed Orca Health into the market almost three years later in December 2012 with a competitive orthopedic patient education app. Having misappropriated Orca Health’s trade secrets, however, 3D4Medical followed the release of the Orca Care Platform with a competing consultation app within just months of Orca Health’s launch.

67. The Orca Care Platform and 3D4Medical’s Complete Ortho are the only two platforms on the market that cover the clinical pathway from patient education to rehabilitation and outcomes.

68. The Orca Care Platform and 3D4Medical’s Complete Ortho are also the only two platforms on the market that allow healthcare providers to record and share consultations with their patients on a HIPAA-compliant platform integrated into the providers’ electronic management records (EMR).

69. 3D4Medical’s Complete Ortho copies the innovative design, flow, features, functionality, processes, structures, and operations of the Orca Care Platform.



70. On information and belief, 3D4Medical unlawfully acquired, used, and disclosed the details of the Orca Care Platform to develop 3D4Medical's Complete Ortho.

71. On information and belief, 3D4Medical also unlawfully acquired, used, and disclosed the details of Orca Health's licensing negotiations with the Mayo Clinic in the process of negotiating its own licensing arrangement for the Mayo Clinic's patient education library.

72. On information and belief, 3D4Medical also unlawfully acquired, used, and disclosed, in connection with 3D4Medical's efforts to unlawfully compete with Orca Health, details of Orca Health's business plans and market strategies, software research, design, and development; product, market, pricing, and sales research and plans; clinical studies and hospital trials; and/or investor, partner, employee, supplier, client, and customer lists, information, prospects, communications, and agreements.

73. Further, on information and belief, 3D4Medical acquired Orca Health's proprietary and/or confidential information, materials, relationships, concepts, and know-how either from Huish or other former employees or contractors of Orca Health, and 3D4Medical knew or should have known that it was unlawfully acquiring Orca Health's innovations and relationships.

74. Using Orca Health's innovations and relationships, 3D4Medical saved significant resources that would have been required for research and development.

75. 3D4Medical also unfairly eroded Orca Health's uniqueness in the marketplace and further undercut Orca Health's position in the market by offering Complete Ortho for significantly less than the Orca Care Platform.

**3D4Medical Infringes Orca Health's '943 Patent**

76. In addition to the Orca Care Platform, Orca Health's innovations also include software apps that present controls for animating, annotating, slicing, and layering 3D anatomy.

77. Orca Health has spent considerable time and resources to protect its intellectual property rights for its innovative software and systems.

78. The fruits of Orca Health's expenditures of resources to protect its intellectual property are a number of issued and pending United States patents.

79. For example, on December 9, 2014, the U.S. Patent and Trademark Office duly issued United States Patent No. 8,908,943 titled "Personalized Anatomical Diagnostics and Simulations" (the "'943 patent"), which Orca Health, Inc. owns by assignment. A copy of the '943 patent is attached hereto as **Exhibit D**.

80. On information and belief, 3D4Medical, Inc. manufactures, uses, imports, exports, offers to sell, and/or sells software applications for visualizing, annotating, manipulating, and modifying anatomical elements, including the mobile device apps "Complete Anatomy," "Spine Pro III," and "Essential Skeleton 4," among several others.

81. 3D4Medical's products, including at least the mobile applications "Complete Anatomy," "Spine Pro III," and "Essential Skeleton 4," infringe at least one claim of the '943 patent. On information and belief, 3D4Medical is aware that its products infringe the claims of the '943 patent, but continues to manufacture, use, import, export, offer to sell, and/or sell the infringing mobile applications to willfully infringe the claims of the '943 patent.

**COUNT I**

**(Misappropriation of Trade Secrets Against All Defendants, Utah Code 13-24-1 *et seq.*)**

82. Orca Health refers to and incorporates herein by reference the foregoing paragraphs of this Complaint.

83. At all relevant times, Orca Health was in possession of trade secrets as defined in Utah Code Ann. § 13-24-2(2) (Utah Uniform Trade Secrets Act), including without limitation Orca Health's business plans and market strategies; software research, design, and development; product, market, pricing, and sales research and plans; clinical studies and hospital trials; and/or investor, partner, employee, supplier, client, and customer lists, information, prospects, communications, and agreements ("Orca Health's Trade Secrets").

