

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

20/20 VISION CENTER, LLC,

Plaintiff,

vs.

VISION PRECISION HOLDINGS, LLC,
STANTON OPTICAL FLORIDA, LLC D/B/A/
STANTON OPTICAL & MY EYELAB,
THOMAS CAMPEN MD & ASSOCIATES,
PLLC, AND M&D OPTICAL FRANCHISE,
LLC,

Defendants.

Case No.: 9:18-cv-80670-RLR

Jury Trial Demanded

SECOND AMENDED COMPLAINT

This is an action for patent infringement, trade secret misappropriation, breach of contract, and related claims, in which plaintiff, 20/20 Vision Center, LLC (“20/20 Vision”), by its counsel, makes the following allegations in support of its Second Amended Complaint against defendants, Vision Precision Holdings, LLC (“VPH”), Stanton Optical Florida, LLC d/b/a Stanton Optical & My Eyelab (“Stanton Optical”), Thomas Campen MD & Associates, PLLC (“Campen”)¹, and M&D Optical Franchise LLC (“M&D Optical”):

PARTIES

1. 20/20 Vision is a Delaware limited liability company with a principal place of business at 100 Quentin Roosevelt Blvd., Suite 400, Garden City, NY, 11530.

¹ Thomas Campen MD & Associates, PLLC is the proper name for this party, although the original Complaint in this action used the abbreviation “T. Campen MD & Associates, PLLC.” (DE 1 at 1).

2. 20/20 Vision draws on its proprietary technology to innovate and develop various telehealth products and solutions, including state-of-the-art computer systems and software for utilizing teleophthalmology to perform vision screenings and eye exams. Among other things, 20/20 Vision's telehealth products and solutions significantly enhance the convenience and flexibility for both customers and eye care providers by enabling accurate, efficient, and affordable vision screenings and comprehensive eye health examinations to be made available and performed at virtually any location.

3. On information and belief, VPH is a Florida limited liability company with a principal place of business at 3801 S. Congress Ave., Palm Springs, FL 33461.

4. On information and belief, Stanton Optical is a Florida limited liability company with a principal place of business at 3801 S. Congress Ave., Palm Springs, FL 33461.

5. On information and belief, Stanton Optical conducts business under the names "Stanton Optical" and "MyEyeLab."

6. On information and belief, Campen is a Florida professional limited liability company with a principal place of business at 3801 S. Congress Ave., Palm Springs, FL 33461.

7. On information and belief, M&D Optical is a Florida limited liability company with a principal place of business at 3801 S. Congress Ave., Palm Springs, FL 33461.

8. On information and belief, M&D Optical markets, offers for sale and sells franchises of Stanton Optical and/or MyEyeLab to third parties, and offers for sale, sells, and/or distributes products and services to such franchisees.

9. On information and belief, VPH is the exclusive provider of goods and services to M&D Optical's franchisees.

10. On information and belief, VPH, Stanton Optical, Campen, and M&D Optical share the same registered agent.

11. On information and belief, Stanton Optical, Campen, and M&D Optical are directly affiliated with, owned by, controlled (directly or indirectly) by, and/or under common ownership or control with, VPH.

12. On information and belief, Defendants offer for sale, sell, and/or distribute a range of eye care products and services, including telehealth-based eye examinations or vision screenings and telehealth-based systems and solutions, including computer systems and products for performing such telehealth-based eye examinations or vision screenings that infringe upon 20/20 Vision's patented technology.

13. On information and belief, rather than expending the necessary resources and time to independently create and develop their own technology, Defendants purposefully and unlawfully acquired 20/20 Vision's valuable trade secrets and proprietary information and copied 20/20 Vision's innovative telehealth software products and technologies in order to unfairly and undeservedly gain a head-start in the marketplace.

JURISDICTION AND VENUE

14. This action arises under the patent laws of the United States, Title 35 U.S.C. §§ 1, *et seq.* Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), and has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

15. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) because the matter in controversy exceeds the sum or value of \$75,000 (exclusive of interest and costs), and 20/20 Vision (including its constituent members) and Defendants (including their respective constituent members) are citizens of different States. All of 20/20 Vision's

constituent members are citizens of the State of New York. On information and belief, all of the constituent members of each of Defendants VPH, Stanton Optical, and Campen are citizens of the States of Florida or Ohio.

16. Defendants are each subject to personal jurisdiction in this Court at least because it: (i) has systematic and ongoing contacts within the jurisdiction of this Court; (ii) has and maintains a principal place of business within the State of Florida and the jurisdiction of this Court; (iii) has committed actions relevant to 20/20 Vision's claims in this Second Amended Complaint within the jurisdiction of this Court, including, without limitation, entering into agreements with customers and other parties, and advertising, promoting, offering for sale, selling, and distributing infringing products and services within the jurisdiction of this Court; and (iv) has consented to this Court's jurisdiction over this action.

17. On information and belief, Defendants have themselves, and through various related parties, repeatedly transacted business and entered into agreements with customers and other parties in Florida and within this District, and have advertised, promoted, offered for sale, sold, distributed, and provided infringing products and services in Florida, without 20/20 Vision's authorization or permission.

18. On information and belief, Defendants also maintain and operate one or more websites on the Internet, including websites located at: <http://www.stantonoptical.com> and <http://www.myeyelab.com>, which are operational twenty-four (24) hours a day, seven days a week, are accessible to and regularly accessed by residents of Florida and other persons throughout the United States, and through which Defendants advertise, promote, offer for sale, and sell infringing products and services.

19. Venue is proper in this District under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) at least because each of the Defendants: (i) is subject to personal jurisdiction in this District; (ii) was formed in the State of Florida; (iii) “resides” in the State of Florida and within this District, inasmuch as it has and maintains a principal place of business in the State of Florida and this District; and (iv) has consented to venue within the jurisdiction of this Court, for the purposes of this action between the parties.

BACKGROUND

20/20 Vision’s Telehealth Innovations

20. 20/20 Vision is a leading developer and provider of telemedicine systems and technology for the eye health industry.

21. 20/20 Vision’s philosophy is centered around revolutionizing the eye health industry by creating new telemedicine technologies that make vision and eye care more accessible, affordable, and convenient for customers, as well as more efficient and flexible for licensed eye health providers.

22. Since its inception, 20/20 Vision has been dedicated to developing and perfecting telemedicine products and solutions that utilize innovative and state-of-the-art ophthalmic equipment and computer systems and software. 20/20 Vision has invested considerable resources and effort over many years to creating and developing its telemedicine systems and technologies, including various unique and proprietary algorithms, methodologies, and techniques that enhance and optimize these systems.

23. One area in which 20/20 Vision has devoted considerable resources and effort is in creating and developing new and improved teleophthalmology solutions that allow vision and eye examinations to be performed from virtually any location. 20/20 Vision’s cutting-edge

solutions utilize digital ophthalmic equipment, refraction software, and telecommunications technology in order to enable remotely-located eye care professionals to communicate and interact in real-time with customers at an exam site, guide them through vision and eye examinations using the ophthalmic equipment, review and evaluate the examination data and results, and generate optical prescriptions and exam reports for the customer.

24. Among other things, 20/20 Vision's inventive teleophthalmology systems and solutions significantly improve the speed, efficiency, and flexibility performing vision and eye examinations, thereby reducing the time and cost associated with such examinations, increasing the number of examinations that can be provided by eye care providers and professionals, and greatly improving the convenience and experience for customers.

25. 20/20 Vision has also invested substantial resources and effort to protecting its inventive and proprietary telemedicine solutions and technologies with a range of intellectual property rights. For example, 20/20 Vision owns a number of patents and patent applications in the United States and throughout the world, which protect various aspects of its new and improved teleophthalmology technologies for performing vision and eye examinations.