84. Orca Health's Trade Secrets constitute trade secrets because Orca Health derives independent economic value from the information, such information is not generally known nor readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and because the information is the subject of reasonable efforts to maintain its secrecy, including without limitation Huish's Confidentiality Agreement, internal and external confidentiality safeguards, and other agreements required by Orca Health.

85. Orca Health's Trade Secrets are not and were not generally known to Orca Health's competitors in the industry, including 3D4Medical.

86. On information and belief, 3D4Medical misappropriated Orca Health's Trade Secrets in designing, developing, marketing, and selling 3D4Medical's Complete Ortho to compete with the Orca Care Platform. Specifically, 3D4Medical acquired, used, and/or disclosed Orca Health's business plans and market strategies, software research, design, and

development; product, market, pricing, and sales research and plans; clinical studies and hospital trials; and/or investor, partner, employee, supplier, client, and customer lists, information, prospects, communications, and agreements.

87. On information and belief, 3D4Medical also misappropriated Orca Health's Trade Secrets by acquiring, using, and disclosing Orca Health's licensing negotiations with the Mayo Clinic to negotiate 3D4Medical's own licensing arrangement for the Mayo Clinic's patient education library.

88. On information and belief, 3D4Medical, a competitor, misappropriated Orca Health's Trade Secrets because:

- a. 3D4Medical acquired Orca Health's Trade Secrets knowing or having reason to know that the trade secrets were acquired by improper means, including without limitation by means of violating one or more duties or obligations by Orca Health employees or contractors, or former employees or contractors, to keep Orca Health's Trade Secrets confidential.
- b. 3D4Medical disclosed and/or used Orca Health's Trade Secrets without express or implied consent because
  - i. 3D4Medical used improper means to acquire knowledge of Orca Health's Trade Secrets, including by inducing Orca Health employees or contractors, or former employees or contractors, to violate one or more duties or obligations to keep Orca Health's Trade Secrets confidential;
  - ii. At the time of the disclosure or use, 3D4Medical knew or had reason to know that its knowledge of Orca Health's Trade Secrets was (A) derived

from Orca Health employees or contractors, or former employees or contractors, who improperly acquired Orca Health's Trade Secrets as a result of a violation of one or more duties or obligations to keep Orca Health's Trade Secrets confidential; (B) acquired under circumstances giving rise to a duty to maintain its secrecy or limits its use; or (C) derived from or through Orca Health employees or contractors, or former employees or contractors, who owed a duty to maintain the secrecy or limit the use of Orca Health's Trade Secrets.

- iii. Before a material change in position, 3D4Medical knew or had reason to know that Orca Health's Trade Secrets were trade secrets and that 3D4Medical's knowledge had been acquired by accident or mistake.

89. Huish also misappropriated Orca Health's Trade Secrets because he participated in the foregoing misappropriation by 3D4Medical.

90. Additionally, on information and belief, Huish misappropriated Orca Health's Trade Secrets in assisting 3D4Medical to design, develop, market, and sell 3D4Medical's Complete Ortho to compete with the Orca Care Platform. Specifically, Huish unlawfully acquired, while no longer employed by Orca Health, some of Orca Health's trade secrets from Orca Health employees or contractors, or former employees or contractors. Additionally, Huish also used and/or disclosed Orca Health's Trade Secrets, acquired both during and after his employment, including Orca Health's business plans and market strategies, software research, design, and development; product, market, pricing, and sales research and plans; clinical studies

and hospital trials; and/or investor, partner, employee, supplier, client, and customer lists, information, prospects, communications, and agreements.

91. On information and belief, Huish also misappropriated Orca Health's Trade Secrets by using and disclosing Orca Health's licensing negotiations with the Mayo Clinic to assist 3D4Medical to negotiate its own licensing arrangement for the Mayo Clinic's patient education library.

92. As a proximate result of Defendants' misappropriation of Orca Health's Trade Secrets, Orca Health has suffered, and will continue to suffer, damages in an amount to be proven at trial. Orca Health is entitled to recover both the actual loss caused by misappropriation and the Defendants' unjust enrichment caused by the misappropriation, and/or any other damages pursuant to Utah Code Ann. § 13-24-4(1), including a reasonable royalty.