26. In particular, as a result of its significant innovations, 20/20 Vision was granted U.S. Patent No. 9,230,062 (the "'062 Patent") by the U.S. Patent and Trademark Office ("USPTO"). The '062 Patent is entitled "Systems and Methods for Enabling Customers to Obtain Vision and Eye Health Examinations," and was filed on November 6, 2013 and issued on January 5, 2016.

27. 20/20 Vision is the owner by assignment of the '062 Patent, with ownership of all substantial rights in the '062 Patent, including the right to exclude others and to sue and recover

damages for the past and future infringement thereof. A true and correct copy of the '062 Patent is attached hereto as Exhibit A.

28. In general, the '062 Patent discloses and claims new and improved telehealth systems, methods, and computer software for enabling remotely-located eye health practitioners to connect with customers at exam sites and perform vision and eye examinations via a computing network.

29. For example, the claims of the '062 Patent are directed to, *inter alia*, telehealth systems and/or computer servers for providing eye health and vision examinations. In certain embodiments, these telehealth systems include one or more diagnostic centers having ophthalmic equipment (e.g., auto-refractors, auto-lensometers, etc.) connected to an equipment controller, one or more practitioner devices associated with eye care practitioners, and a computer server that is connected to the diagnostic centers and practitioner devices over a network.

30. In certain embodiments, the diagnostic centers communicate with the server in order to select eye care practitioners for administering eye examinations to customers, receive instructions that enable the practitioners to operate the ophthalmic equipment and administer one or more tests, and send various examination data that is generated in connection with the tests being performed.

31. In certain embodiments, the practitioner devices are configured to receive customer examination data from the server and allow the practitioners review the examination data and generate customer evaluation data. In certain embodiments, eye health reports based on the practitioners' customer evaluation data are provided to the customers.

32. In certain embodiments, the server allows practitioners to log-in to a web-based platform associated with administering the eye examinations to customers. In certain

embodiments, the server tracks various availability data associated with the practitioners (e.g., whether the practitioners are logged-on to the platform and whether they are currently administering an exam), which is used to select practitioners for administering eye examinations at the diagnostic centers.

33. In certain embodiments, the eye examinations administered at the diagnostic centers include objective tests using the ophthalmic equipment and subjective tests that utilize an iterative process of presenting questions to the customers based on the results of the objective tests and the responses received from the customers.

34. 20/20 Vision's patents on this technology also include U.S. Patent No. 5,914,772 (the "'772 Patent"), which is entitled "Method and Device for Testing Eyes." The '772 Patent was filed on December 9, 1997 and issued on June 22, 1999

35. 20/20 Vision is the owner by assignment of the '772 Patent, with ownership of all substantial rights in the '772 Patent, including the right to exclude others and to sue and recover damages for the past and future infringement thereof. A true and correct copy of the '772 Patent is attached hereto as Exhibit B.

36. The '772 Patent is generally directed to, *inter alia*, devices, systems, and methods for performing automated testing of a person's eyes, including automated systems for determining the refractive error of an eye.

37. The Patent Office examined the '062 and '772 Patents over a period of several years. After thorough examination, the Patent Office found that the inventions described and claimed in these patents are both new and not obvious in light of prior patents, publications, and other references.

38. In addition to its patented technologies, 20/20 Vision has devoted considerable resources and effort over many years to creating, developing, and safeguarding various trade secrets and other confidential and proprietary information, such as innovative technologies, proprietary computer software, and novel processes and techniques, as well as other forms of confidential and proprietary data and information.

39. By way of example, 20/20 Vision's trade secrets and other confidential and proprietary information include novel computer-based systems and platforms, including cutting-edge telecommunications technology, ophthalmic equipment, and other automated devices and systems for managing and facilitating the administration of vision and eye examinations using telemedicine.

40. 20/20 Vision's trade secrets and other confidential and proprietary information also include innovative computer software, algorithms, and routines for implementing and managing various aspects of its telehealth systems, such as establishing real-time connections between remotely-located practitioners and customers at an examination site, enabling practitioners to remotely operate and control the ophthalmic equipment at the examination site, and tracking, storing, and generating various data, results, and reports associated with administering the examinations to customers.

41. 20/20 Vision's trade secrets and other confidential and proprietary information also include confidential product specifications, manuals, documentation, and literature, as well as various other materials and information, pertaining to its innovative telehealth systems and software products.

42. These and other valuable trade secrets and other confidential and proprietary information have been developed and attained through extensive efforts and substantial

expenditures of time and money by 20/20 Vision over many years, including considerable investments into research and development activities for new products and technologies and the creation and improvement of product offerings and business strategies through a continual trial-and-error process with respect to the development, implementation, sale, and distribution of 20/20 Vision's telehealth products and solutions.

43. These trade secrets and other confidential and proprietary information are vital to 20/20 Vision's enterprise and have been instrumental to 20/20 Vision's significant commercial success in the eye health industry.

44. 20/20 Vision has, at all times, maintained reasonable security measures to preserve the secrecy and confidentiality of its trade secrets and other confidential and proprietary information.

45. For example, 20/20 Vision takes active steps to restrict access to its trade secrets and other confidential and proprietary information, such as by making it available on a "need to know" basis and/or storing sensitive information, such as software code, in protected files on a secure computer server.

46. As another example, 20/20 Vision employs various measures to limit the distribution of any trade secrets and other confidential and proprietary information to customers, such as by only providing such information to customers pursuant to written agreements that include express confidentiality and non-disclosure obligations and usage restrictions, only providing limited types of information and data (e.g., object code) to customers, and requiring that customers return or destroy all copies of such information upon the expiration or termination of their agreements with 20/20 Vision.

47. Due to these and various other security measures, 20/20 Vision's trade secrets and other confidential and proprietary information are not available for others in the eye health industry – or any other industry – to use through any legitimate means.

48. As a result, 20/20 Vision's trade secrets and other confidential and proprietary information derive considerable independent economic value from not being generally known to, and not being readily ascertainable through proper means by, other persons who could obtain economic value from the disclosure or use of these trade secrets and other confidential and proprietary information.

Defendants Agreed to License 20/20 Vision's Innovative Technology

49. On information and belief, Defendants are in the eye care business and own, operate, and/or franchise a number of retail stores through which they market, offer for sale, and sell various optical products, including eye glasses, frames, and contact lenses, as well as certain eye health services, such as vision screenings and eye examinations.

50. On information and belief, Defendants were originally focused on providing traditional eye health services through examinations that were administered to customers by an on-site eye care professional, and, until recently, did not offer or provide any telemedicine-based eye health services.

51. On information and belief, in or about the early 2015 timeframe, Defendants began exploring the possibility of providing vision and eye examinations that utilized telemedicine technology.

52. In or around mid-2015, Defendants VPH, Stanton, and Campen approached 20/20 Vision about the possibility of licensing and using 20/20 Vision's telemedicine systems and

software in connection with providing eye examinations to customers at certain of Defendants' retail locations.

53. After engaging in various discussions and negotiations, Defendants VPH, Stanton, and Campen, and 20/20 Vision reached an agreement on the terms of the proposed licensing and affiliation arrangement, which was then memorialized in a number of written agreements executed by certain of the Defendants, 20/20 Vision, and/or certain of their respective affiliates, during the period between August 2015 and May 2016.

54. For example, on or around August 28, 2015, Defendant Campen, 20/20 Vision, and one of 20/20 Vision's affiliates, 20/20 Ophthalmology Services, PLLC ("20/20 Ophthalmology"), entered into a Pilot Telehealth Agreement (a true and correct copy of which is attached hereto as Exhibit C), pursuant to which, *inter alia*, 20/20 Vision agreed to lease certain equipment, license certain of its telehealth software products and documentation, and provide various onsite and professional services to Campen in connection with Campen's use of 20/20 Vision's proprietary telehealth business model at a retail location owned and operated by Defendants in Hollywood, Florida, in return for which Campen agreed to pay certain licensing and services fees to 20/20 Vision.