93. As a further proximate result of Defendants' misappropriation of Orca Health's trade secrets, Orca Health is being irreparably harmed because 3D4Medical has gained competitive advantages from the unlawful acquisition, use, and disclosure of Orca Health's Trade Secrets, which advantages include business, products, and relationships in a unique market that 3D4Medical acquired as a result of its misappropriation. It would be difficult to ascertain the amount of compensation that would afford Orca Health adequate relief for this harm, and Orca Health does not have an adequate remedy at law to compensate it for its injuries. Thus, Orca Health seeks an injunction, pursuant to Utah Code Ann. § 13-24-3, precluding 3D4Medical from misappropriating Orca Health's trade secrets, including any business, products, or relationships that were developed from the misappropriation, which injunction shall also last for

a reasonable period of time in order to eliminate the commercial advantage that otherwise would be derived from the misappropriation.

94. Upon information and belief, Defendants' misappropriation has been willful and malicious in light of Defendants' knowing conduct, deliberate violation of confidentiality, and Defendants' intentional use of Orca Health's Trade Secrets to compete against Orca Health. Therefore, Plaintiffs are entitled to an award of exemplary damages as authorized in Utah Code Ann. § 13-24-4 (2), and reasonable attorneys' fees as authorized in Utah Code Ann. § 13-24-5.

## **COUNT II**

### **(Federal Defend Trade Secrets Act Against All Defendants, 18 U.S.C. § 1831 *et seq.*)**

95. Orca Health refers to and incorporates herein by reference the foregoing paragraphs of this Complaint.

96. Orca Health's Trade Secrets meet the statutory definition of "trade secret" under 18 U.S.C. § 1839(3). Specifically, the following meet the statutory definition of trade secret: Orca Health's business plans and market strategies, software research, design, and development; product, market, pricing, and sales research and plans; clinical studies and hospital trials; and/or investor, partner, employee, supplier, client, and customer lists, information, prospects, communications, and agreements.

97. For the reasons set forth in paragraphs 82 through 94 inclusive, Defendants misappropriated Orca Health's Trade Secrets, as defined and prohibited by 18 U.S.C. §§ 1836(b)(1), 1839(5)(B)(ii)(II), and any other applicable provision.

98. As a proximate result of Defendants' breach of the Defend Trade Secrets Act, Orca Health has suffered, and will continue to suffer, damages in an amount to be proven at trial.

99. Orca Health is entitled to injunctive relief pursuant to 18 U.S.C. § 1836(b)(3)(A); an award of damages for actual loss caused by Defendants' misappropriation, Defendants' unjust enrichment caused by the misappropriation, and/or a reasonable royalty pursuant to 18 U.S.C. § 1836(b)(3)(B); and an award of exemplary damages and attorney's fees for willful and malicious misappropriation pursuant to 18 U.S.C. § 1836(b)(3)(C) and (D).

### **COUNT III**

#### **(Interference with Economic Relations Against All Defendants)**

100. Orca Health refers to and incorporates herein by reference the foregoing paragraphs of this Complaint.

101. Orca Health enjoyed existing and prospective business relationships with investors, partners, employees, suppliers, clients, and customers.

102. On information and belief, Defendants interfered with those existing and prospective business relationships by use of improper means, including without limitation by deceit or misrepresentation, unfounded litigation, defamation, or disparaging falsehood; by violating an established standard of a trade or profession; and by deliberately inducing, with an intent to injure, the breach of Orca Health's agreements with its current and former employees and contractors.

103. Specifically, on information and belief, Defendants interfered with Orca Health's existing and prospective business relationships by using improper means, including the foregoing improper means, while contacting Orca Health's investors, partners, employees, suppliers, clients, and customers in promoting 3D4Medical's Complete Ortho in competition with the Orca Care Platform.



104. In addition to his liability for individual actions, Huish is also liable for 3D4Medical's interference with Orca Health's existing and prospective business relationships because he participated in 3D4Medical's interference.

105. As a result of Defendants' interference, on information and belief, Orca Care has lost investors, partners, employees, suppliers, clients, and customers.

106. Orca Health's injuries were natural, probable, and foreseeable consequences of the Defendants' conduct and Orca Health seeks and is entitled to recover all of its actual, incidental, pecuniary, and consequential damages (including third-party litigation expenses) caused by the interference, as well as punitive damages. Orca Health is further entitled to injunctive relief against further interference.