55. On or around February 5, 2016, Defendant VPH and 20/20 Vision entered into a Telehealth Software License Agreement (a true and correct copy of which is attached hereto as Exhibit D), pursuant to which, *inter alia*, 20/20 Vision agreed to license certain of its telehealth software products and documentation to VPH, and provide support services to VPH related thereto, solely in connection with VPH's use of the software on the equipment sold by 20/20 Vision to VPH at Defendants' retail location in Knoxville, Tennessee.

56. On or around February 5, 2016, Defendant VPH and 20/20 Vision also entered into an Equipment Purchase Agreement (a true and correct copy of which is attached hereto as Exhibit E), pursuant to which, *inter alia*, 20/20 Vision agreed to sell certain computer and telehealth equipment to VPH for use at Defendants' retail location in Knoxville, Tennessee.

57. On or around February 25, 2016, Defendant VPH, 20/20 Vision, and 20/20 Ophthalmology, entered into a Telehealth Affiliation Agreement (a true and correct copy of which is attached hereto as Exhibit F), pursuant to which, *inter alia*, 20/20 Vision agreed to lease certain equipment and provide various onsite and professional services to VPH in connection with VPH's use of 20/20 Vision's proprietary telehealth business model at a retail location owned and operated by Defendants in Knoxville, Tennessee, in return for which VPH agreed to pay certain services fees to 20/20 Vision.

58. On or around May 1, 2016, Defendant Campen and 20/20 Vision entered into a Telehealth Software License Agreement (a true and correct copy of which is attached hereto as Exhibit G), pursuant to which, *inter alia*, 20/20 Vision agreed to license certain of its telehealth software products and documentation to Campen, and provide support services to Campen related thereto, solely in connection with Campen's use of the software on the equipment sold by 20/20 Vision to Campen at Defendants' retail location in Hollywood, Florida.

59. On or around May 1, 2016, Defendant VPH and 20/20 Vision also entered into another Equipment Purchase Agreement (a true and correct copy of which is attached hereto as Exhibit H), pursuant to which, *inter alia*, 20/20 Vision agreed to sell certain computer and telehealth equipment to VPH for use at Defendants' retail location in Hollywood, Florida.'

60. On or around May 1, 2016, Defendant Campen, 20/20 Vision, and 20/20 Ophthalmology entered into a Telehealth Affiliation Agreement (a true and correct copy of

which is attached hereto as Exhibit I), pursuant to which, *inter alia*, 20/20 Vision agreed to lease certain equipment and provide various onsite and professional services to Campen in connection with Campen's use of 20/20 Vision's proprietary telehealth business model at a retail location owned and operated by Defendants in Hollywood, Florida, in return for Campen's payment of certain services fees to 20/20 Vision. The Pilot Telehealth Agreement, Telehealth Affiliation Agreements, Telehealth Software License Agreements, and Equipment Purchase Agreements discussed above, including any agreements, exhibits, and documents, attached thereto, referenced therein, or executed in connection therewith, and any other similar agreements entered into between any of the Defendants' and 20/20 Vision around the same time, as well as any amendments, modifications, or supplementations to any of the foregoing are referred to herein as the "Telehealth Agreements."

Defendants' Unlawful and Infringing Activities

61. Shortly after entering into the May 2016 Telehealth Agreements with 20/20 Vision and 20/20 Ophthalmology, Defendants VPH, Stanton, and Campen defaulted on a number of their material obligations under these agreements.

62. For example, Defendants VPH, Stanton, and/or Campen failed to pay certain Usage and License Fees under the May 2016 Telehealth Affiliation Agreement that were due and payable to 20/20 Vision in connection with professional services provided to Defendants during May, June, July, and August of 2016.

63. In or around late-May 2016, 20/20 Vision notified Defendants VPH, Stanton, and Campen that they were in default of the Telehealth Agreements and requested Defendants to promptly pay all amounts that were then past due under these agreements. After not receiving any response from Defendants, 20/20 Vision made repeated attempts to contact Defendants

VPH, Stanton, and Campen, including via telephone and e-mail, during June, July, and August of 2016.

64. Defendants VPH, Stanton, and/or Campen responded to 20/20 Vision on or around August 21, 2016, and made various assurances to 20/20 Vision that Defendants intended to cure their default and that all past-due amounts owing under the agreements either were being, or already had been, paid to 20/20 Vision.

65. Defendants VPH, Stanton, and Campen, however, failed to make any such past-due payments as promised to 20/20 Vision.

66. Despite 20/20 Vision's additional attempts to contact Defendants VPH, Stanton, and/or Campen in late-August 2016, Defendants failed provide any further response or explanation whatsoever concerning their continued failure to cure their default under the Telehealth Agreements.

67. On or around September 1, 2016, 20/20 Vision sent a letter to Defendants VPH, Stanton, and Campen, notifying them that 20/20 Vision was immediately terminating the Telehealth Agreements due to Defendants' continued failure to pay the amounts due and owed to 20/20 Vision under the agreements.

68. In its letter, 20/20 Vision also advised Defendants VPH, Stanton, and Campen that, in accordance with the terms of the Telehealth Agreements, any and all licenses and rights that had been granted to Defendants, including all rights to use any of 20/20 Vision's software, intellectual property, and confidential information were also immediately terminated.

69. Defendants VPH, Stanton, and Campen never responded to 20/20 Vision's September 1, 2016 letter, nor have they made any of the payments that were due and owed to 20/20 Vision as of the date the Telehealth Agreements were terminated, which amounted to

approximately \$22,000 in service fees, and certain additional applicable late fees and interest charges.

70. On information and belief, following Defendants VPH's, Stanton's, and/or Campen's violation of the Telehealth Agreements, and the termination of the agreements by 20/20 Vision, Defendants have continued and are continuing to offer and sell various eye health services, including eye health examinations, that utilize telemedicine systems, software, and technology.

71. On information and belief, rather than pursuing independent product development in connection with implementing these telehealth systems and technologies, Defendants deliberately and systematically misappropriated and improperly used 20/20 Vision's trade secrets and other confidential and proprietary information and/or copied 20/20 Vision's innovative and patented telehealth technologies and methodologies with utter disregard for 20/20 Vision's intellectual property rights.

72. On information and belief, Defendants copied and used the same elements and features as 20/20 Vision's proprietary telehealth systems, technology and business model, including 20/20 Vision's patented teleophthalmology inventions.

73. For example, on information and belief, Defendants are continuing to use 20/20 Vision's proprietary telehealth software, technology, and business model that Defendants VPH, Stanton, and Campen acquired from 20/20 Vision in connection with the Telehealth Agreements, and/or other copy-cat telehealth software and technology based thereon, to provide vision and eye health examinations that are performed utilizing telemedicine to customers at Defendants' retail stores, including one or more retail stores located in Tennessee and Florida, as well as

Defendants' franchisees' retail stores, including in franchise retail locations in Florida, Georgia, California, and elsewhere in the United States.

74. On or about March, 21 2017, 20/20 Vision sent a letter to Defendants VPH, Stanton, and Campen, informing them (and other affiliates thereof) of 20/20 Vision's concerns with respect to Defendants continued, unauthorized, and unlawful use of 20/20 Vision's telehealth software and intellectual property, as well as its belief that Defendants' telehealth offerings are infringing upon 20/20 Vision's '062 Patent.

75. Defendants VPH, Stanton, and Campen responded to 20/20 Vision in a one-page letter, dated March 27, 2017, in which Defendants merely stated, without any explanation or support, that they were no longer using any of 20/20 Vision's telehealth software, intellectual property, or other confidential and proprietary information and, instead, were using a new telehealth system that was allegedly "developed through a source completed [sic] unrelated to [20/20 Vision]."