#### **COUNT IV**

##### **(Breach of Fiduciary Duty Against Huish)**

107. Orca Health refers to and incorporates herein by reference the foregoing paragraphs of this Complaint.

108. In his capacity as Orca Health's Vice President of Sales, Huish owed Orca Health a duty of loyalty and other fiduciary duties not to injure or otherwise take action that would conflict with Orca Health's interests or disrupt its operations, relationships, or opportunities.

109. Huish violated those duties while employed by Orca Health when Huish made plans to join 3D4Medical and compete with Orca Health; prepared to take Orca Health's proprietary and/or confidential information, materials, relationships, concepts, and know-how to 3D4Medical; and contacted some of Orca Health's investors, partners, employees, suppliers,

clients, or customers in connection with his plans, preparations, and actions to take Orca Health's innovations and relationships to 3D4Medical and otherwise compete with Orca Health.

110. As a result of Huish's breach of fiduciary duty, on information and belief, Orca Care has lost investors, partners, employees, suppliers, clients, and customers.

111. Orca Health's injuries were natural, probable, and foreseeable consequences of Huish's breach of fiduciary duty and Orca Health seeks and is entitled to recover all of its actual, incidental, pecuniary, and consequential damages (including third-party litigation expenses) caused by the breach, as well as punitive damages.

### **COUNT V**

#### **(Breach of Contract against Huish)**

112. Orca Health refers to and incorporates herein by reference the foregoing paragraphs of this Complaint.

113. Huish's Confidentiality Agreement is a valid and enforceable contract. The confidentiality covenants and other provisions contained in the agreement are reasonably necessary to protect Orca Health's legitimate interests.

114. Orca Health has fully performed all of its obligations under the agreement.

115. On information and belief, Huish breached the agreement, including at least provisions 9, 10, 13, and 14 of the Agreement.

116. For example, on information and belief, Huish breached provision 9 of the agreement by providing confidential information to 3D4Medical during and after his employment with Orca Health.

117. On information and belief, Huish breached provision 10 of the agreement by deleting the contents of Orca Health's electronic devices prior to its return to Orca Health.

118. On information and belief, Huish breached provision 13 of the agreement by engaging with Orca Health's investors, partners, employees, suppliers, clients, and customers in a manner that was intended, and did, divert business opportunities from Orca Health, directly competed with Orca Health, and otherwise acted contrary to the interests of Orca Health.

119. On information and belief, Huish breached provision 14 of the Agreement by soliciting employees or consultants away from Orca Health either for his own benefit or for the benefit of 3D4Medical.

120. Orca Health's injuries were natural, probable, and foreseeable consequences of Huish's breach of contract and Orca Health seeks and is entitled to recover all of its actual, incidental, pecuniary, and consequential damages (including third-party litigation expenses) caused by the breach.

121. As a further proximate result of Huish's breach of the Agreement, Orca Health has been irreparably harmed because Orca Health's competitor, 3D4Medical, has been given a competitive advantage to compete with Orca Health. It would be difficult to ascertain the amount of compensation that would afford Orca Health adequate relief for this harm, and Orca Health does not have an adequate remedy at law to compensate it for its injuries. Thus, Orca Health seeks an injunction against future breach of the confidentiality provisions of the Agreement.

**COUNT VI**

**(Interference with Contract Against 3D4Medical)**

122. Orca Health refers to and incorporates herein by reference the foregoing paragraphs of this Complaint.

123. At all relevant times, Orca Health maintained contractual relationships with its employees and contractors.

124. On information and belief, Defendants interfered with those employee agreements by use of improper means, including without limitation by deceit or misrepresentation, unfounded litigation, defamation, or disparaging falsehood; by violating an established standard of a trade or profession; and by deliberately inducing, with an intent to injure, the breach of Orca Health's agreements with its current and former employees and contractors.

125. Specifically, on information and belief, Defendants interfered with Orca Health's employee agreements by using improper means, including the foregoing improper means, while inducing Orca Health's current and former employees and contractors to breach their agreements with Orca Health, in furtherance of 3D4Medical's competition with the Orca Care Platform.

126. As a result of Defendants' interference, on information and belief, Orca Care has lost the benefits of its contractual relationships with its current and former employees and contractors.