76. In their March 27th letter, Defendants VPH, Stanton, and Campen also erroneously concluded that, because they were purportedly no longer using 20/20 Vision's telehealth software, this "negates the possibility of a patent violation."

77. On or about March 30, 2017, 20/20 Vision sent another letter to Defendants VPH, Stanton, and Campen, which, among other things, requested additional information from Defendants concerning their allegedly new telehealth system, including the "source" who purportedly developed the software, a description and documentation regarding the hardware and software components in the system, and an explanation as to why Defendants' believed their system does not infringe 20/20 Vision's patents.

78. Defendants VPH, Stanton, and Campen did not respond to 20/20 Vision's March 30th letter, and, on or around July 7, 2017, 20/20 Vision sent yet another letter to Defendants.

79. Although Defendants VPH, Stanton, and Campen engaged in a few brief discussions with 20/20 Vision in July and August of 2017, as well as an in-person meeting at Defendants' principal place of business in April 2018, to this day, Defendants have not provided 20/20 Vision with the name of the "source" who purportedly developed the software, nor have they provided any meaningful explanation or documentation supporting their bald assertions that Defendants were no longer using any of 20/20 Vision's confidential and proprietary materials or infringing 20/20 Vision's intellectual property rights in connection with the allegedly "new" telehealth software and systems that Defendants were using, and continue to use, in order to offer and administer telemedicine-based vision and eye health examinations to its customers.

80. In early November, 20/20 Vision also sent letters to one of Defendants' franchisees, as well as two of its service providers, informing them of the Complaint filed by 20/20 Vision in this action, stating that 20/20 Vision was "continuing [its] investigation into this matter to better understand which companies and third parties are involved . . .," and requesting a response as to the nature of their relationship with VPH.

81. On November 20, 2017, just five days after 20/20 sent its foregoing letters, one of Defendant VPH's affiliates, M&D Optical, brought suit against 20/20 Vision in the Fifteenth Judicial Circuit Court, in and for Palm Beach County, Florida, styled *M&D Optical Franchise, LLC v. 20/20 Vision Center, LLC*, Case No. 2017-CA-12747 (Fla. 15th Cir. Ct. 2017), seeking monetary damages and injunctive relief for tortious interference with an advantageous business relationship based on the investigatory letters sent by 20/20 Vision to M&D Optical's franchisee and service providers (hereinafter, the "M&D Action").

82. At, or shortly after, the time the M&D Action was filed, 20/20 Vision learned, for the first time, that one of Defendant VPH's affiliates, M&D Optical was operating the franchising program on behalf of Defendants, through which they market, offer for sale, and sell MyEyeLab and/or Stanton Optical franchises to third parties, and manage and provide various technology, products, and services to their franchisees, including computer systems and software for performing telehealth-based eye examinations or vision screenings that infringe upon 20/20 Vision's patented technology.

83. On information and belief, M&D Optical has more than 40 franchisees, including a number of MyEyeLab franchisees with retail locations in Florida, Georgia, and California.

84. On January 8, 2018, 20/20 Vision filed a Counterclaim and Notice of Removal in the M&D action, removing the case to the United States District Court for the Southern District of Florida, West Palm Beach Division, now styled *M&D Optical Franchise, LLC v. 20/20 Vision Center, LLC*, Case No. 9:18-cv-80023-RLR (S.D. Fla. 2018).

85. Prior to Defendant M&D Optical's filing of its complaint in the M&D Action, 20/20 Vision was not aware of the existence of M&D Optical, its relationship with VPH, Stanton, and Campen, or its role in providing products and services to Defendants' franchisees and other third parties.

86. The sole basis for Defendant M&D Optical's bringing the M&D Action for tortious interference is that 20/20 Vision purportedly interfered with certain of Defendant's VPH's and its affiliates' franchisees and ophthalmology service providers by sending the investigatory letters on November 15, 2017.

87. On or around May 16, 2018, 20/20 Vision and Defendants reached an agreement to transfer this action, which was originally filed by 20/20 Vision in the Southern District of New York, to this District to consolidate the M&D Case with this case.

88. Accordingly, on information and belief, Defendants are continuing to use telehealth software and systems that unlawfully include, misuse, and/or copy 20/20 Vision's proprietary telehealth software, technology and business models, as well as other trade secrets and confidential and proprietary information, and infringe upon 20/20 Vision's patented telehealth technology.

89. On information and belief, Defendants engaged in a purposeful campaign designed to improperly acquire 20/20 Vision's trade secrets and other confidential and proprietary information under false pretenses, including extracting such information from 20/20 Vision under the guise of entering into a licensing and affiliation arrangement with 20/20 Vision, and then misused these trade secrets and other confidential and proprietary information in order to gain an improper and undeserved head-start in the marketplace and unfairly compete with 20/20 Vision.

90. On information and belief, Defendants' effort to unlawfully obtain, copy, infringe, and misuse 20/20 Vision's intellectual property was planned, deliberate, and strategic.

Defendants' Infringement of 20/20 Vision's '062 Patent

91. On information and belief, since the termination of the Telehealth Agreements on or about September 1, 2016, Defendants have continued and are continuing to offer and sell vision and eye health examinations that utilize telemedicine systems, software, and technology that enable remotely-located eye health practitioners or professionals to connect and interact with customers at an exam site and administer the examinations via a real-time network interface.

92. For example, on information and belief, Defendants are advertising, offering and providing, including through Defendants' websites and one or more of Defendants' retail stores, eye examinations that are described as being "telemedicine-based eye exams," which "use[s] telemedicine for maximized efficiencies" and, as a result, there is "no need for on-site doctors." *See* <http://www.stantonoptical.com>.

93. On information and belief, Defendants also launched a "strategic franchise program" under their My Eyelab business, which they are advertising, offering and providing, as being based on Defendants' "development of My Refractive Services, a telemedicine company that My Eyelab created to reduce the barrier of entry to the optical retail industry while improving accessibility to eye care." *See* <http://www.myeyelab.com>.

94. Similarly, M&D Optical describes its MyEyeLab franchise offering as including "[r]evolutionary use of telemedicine for maximized efficiency," and "built on exclusive technologies – from the flexibility of providing telemedicine-based eye exams throughout the day, to automated ordering, processing, customer management, and more." *See* <http://www.myeyelab.com/franchise>.

95. According to M&D Optical, these "teleconsulting" and other tools are provided to its franchisees so that "it has all been planned for you; no need for on-site doctors, with minimized administrative tasks, so your optical business can focus on sales and customer relations." *See* <http://www.myeyelab.com/franchise>.

96. Additionally, on information and belief, in connection with implementing and providing vision and eye examinations at its retail stores, including one or more retail stores located in Tennessee and Florida, Defendants' are using telemedicine-based systems and technology that improperly include, utilize, misuse, and/or copy 20/20 Vision's proprietary

telehealth software, systems, and methodologies, as well as other trade secrets and confidential and proprietary information that Defendants' received and learned from 20/20 Vision under and subject to the terms and conditions of the Telehealth Agreements.

97. On information and belief, M&D Optical is offering for sale, selling, and/or distributing the very same infringing telehealth systems, software, and business models on behalf of MyEyeLab and/or Stanton Optical to various third party franchisees, including franchisees located in Florida, Georgia, California, and elsewhere in the United States.

98. On information and belief, Defendants are continuing to sell, offer for sale and provide telemedicine-based vision and eye examinations that are infringing the inventions claimed in 20/20 Vision's Asserted Patent. Defendants' telemedicine-based systems for providing vision and eye examinations, including, without limitation, My Refractive Services, and any equivalent telemedicine-based eye health services under different names, as well as any other system, product, technology, or service made, sold, offered for sale, used, performed, purchased, manufactured, distributed in, or imported into the United States by or on behalf of Defendants that has the same form, structure, and/or steps as the inventions claimed in the Asserted Patent, are referred to herein as the "Accused Systems."

99. On information and belief, the Accused Systems include, telehealth systems, servers, and computer software for enabling customers to receive vision and eye examinations at a diagnostic site that are administered by remotely-located eye health practitioners via real-time network connections.

100. On information and belief, the Accused Systems include diagnostic centers (e.g., exam sites located at Defendants' optical retail stores) with various ophthalmic equipment and devices (e.g., auto-refractors, auto-lensometers, etc.) that are connected to an equipment

controller (e.g., a server, PC or other computing device) for controlling and operating the equipment.

101. On information and belief, the Accused Systems also include practitioner devices associated with eye care practitioners (e.g., PCs, laptops, mobile devices, etc. that are used by the eye care practitioners or professionals who administer vision and eye exams to Defendants' customers). On information and belief, the Accused Systems further include at least one computer server that is connected to the diagnostic centers and practitioner devices over one or more computer networks.

102. On information and belief, the server(s) in the Accused Systems communicate with the diagnostic centers and practitioner devices in order to select eye care practitioners to administer eye examinations that are requested by customers, and communicate various data and instructions between the practitioner devices and the diagnostic center that (among other things) establish a real-time connection that allows the practitioners and customers to communicate and interact with each other, enable practitioners to remotely operate the ophthalmic equipment and administer one or more tests to the customers, and allow practitioners to review and evaluate various results and data generated in connection with the tests that are being performed during the exam.

103. On information and belief, the practitioner devices in the Accused Systems are configured to receive customer examination data from the server and allow the practitioners to review the examination data and generate customer evaluation data. On information and belief, the Accused Systems generate optical prescriptions or eye health reports based on this customer evaluation data, which are provided to or made available to the customers at the diagnostic centers.

104. On information and belief, the server(s) in the Accused Systems include a web-based platform through which practitioners can log into the system from their practitioner devices and administer eye examinations to customers. On information and belief, these server(s) also track various availability data associated with the practitioners (e.g., which practitioners are logged-on to the system and currently available), and use this information to select practitioners for administering eye examinations that are requested by customers at the diagnostic centers.

105. On information and belief, certain of the eye examinations administered at the diagnostic centers of the Accused Systems include an objective portion utilizing the data generated during one or more objective tests by certain of the ophthalmic equipment (e.g., data generated by auto-refractors or auto-lensometers) and a subjective portion that utilizes an iterative process for presenting a series of questions to the customers that are based on the results of the objective tests and prior responses received from the customers.

106. Upon the termination of the Telehealth Agreements on or about September 1, 2016, any and all licenses and rights granted thereunder to Defendants VPH, Campen, and/or Stanton with respect to their use of 20/20 Vision's proprietary telehealth software and other intellectual property were immediately terminated. Accordingly, at least following the date on which the Telehealth Agreements were terminated, Defendants VPH, Campen, and/or Stanton have not been licensed or authorized to use any of 20/20 Vision's technology or intellectual property in any manner or for any purpose whatsoever. Defendants have not subsequently (or ever) sought permission to use 20/20 Vision's patented inventions and are not licensed under the Asserted Patent.

107. As a result, at least since the termination of the Telehealth Agreements, in each instance, Defendants have infringed and continue to infringe 20/20 Vision's Asserted Patent by making, using, selling, or offering for sale its Accused Systems and/or having its Accused Systems made, used, sold, or offered for sale on its behalf by others, such as developers and retailers.

108. On information and belief, Defendants have at all relevant times been aware of 20/20 Vision's telehealth technology and patents and chose to disregard and knowingly infringe 20/20 Vision's intellectual property rights.

109. Indeed, in or around August 2015, February 2016, and May of 2016, Defendants VPH, Campen, and Stanton entered into the Telehealth Agreements under which they licensed and utilized 20/20 Vision's proprietary telehealth software, technology, and methodologies. As a result, on information and belief, at least by August 2015, Defendants knew or should have known of 20/20 Vision's patents and patent applications, including the application that led to the issuance of the Asserted Patent.

110. Additionally, Defendants VPH, Campen, and/or Stanton have had actual knowledge of the Asserted Patent since at least March 30, 2017, when 20/20 Vision sent a letter to Defendants, which identified the Asserted Patent and described Defendants' infringing and unlawful conduct.

111. On information and belief, Defendants' ongoing acts of infringement of the Asserted Patent have been committed and are being committed with full knowledge of 20/20 Vision's rights in the patent, and Defendants have acted and are continuing to act despite an objectively high likelihood that their actions constitute infringement of the Asserted Patent and

Defendants knew or should have known of that objectively high risk. As a result, Defendants' ongoing acts constitute willful and deliberate infringement of the Asserted Patent.

112. 20/20 Vision is forced to file this lawsuit to protect its patented technology and innovations and seek redress for Defendants' ongoing, willful infringement.

113. 20/20 Vision is harmed by Defendants' use of 20/20 Vision's patented technologies in a way that cannot be remedied by monetary damages alone. Defendants have received substantial revenue and increased market share by using, offering, and selling (and having others use, offer, and sell) systems and services that practice the technology described in the Asserted Patent and without having to incur the costs of developing or licensing this technology.

114. On information and belief, Defendants' infringement has caused 20/20 Vision to suffer irreparable harm due to, among other things, lost business opportunities and lost market share. Even if Defendants were to subsequently pay past due royalties, lost profits, or other damages, there is no reason to believe that Defendants would stop infringing, and it would still enjoy the market share it has developed while infringing upon, the Asserted Patent. Due to the difficulty in predicting whether, if at all, 20/20 Vision can recover these losses, 20/20 Vision's harm cannot be compensated by payment of monetary damages alone.

**Defendants' Misappropriation of 20/20 Vision's Trade Secrets
and Other Confidential and Proprietary Information**

115. On information and belief, Defendants not only copied and infringed 20/20 Vision's patented technology, but also misappropriated and misused 20/20 Vision's valuable trade secrets and other confidential and proprietary information.

116. Defendants acquired and/or learned of 20/20 Vision's trade secrets and other confidential and proprietary information in connection with the Telehealth Agreements, pursuant

to which certain of the Defendants were granted certain licenses and rights to use 20/20 Vision's proprietary telehealth software, technology, and business models.

117. These Telehealth Agreements included various provisions governing and restricting Defendants VPH's, Campen's, and Stanton's use and disclosure of any of 20/20 Vision's trade secrets and confidential and proprietary information that Defendants received or learned of in connection with these agreements.

118. For example, under the Telehealth Agreements, in connection with receiving confidential and proprietary information from 20/20 Vision, including certain rights to use 20/20 Vision's proprietary telehealth software and telehealth business model, Defendants VPH, Campen, and Stanton agreed to the following:

In addition to, and as part of the Provider Information and IP, each Party agrees that the other Party possesses business information not in the public domain that may be distributed or otherwise disclosed as a result of this Agreement (the "Confidential Information"). Each Party and its employees, agents, affiliates and representatives shall not use any of the other Party's Confidential Information for any purpose other than in connection with the performance of its obligations under this Agreement.

...

Upon termination of this Agreement, each Party shall use its best efforts to return to the other Party or destroy, any and all materials containing Confidential Information.

...