127. Orca Health's injuries were natural, probable, and foreseeable consequences of the Defendants' conduct and Orca Health seeks and is entitled to recover all of its actual, incidental, pecuniary, and consequential damages (including third-party litigation expenses)

caused by the interference, as well as punitive damages. Orca Health is further entitled to injunctive relief against further interference.

## **COUNT VII**

### **(Unjust Enrichment against 3D4Medical)**

128. Orca Health refers to and incorporates herein by reference the foregoing paragraphs of this Complaint.

129. 3D4Medical received a benefit from Orca Health when 3D4Medical unlawfully obtained Orca Health's non-trade secret materials from one or more of Orca Health's current or former employees or contractors, including Huish.

130. 3D4Medical had an appreciation or knowledge of the benefit conferred on them by receipt of Orca Health's non-trade secret materials from one or more of Orca Health's current or former employees or contractors, including Huish.

131. 3D4Medical retained the benefits described above under such circumstances as to make it inequitable for them to retain those benefits without payment of the value of those benefits to Orca Health.

132. Orca Health is entitled to the value of the unjust enrichment conferred upon 3D4Medical.

## **COUNT VIII**

### **(Unfair Competition Against 3D4Medical, 15 U.S.C. § 1125)**

133. Orca Health refers to and incorporates herein by reference the foregoing paragraphs of this Complaint.

134. The Orca Care Platform has an inherently distinctive trade dress, including without limitation: (1) distinctive icon comprising the outline of a physician, identifying emblems for the medical field, simple geometric shape, flat dimension without shadows or depth, right-hand side logo, and radiant color scheme for both foreground and background; (2) introductory grid of 3D renderings of distinct anatomical regions with text below specifying the particular region and top-center user prompt placed above; (3) distinctive screen designs comprising 3D anatomy centered in the screen, contextual content for the anatomy arranged vertically and placed to the side of the screen, linear point-of-care consultation flow arranged horizontally and placed at the top of the screen, and next button placed in the top-right corner to advance the point-of-care consultation flow; (4) distinctive charcoal colored play button and “scrub” bar to advance range of motion animation; (5) distinctive compilation of dashboard elements comprising light blue, yellow, green colors used for circle, bar, and/or other graphs; (6) distinctive design for selecting content in a “Care Plan” to send to a patient comprising a grid of selectable items wherein each item has a small, light green, circle icon in the top corner of the item for adding/removing content; and (7) distinctive design for sending a “Care Plan” comprising an elongated button with rounded edges in light-green coloring with the centered text “Send to Patient.”

135. Orca Health also uses the inherently distinctive mark “Care Plan” as a source identifier for the Orca Care Platform. Orca Health’s CARE PLAN mark has also acquired secondary meaning as a result of Orca Health’s extensive use, advertising, and sales across the United States.

136. The Orca Care Platform trade dress and Orca Health's mark CARE PLAN have acquired secondary meaning as a result of Orca Health's and its distributors' extensive use, advertising, and sales across the United States, including, for example, promotion at nationwide, industry-leading trade venues.

137. Without authorization, on information and belief, 3D4Medical is using the Orca Care Platform trade dress and Orca Health's mark CARE PLAN, including without limitation in the design, development, and promotion of 3D4Medical's Complete Ortho.

138. 3D4Medical's unauthorized use of confusingly similar imitations of the Orca Care Platform trade dress and Orca Health's mark CARE PLAN have caused and are causing both forward and reverse confusion, deception, and mistake by creating the false and misleading impression that 3D4Medical and/or Complete Ortho are affiliated, connected, or associated with Orca Health and/or the Orca Care Platform, and/or vice versa.

139. 3D4Medical has made false representations, false descriptions, and false designations of origin in connection with Complete Ortho, in violation of 15 U.S.C. § 1125(a), and unless enjoined by this Court, 3D4Medical's further activities will cause a likelihood of confusion and deception of members of the public and, additionally, injury to Orca Care's goodwill and reputation, for which Orca Health has no adequate remedy at law.

140. 3D4Medical's actions demonstrate an intentional, willful, and malicious intent to infringe the Orca Care Platform trade dress and Orca Health's mark CARE PLAN, to the great and irreparable injury of Orca Health.

141. 3D4Medical caused substantial injury to the public and to Orca Health, and pursuant to 15 U.S.C. §§ 1116, 1117, and 1125(a), Orca Health is entitled to injunctive relief,

damages, costs, and 3D4Medical's profits. In light of the egregious and exceptional nature of 3D4Medical's conduct, Orca Health is further entitled to recover its reasonable attorneys' fees.

### **COUNT IX**

#### **(Infringement of U.S. Patent No. 8,908,943 Against 3D4Medical)**

142. Orca Health refers to and incorporates herein by reference the foregoing paragraphs of this Complaint.

143. 3D4Medcial, by the acts complained herein, and by making, using, selling, offering for sale, importing, and/or exporting from the United States products, including at least the mobile application software "Complete Anatomy," "Spine Pro III," and "Essential Skeleton 4," that embody the invention claimed in the '943 patent, have in the past, do now, and continue to directly infringe, contributorily infringe, and/or induce others to infringe the claims of the '943 patent literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271.

144. Upon information and belief, 3D4Medical will continue to infringe upon the claims of the '943 patent by making, using, selling, offering for sale, and/or exporting from the United States products, including at least the above listed mobile applications unless this Court enjoins 3D4Medical's infringing activities.

145. Claim 16 of the '943 patent recites:

A computer system method for presenting anatomical information as one or more rendered anatomical elements and for modifying the rendering of the anatomical elements in response to conditional input data, the computer system comprising: a memory; at least one processor; and a storage device having stored instructions which, when executed by the at least one processor, implement a method comprising receiving input corresponding to an anatomical element and that is capable of being used by the computing system to represent the anatomical element; resending the anatomical element with at least visual feedback; presenting controls



for modifying the presentation of the anatomical element, the controls comprising:

a storage device having stored instructions which, when executed by the at least one processor, implement a method comprising:

receiving input corresponding to an anatomical element and that is capable of being used by the computing system to represent the anatomical element;

presenting the anatomical element with at least visual feedback;

presenting controls for modifying the presentation of the anatomical element, the controls comprising:

an animation control which, when selected, selectively turns on and off animations of the anatomical element;

an annotations control which, when selected, selectively turns on and off a display of labels associated with different components of the anatomical element;

a slices control displaying at least three selectable options which, when any of the at least three selectable options is selected, causes the anatomical element to be displayed with a corresponding slice view; and

a layers control displaying at least three selectable options which, when any of the at least three selectable options is selected, causes the anatomical element to be displayed with one or more corresponding layers associated with a selected option;

the animation control, the annotations control, the slices control, the layers control and the anatomical element all being displayed simultaneously; and

at least a medical condition control which, when selected, is operable to receive input for personalizing the anatomical element to a detected medical condition associated with the particular user; and

modifying the anatomical element in response to detected user input entered with at least the medical condition control.

146. A complete claim chart cross referencing the elements of Claim 16 with explanation of the infringing aspects of one exemplary infringing product is attached hereto as **Exhibit E**, and is incorporated herein by reference.

147. The functionality of 3D4Medical's "Complete Anatomy," "Spine Pro III," and "Essential Skeleton 4," software products that infringe the claims of the '943 patent have no

substantial non-infringing use because their fundamental purpose, interface, and capabilities are embodied by the issued claims of the '943 patent.

148. 3D4Medical provides its customers with mobile software applications, such as the "Complete Anatomy," "Spine Pro III," and "Essential Skeleton 4," that provide an environment for users to visualize, manipulate, personalize, and modify anatomical elements in a manner that infringes the claims of the '943 patent.

149. By reason of 3D4Medical's infringement of the claims of the '943 patent alleged herein, Orca Health, Inc. has suffered damage in an amount to be proved at trial.

150. Further, 3D4Medical threatens to continue to infringe the claims of the '943 patent as complained herein unless it is restrained and enjoined, all to Orca Health's irreparable injury. It would be difficult to ascertain the amount of compensation that would afford Orca Health adequate relief for such future and continuing infringement, and a multiplicity of judicial proceedings would be required to protect Orca Health's rights in the '943 patent. Orca Health does not have an adequate remedy at law to compensate it for the injuries threatened.

151. Thus, Orca Health is entitled to monetary damages adequate to compensate it for 3D4Medical's infringement of the '943 patent under 35 U.S.C. § 284, increased damages under 35 U.S.C. § 284, together with interest, costs, and attorneys' fees under 35 U.S.C. § 285, and is entitled to injunctive relief against such infringement in accordance with 35 U.S.C. § 283.