Upon termination of this Agreement for any reason or expiration or non-renewal of any Term, all rights granted to Patient Facilitator hereunder with respect to the

[Software, Documentation and Cloud Service / applicable Provider Services and Provider Information and IP], shall cease.²

119. Under the two Telehealth Software License Agreements, dated February 5, 2016 and May 1, 2016, in connection with receiving a license to use 20/20 Vision's proprietary telehealth software and documentation, Defendants VPH, Campen, and Stanton further agreed to the following:

Patient Facilitator shall not (i) [sic] lease, loan, resell, sublicense or otherwise distribute the Software; (ii) make any use of or perform any acts with respect to the Software other than as expressly permitted in accordance with the terms of this Agreement; (iii) copy, translate, disassemble, decompile, nor reverse engineer the Software; (iv) create or attempt to create the source code from the object code of the Software; (v) allow any remote connections to the Software or (vi) change or remove Telehealth Administrator's copyright and authorship notices on the Software.³

120. Under these two Telehealth Software License Agreements Defendants VPH, Campen, and Stanton also agreed to similar restrictions with respect to their use of 20/20 Vision's proprietary telehealth "Cloud Service" and related documentation, as well as additional restrictions governing the use and sharing of access credentials by Defendants' personnel to access the Cloud Service.

121. Accordingly, Defendants VPH, Campen, and Stanton were, and still are, under obligations to, among other things, protect and not disclose 20/20 Vision's trade secrets and other confidential and proprietary information, and to use such trade secrets and information

² See, e.g., Ex. C at pp. 8-9, Ex. D at pp. 6, 8, Ex. E at p. 8, Ex. F at pp. 7, 9, Ex. G at pp. 6, 8, Ex. H at p. 7, Ex. I at pp. 5, 7.

³ See Ex. D at p. 1; Ex. G at pp. 1-2.

solely for purposes of performing their obligations under, and subject to the various restrictions set forth in, the Telehealth Agreements.

122. The foregoing obligations (as well as various others) that Defendants VPH, Campen, and Stanton owed, and owe, to 20/20 Vision were never waived or modified, by contract or otherwise.

123. 20/20 Vision performed all of its obligations under its agreements with Defendants VPH, Campen, and Stanton, including (without limitation) by (i) delivering certain computer and telehealth equipment to Defendants for use at Defendants' retail locations in Tennessee and Florida; (ii) providing 20/20 Vision's proprietary telehealth software code and documentation to Defendants' for installation on the equipment; and (iii) providing various onsite and professional services and support to Defendants related to their use of 20/20 Vision's proprietary telehealth business model, each in accordance with these agreements.

124. Over the course of 20/20 Vision's relationship with Defendants VPH, Campen, and Stanton, 20/20 Vision disclosed various trade secrets and other confidential and proprietary information to Defendants, including (without limitation) the trade secrets and other confidential and proprietary information discussed above.

125. 20/20 Vision disclosed this information to Defendants VPH, Campen, and Stanton for the sole purpose of enabling and furthering the parties' performance of their respective obligations under the Telehealth Agreements.

126. 20/20 Vision reasonably believed and expected that Defendants VPH, Campen, and Stanton would maintain the secrecy and confidentiality of this information and would only use it in connection with carrying out their obligations under the Telehealth Agreements, which Defendants expressly agreed to do in the Telehealth Agreements.

127. On information and belief, Defendants VPH, Campen, and Stanton knew that the information they received from 20/20 Vision consisted of 20/20 Vision's trade secrets and other confidential and proprietary information.

128. As discussed above, due to Defendants VPH's, Campen's, and Stanton's violation of their obligations under the Telehealth Agreements, and their continued failure to cure such violations (or even respond to 20/20 Vision), 20/20 Vision terminated the Telehealth Agreements on or about September 1, 2016. Upon the termination of the Telehealth Agreements, all licenses and rights granted thereunder to Defendants with respect to their use of 20/20 Vision's proprietary telehealth software, intellectual property, and other confidential and proprietary information were immediately terminated. Accordingly, Defendants were no longer authorized to use any of 20/20's trade secrets or other confidential or proprietary information in any manner or for any purpose whatsoever.

129. On information and belief, however, following the termination of the Telehealth Agreements, Defendants continued to use 20/20 Vision's trade secrets and other confidential or proprietary information that Defendants received from 20/20 Vision, or otherwise obtained or learned, in connection with the Telehealth Agreements.

130. For example, on information and belief, Defendants have continued to use and/or copy 20/20 Vision's proprietary telehealth software, technology, and business model, that was licensed and provided to Defendants under the Telehealth Agreements, including in connection with Defendants offering and providing telemedicine-based vision and eye examinations at one or more retail stores owned or operated by Defendants, and to provide software, technology, business models, and/or related products and services to Defendants' franchisees for use in

offering and providing such examinations at one or more retail stores owned or operated by Defendants' franchisees.

131. Accordingly, by continuing to use and/or copy 20/20 Vision's telehealth software, technology, and business model without 20/20 Vision's authorization, in each instance, Defendants are misappropriating and misusing 20/20 Vision's valuable trade secrets and other confidential and proprietary information.

132. On information and belief, Defendants entered into the Telehealth Agreements under the false pretense of forming a licensing and affiliation arrangement with 20/20 Vision in order to improperly gain access to and misappropriate 20/20 Vision's valuable trade secrets and confidential and proprietary information and gain a head-start in the telehealth market by exploiting the substantial efforts and resources invested by 20/20 Vision.

133. 20/20 Vision has been, and continues to be, harmed by Defendants' misappropriation and misuse of 20/20 Vision's trade secrets and other confidential and proprietary information in a way that cannot be remedied by monetary damages alone. Defendants have received substantial revenue and increased market share by unlawfully copying 20/20 Vision's trade secrets and other confidential and proprietary to make, use, offer, and/or sell telemedicine-based systems, products, and services without having to incur the substantial costs of independently developing such systems, products and services.

134. On information and belief, Defendants' misappropriation and misuse of 20/20 Vision's trade secrets and other confidential and proprietary information has caused, and will continue to cause, 20/20 Vision to suffer irreparable harm due to (among other things) lost market share and/or lost business opportunities. Due to (among other things) the difficulty in

predicting whether, if at all, 20/20 Vision can recover this market share, 20/20 Vision's harm cannot be compensated by payment of monetary damages alone.

COUNT I
(Breach of Contract under New York Law by VPH, Campen, and Stanton)

135. 20/20 Vision incorporates by reference and realleges the averments set forth in the preceding paragraphs.

136. Defendants VPH, Stanton, and Campen entered into binding agreements, including (without limitation) the Telehealth Agreements, with 20/20 Vision.⁴

137. The Telehealth Agreements were supported by valuable consideration, including (without limitation) 20/20 Vision's agreement to disclose and provide its proprietary Telehealth software, technology, business model, and other confidential and proprietary information to Defendants VPH, Stanton, and Campen, and provide various professional and support services to Defendants, and Defendants agreement to make certain payments to 20/20 Vision and maintain the confidentiality of 20/20 Vision's confidential and proprietary information in connection therewith.

138. Defendants VPH, Stanton, and Campen breached a number of their obligations under the Telehealth Agreements, including (without limitation) their payment obligations and their obligations with respect to their use of, and duties to maintain the secrecy and confidentiality of, 20/20 Vision's confidential and proprietary information.

⁴ Although Stanton is not listed as a signatory on any of the Telehealth Agreements attached to this Second Amended Complaint, according to Defendants, there may be some "confusion" surrounding who actually signed certain of these agreements (e.g., Exs. C, G, and I), and that, based on the "Tax ID number" identified in the contract, Stanton may have been the actual signatory. (*See* DI 23 at p. 1).

139. As a result of the breach, 20/20 Vision has suffered, and continues to suffer harm, including (without limitation), pecuniary losses and the loss of opportunities to make substantial profits from the agreements.

140. Accordingly, Defendants VPH, Stanton, and Campen are liable for breach of contract under New York law.

COUNT II
(Violation of Defend Trade Secrets Act By All Defendants)

141. 20/20 Vision incorporates by reference and realleges the averments set forth in the preceding paragraphs.

142. 20/20 Vision owns and possesses certain trade secrets, as alleged above.

143. 20/20 Vision's trade secrets relate to products and services used, sold, shipped and/or ordered in, or intended to be used, sold, shipped and/or ordered in, interstate or foreign commerce.

144. 20/20 Vision has taken reasonable measures to keep such information secret and confidential.

145. As a result of these measures, 20/20 Vision's trade secrets are not available for others in the telehealth industry – or any other industry – to use through any legitimate means.

146. 20/20 Vision's trade secrets derive independent economic value from not being generally known to, and not being readily ascertainable through proper means by, another person who could obtain economic value from the disclosure or use of the information.

147. Defendants were, and are, under a duty, by contract and/or by virtue of their duties of good faith to 20/20 Vision to protect 20/20 Vision's trade secrets and other confidential and proprietary information.

148. Defendants acquired and learned 20/20 Vision's trade secrets and other confidential and proprietary information in connection with the Telehealth Agreements, pursuant to which 20/20 Vision disclosed and provided to Defendants VPH, Stanton, and Campen, and granted such Defendants certain licenses and rights to use, 20/20 Vision's proprietary telehealth systems, technology, and business models, and other confidential materials, including (among other things), 20/20 Vision's proprietary teleophthalmology software code and documentation.

149. Defendants knew or had reason to know that the information disclosed and provided by 20/20 Vision to Defendants VPH, Stanton, and Campen under the Telehealth Agreements was confidential and proprietary and was disclosed to, and intended to be used by, Defendants solely for purposes of performing their obligations under the Telehealth Agreements.

150. For example, the Telehealth Agreements included various provisions (including the provisions discussed above) that restricted Defendants VPH's, Stanton's, and Campen's use and disclosure of 20/20 Vision's trade secrets and other confidential and proprietary information and required Defendants to maintain the secrecy and confidentiality of such information.

151. The Telehealth Agreements also explicitly indicated the proprietary and confidential nature of at least certain materials and information that were being disclosed and provided to Defendants VPH, Stanton, and Campen under the agreements.

152. Additionally, at least certain of the software code, documentation, and other materials and information that were disclosed and provided to Defendants VPH, Stanton, and Campen under the Telehealth Agreements were labeled as confidential and/or proprietary.

153. Upon 20/20 Vision's termination of the Telehealth Agreements on or about September 1, 2016, all licenses and rights granted thereunder to Defendants VPH, Stanton, and Campen to use 20/20 Vision's proprietary telehealth software and intellectual property, including

any trade secrets and other confidential and proprietary information, were immediately terminated. As a result, upon such termination, Defendants were no longer authorized to use any of 20/20 Vision's trade secrets or other confidential or proprietary information in any manner or for any purpose whatsoever.

154. On information and belief, following the termination of the Telehealth Agreements, Defendants have continued to improperly and unlawfully use 20/20 Vision's trade secrets and other confidential or proprietary information, including 20/20 Vision's proprietary telehealth software, technology, documentation, and/or business models, which Defendants received from 20/20 Vision, or otherwise learned, in connection with and subject to the terms and conditions of the Telehealth Agreements.

155. Accordingly, by continuing to use 20/20 Vision's trade secrets without 20/20 Vision's consent, in each instance, Defendants have misappropriated and misused, and are continuing to misappropriate and misuse, 20/20 Vision's valuable trade secrets, by improper means, including (without limitation) through breach of contractual obligations and other duties to use such trade secrets solely for the purposes and in the manner authorized under the Telehealth Agreements, and only during the term of such agreements, and to maintain the secrecy and confidentiality of such trade secrets and other information at all times.

156. On information and belief, if Defendants are not enjoined, Defendants will continue to misappropriate and use 20/20 Vision's trade secret information for their own benefit and to 20/20 Vision's detriment.

157. On information and belief, Defendants misused this information for the purpose of obtaining a competitive advantage in the marketplace at the expense of 20/20 Vision.

158. On information and belief, Defendants' acts have been done willfully, knowingly, and maliciously, and Defendants have profited and been unjustly enriched by this unlawful conduct or stand to profit from this unlawful conduct.

159. Given the foregoing, Defendants are liable to 20/20 Vision under the Defend Trade Secrets Act, including (inter alia) 18 U.S.C. § 1836 and 1839.

160. As a result of Defendants' misconduct (described above), 20/20 Vision has been harmed.

161. In addition, Defendants' ongoing misconduct has irreparably harmed 20/20 Vision, and will continue to cause irreparable harm to 20/20 Vision, such that 20/20 Vision has no adequate remedy at law.

COUNT III
(Misappropriation of Trade Secrets under New York Law By All Defendants)

162. 20/20 Vision incorporates by reference and realleges the averments set forth in the preceding paragraphs.

163. 20/20 Vision owns and possesses certain trade secrets, as alleged above

164. 20/20 Vision uses its trade secrets in its business.

165. 20/20 Vision's trade secrets give 20/20 Vision an opportunity to obtain an advantage over competitors who do not know or use them.

166. Defendants were under a duty, by contract and/or by virtue of their duties of good faith to 20/20 Vision to protect 20/20 Vision's trade secrets.

167. Defendants acquired and learned 20/20 Vision's trade secrets and other confidential and proprietary information in connection with the Telehealth Agreements, pursuant to which 20/20 Vision disclosed and provided to Defendants VPH, Stanton, and Campen, and granted such Defendants certain licenses and rights to use, 20/20 Vision's proprietary telehealth

systems, technology, and business models, and other confidential materials, including (among other things), 20/20 Vision's proprietary teleophthalmology software code and documentation.

168. Defendants knew or had reason to know that the information disclosed and provided by 20/20 Vision to Defendants VPH, Stanton, and Campen under the Telehealth Agreements was confidential and proprietary and was disclosed to, and intended to be used by, Defendants solely for purposes of performing their obligations under the Telehealth Agreements.

169. For example, the Telehealth Agreements included various provisions (including the provisions discussed above) that restricted Defendants VPH's, Stanton's, and Campen's use and disclosure of 20/20 Vision's trade secrets and other confidential and proprietary information and required Defendants to maintain the secrecy and confidentiality of such information.

170. The Telehealth Agreements also explicitly indicated the proprietary and confidential nature of at least certain materials and information that were being disclosed and provided to Defendants VPH, Stanton, and Campen under the agreements.

171. Additionally, at least certain of the software code, documentation, and other materials and information that were disclosed and provided to Defendants VPH, Stanton, and Campen under the Telehealth Agreements were labeled as confidential and/or proprietary.

172. Upon 20/20 Vision's termination of the Telehealth Agreements on or about September 1, 2016, all licenses and rights granted thereunder to Defendants VPH, Stanton, and Campen to use 20/20 Vision's proprietary telehealth software and intellectual property, including any trade secrets and other confidential and proprietary information, were immediately terminated. As a result, upon such termination, Defendants were no longer authorized to use any of 20/20 Vision's trade secrets or other confidential or proprietary information in any manner or for any purpose whatsoever.

173. On information and belief, following the termination of the Telehealth Agreements, Defendants have continued to improperly and unlawfully use 20/20 Vision's trade secrets and other confidential or proprietary information, including 20/20 Vision's proprietary telehealth software, technology, documentation, and/or business models, which Defendants received from 20/20 Vision, or otherwise learned, in connection with and subject to the terms and conditions of the Telehealth Agreements.

174. Accordingly, by continuing to use 20/20 Vision's trade secrets without 20/20 Vision's consent, in each instance, Defendants have misappropriated and misused, and are continuing to misappropriate and misuse, 20/20 Vision's valuable trade secrets, by improper means, including (without limitation) through breach of contractual obligations and other duties to use such trade secrets solely for the purposes and in the manner authorized under the Telehealth Agreements, and only during the term of such agreements, and to maintain the secrecy and confidentiality of such trade secrets and other information at all times.