### **COUNT X**

#### **(Unfair Competition Against All Defendants, Utah Code § 13-5A-101 *et seq.*)**

152. Orca Health refers to and incorporates herein by reference the foregoing paragraphs of this Complaint.

153. Defendants engaged in unfair competition as defined in Utah Code § 13-5A-102(4) by their conduct above when, among other things, Defendants did the following:

- a. Defendants engaged in malicious cyber activity; and
- b. 3D4Medical infringed Orca Health's '943 Patent and trademark or trade name.

154. Defendants' actions or practices are unlawful, unfair, and/or fraudulent, as outlined above, and have led to a material diminution in the value of Orca Health's intellectual property, including Orca Health's '943 Patent, trademark and trade name, and other intellectual property.

155. As a result of the conduct alleged above, Defendants are in violation of the Unfair Competition Act, Utah Code Ann. §§ 13-5A-101, et seq.

156. Accordingly, Orca Health is entitled to actual damages, costs, attorneys' fees, and punitive damages pursuant to Utah Code 13-5A-103.

### **COUNT XI**

#### **(Civil Conspiracy Against Defendants)**

157. Orca Health refers to and incorporates herein by reference the foregoing paragraphs of this Complaint.

158. Defendants, in combination with one or more individuals or entities, including each of them, acted to misappropriate Orca Health's trade secrets, interfere with Orca Health's contractual rights, breach Huish's fiduciary duties, interfere with Orca Health's existing and prospective economic relations, unjustly enrich themselves of Orca Health's non-trade secret materials, unfairly compete with Orca Health under the Lanham Act, infringe Orca Health's '943 patent, and violate the Utah Unfair Competition Act.

159. The object of Defendants' conspiratorial conduct was to injure Orca Health in favor of 3D4Medical, and there was a meeting of the minds between Defendants on the unlawful object of their conspiracy or course of action.

160. Defendants engaged in one or more unlawful acts by their conduct alleged above, including by misappropriating Orca Health's trade secrets, interfering with Orca Health's contractual rights, breaching Huish's fiduciary duties, interfering with Orca Health's existing and prospective economic relations, unjustly enriching themselves of Orca Health's non-trade secret materials, unfairly competing with Orca Health under the Lanham Act, infringing Orca Health's '943 patent, and violating the Utah Unfair Competition Act.

161. Orca Health has suffered significant damages as a direct and proximate result of Defendants' conspiracy.

162. Orca Health's injuries were natural, probable, and foreseeable consequences of Defendants' conspiratorial conduct, and Orca Health is entitled to recover all of its actual damages caused by Defendants' conspiratorial conduct, together with punitive damages.

163. Orca Health is further entitled to injunctive relief against further tortious conduct by Defendants.

#### **JURY DEMAND**

Plaintiff demands a jury trial on all disputed issues that are so triable.

#### **PRAYER FOR RELIEF**

WHEREFORE, Orca Health, Inc. demands for a judgment in its favor and prays the Court to award the following relief:

A. On Count I, a judgment that Defendants violated Utah Code Ann. § 13-24-2 (Utah Uniform Trade Secrets Act) by misappropriating Orca Health's trade secrets; an order pursuant to Utah Code Ann. § 13-24-3 enjoining all Defendants, which injunction shall also last for a reasonable period of time in order to eliminate the commercial advantage that otherwise would be derived from the misappropriation, from using, communicating, or otherwise benefitting from any misappropriated trade secrets, including 3D4Medical from marketing, selling, or distributing copies or licenses for Complete Ortho, or of any other application that uses or was developed using Orca Health's Trade Secrets; an award to Orca Health for its actual damages, Defendants' unjust enrichment, and/or a reasonable royalty as authorized by Utah Code Ann. § 13-24-4(1); an order finding Defendants' misappropriation willful and malicious and an award to Orca Health of exemplary damages and attorneys' fees authorized by Utah Code Ann. §§ 12-24-4(2) and 12-24-5;

B. On Count II, a judgment that Defendants violated the Federal Defend Trade Secrets Act by misappropriating Orca Health's trade secrets; an order enjoining any actual or threatened misappropriation pursuant to 18 U.S.C. § 1836(b)(3)(A); an award of Orca Health's actual damages, Defendants' unjust enrichment, and/or a reasonable royalty pursuant to 18 U.S.C. § 1836(b)(3)(B); and an order finding Defendants' misappropriation willful and malicious and an award to Orca Health of exemplary damages and attorney's fees pursuant to 18 U.S.C. § 1836(b)(3)(C) and (D) ;

C. On Count III, a judgment holding Defendants liable for interfering with Orca Health's existing and prospective business relationships; an order enjoining further interference; and an award of Orca Health's actual, incidental, pecuniary, and consequential damages

(including third-party litigation expenses) caused by the interference, as well as punitive damages;

D. On Count IV, a judgment holding Huish liable for breach of fiduciary duty; and an award of Orca Health's actual, incidental, pecuniary, and consequential damages (including third-party litigation expenses) caused by the breach, as well as punitive damages;

E. On Count V, a judgment holding Huish liable for breach of contract; an order enjoining Huish from further breach; and an award of Orca Health's actual, incidental, pecuniary, and consequential damages (including third-party litigation expenses) caused by the breach;

F. On Count VI, a judgment holding 3D4Medical liable for interference with contract; an order enjoining further interference; and an award of Orca Health's actual, incidental, pecuniary, and consequential damages (including third-party litigation expenses) caused by the interference, as well as punitive damages;

G. On Count VII, a judgment against 3D4Medical for unjust enrichment; and an order awarding Orca Health the value of the unjust enrichment;

H. On Count VIII, a judgment against 3D4Medical for unfair competition and false designation of origin; an order enjoining 3D4Medical from further unfair competition and false designation of origin; and an award of Orca Health's damages, costs, and reasonable attorney's fees, as well as the disgorgement of 3D4Medical's profits;

I. On Count IX, a judgment holding 3D4Medical liable for willfully infringing the claims of the '943 patent; an order enjoining 3D4Medical from infringing the '943 patent under 35 U.S.C. § 283; an order awarding Orca Health general and/or specific damages, including a

reasonable royalty and/or lost profits, in amounts to be fixed by the Court in accordance with proof, including enhanced and/or exemplary damages, as appropriate for its acts of patent infringement under 35 U.S.C. § 284; an order finding that 3D4Medical's infringement of the claims of the '943 patent was willful, that this is an exceptional case, and an award to Orca Health of enhanced damages and attorneys' fees under 35 U.S.C. § 285;

J. On Count X, a judgment that Defendants violated Utah Code Ann. § 13-5A-102 (Utah Unfair Competition Act); and an award of actual damages, costs, attorneys' fees, and punitive damages pursuant to Utah Code Ann. § 13-5A-103.

K. On Count XI, a judgment that Defendants engaged in an unlawful conspiracy; an order enjoining further conspiracy; and an award for an amount of damages to be proven at trial, attorneys' fees, costs, an punitive damages;

L. For an order awarding Orca Health pre-judgment and post-judgment interest; and such other and further relief as the Court deems appropriate and just under the circumstances.

DATED this 11th day of April, 2017.

RAY QUINNEY & NEBEKER P.C.

/s/Michael K. Erickson

Samuel C. Straight

Michael K. Erickson

Calvin R. Winder

Adam K. Richards

*Attorneys for Plaintiff Orca Health, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of April, 2017, a true and correct copy of the foregoing **FIRST AMENDED COMPLAINT** was electronically filed with the Court via the CM/ECF system which sent notification of such filing to the following:

Mark M. Bettilyon  
Ian Wang  
THORPE, NORTH & WESTERN, LLP  
175 South Main Street  
Suite 900  
Salt Lake City, UT 84111  
mark.bettilyon@tnw.com  
ian.wang@tnw.com

Dorothy R. Auth  
Howard Wizenfeld  
Nimra H. Azmi  
CADWALADER, WICKERSHAM & TAFT LLP  
One World Financial Center  
New York, NY 10281-0006  
dorothy.auth@cwt.com  
howard.wizenfeld@cwt.com  
nimra.azmi@cwt.com

Erik A. Olson  
Kevin M. Paulsen  
MARSHALL OLSON & HULL  
Newhouse Building  
Ten Exchange Place, Suite 350  
Salt Lake City, UT 84111  
eolson@mohtrial.com  
kpaulsen@mohtrial.com

Angelica Torres