175. On information and belief, Defendants' acts have been done willfully and knowingly, and Defendants have profited and have been unjustly enriched by this unlawful conduct or stand to profit from this unlawful conduct.

176. As a result of Defendants' misconduct (described above), 20/20 Vision has been harmed.

177. In addition, Defendants' ongoing misconduct has irreparably harmed 20/20 Vision, and will continue to cause irreparable harm to 20/20 Vision, such that 20/20 Vision has no adequate remedy at law.

COUNT IV
(Unfair Competition under New York Law By All Defendants)

178. 20/20 Vision incorporates by reference and realleges the averments set forth in the preceding paragraphs.

179. In the event, and to the extent, that 20/20 Vision's trade secrets and other confidential and proprietary information, as described above, are determined not to be trade secrets, Defendants are liable to 20/20 Vision for unfair competition as set forth below.

180. On information and belief, Defendants misappropriated 20/20 Vision's significant labors, skills, expenditures and good will for the commercial advantage and benefit of Defendants by unlawfully using 20/20 Vision's confidential and proprietary information in order to utilize, implement, and/or develop copy-cat telehealth systems, technologies, and business models for offering, selling, and providing telemedicine-based eye health services and usurp the good will and marketplace recognition 20/20 Vision has achieved for its innovative telehealth technologies and solutions.

181. Defendants acquired and learned 20/20 Vision's confidential and proprietary information in connection with the Telehealth Agreements, pursuant to which 20/20 Vision disclosed and provided to Defendants VPH, Stanton, and Campen, and granted such Defendants certain licenses and rights to use, 20/20 Vision's proprietary telehealth systems, technology, and business models, and other confidential materials, including (among other things), 20/20 Vision's proprietary teleophthalmology software code and documentation.

182. The Telehealth Agreements included various provisions (including the provisions discussed above) that restricted Defendants VPH's, Stanton's, and Campen's use and disclosure of 20/20 Vision's trade secrets and other confidential and proprietary information and required Defendants to maintain the secrecy and confidentiality of such information.

183. Upon 20/20 Vision's termination of the Telehealth Agreements on or about September 1, 2016, all licenses and rights granted thereunder to Defendants VPH, Stanton, and Campen to use 20/20 Vision's proprietary telehealth software and intellectual property and other confidential and proprietary information, were immediately terminated. As a result, upon such termination, Defendants were no longer authorized to use any of 20/20 Vision's confidential or proprietary information in any manner or for any purpose whatsoever.

184. On information and belief, following the termination of the Telehealth Agreements, Defendants have continued to improperly and unlawfully use 20/20 Vision's confidential and proprietary information, including 20/20 Vision's proprietary telehealth software, technology, documentation, and/or business models, which Defendants received from 20/20 Vision, or otherwise learned, in connection with and subject to the terms and conditions of the Telehealth Agreements.

185. Accordingly, Defendants' continued use of 20/20 Vision's confidential and proprietary information has been without consent and by improper means, including (without limitation) through breach of contractual obligations and other duties to use such information solely for the purposes and in the manner authorized under the Telehealth Agreements, and only during the term of such agreements, and to maintain the secrecy and confidentiality of such information at all times.

186. On information and belief, Defendants' acts of misappropriation have been done willfully and knowingly and in bad faith, and Defendants have profited and been unjustly enriched by this unlawful conduct or stand to profit from this unlawful conduct.

187. The acts of Defendants as described above constitute unfair competition under New York law.

188. As a result of Defendants' misconduct (described above), 20/20 Vision has been harmed.

189. In addition, Defendants' ongoing misconduct has irreparably harmed 20/20 Vision, and will continue to cause irreparable harm to 20/20 Vision, such that 20/20 Vision has no adequate remedy at law.

COUNT V
(Unjust Enrichment Under New York Law By All Defendants)

190. 20/20 Vision incorporates by reference and realleges the averments set forth in the preceding paragraphs.

191. In the event, and to the extent, that 20/20 Vision's trade secrets and other confidential and proprietary information, as described above, are determined not to be trade secrets, Defendants are liable to 20/20 Vision for unjust enrichment under New York law as set forth below.

192. Defendants have been, and continue to be, unjustly enriched by the misappropriation and misuse of 20/20 Vision's confidential and proprietary information, at 20/20 Vision's expense.

193. Without 20/20 Vision's consent, 20/20 Vision was forced to confer the benefit of its confidential and proprietary information upon Defendants.

194. Defendants were aware that they were receiving 20/20 Vision's confidential and proprietary information.

195. In light of Defendants' misconduct and under the circumstances described above, Defendants accepted and retained the benefit of 20/20 Vision's confidential and proprietary information under circumstances that make such retention inequitable.

196. Equity and good conscience dictate that Defendants may not retain the benefit of 20/20 Vision's confidential and proprietary information.

COUNT VI
(Infringement of U.S. Patent No. 9,230,062 by All Defendants)

197. 20/20 Vision incorporates by reference and realleges the averments set forth in the preceding paragraphs.

198. On January 5, 2016, the Patent Office duly and legally issued the '062 Patent. 20/20 Vision is the owner, by assignment, of all right, title, and interest in and to the '062 Patent, including the right to recover damages for past and future infringement.

199. On information and belief, Defendants have infringed and continue to infringe the '062 Patent in the United States in violation of 35 U.S.C. § 271 by making, using, selling, or offering for sale and/or causing others to make, use, sell, or offer for sale, one or more of the Accused Systems that practice one or more claims of the '062 Patent.

200. For example, Defendants have infringed and continue to infringe the '062 Patent by making and/or using telemedicine-based systems for performing vision and eye examinations, including by selling and providing such systems and processes to their franchisees, which include each and every feature recited in claims 13, 14, 15, and 17 of the '062 Patent.

201. Defendants have sold, offered for sale, and provided, and are continuing to sell, offer for sale and provide, these copy-cat telehealth systems, software, and processes for implementing telemedicine-based vision and eye examinations that are infringing the inventions claimed in 20/20 Vision's '062 Patent, in order to provide vision and eye health examinations that are performed utilizing telemedicine to customers at Defendants' and/or their franchisees' retail stores throughout the United States.

202. Defendants' telemedicine-based systems and processes for performing vision and eye examinations were copied from and/or use the same elements and features as 20/20 Vision's proprietary telehealth systems, technology and business model, including 20/20 Vision's patented teleophthalmology inventions, which M&D Optical and its affiliates improperly acquired from 20/20 Vision under the false pretense of licensing such systems and technology from 20/20 Vision.

203. 20/20 Vision's proprietary telehealth software, technology, and business model that were provided to Defendants' VPH, Stanton, and Campen in connection with the Telehealth Agreements, and misused by Defendants following the termination of such agreements, include each and every element of, and are, therefore, covered by claims 13, 14, 15, and 17 of the '062 Patent.

204. On information and belief, the Accused Systems were copied from, and/or continue to use the same components and elements as, 20/20 Vision's proprietary telehealth software, technology, and business model that were provided to Defendants' VPH, Stanton, and Campen in connection with the Telehealth Agreements, and, therefore, also include each and every element of, and are infringing, claims 13, 14, 15, and 17 of the '062 Patent

205. These Accused Systems include, *inter alia*, telehealth systems, servers, and computer software for enabling customers to receive vision and eye examinations at a diagnostic site that are administered by remotely-located eye health practitioners via real-time network connections.

206. The Accused Systems include "a server for providing services related to eye health and vision examinations," as required by claim 13. For example, on information and

belief, the Accused Systems include one or more computer servers at the diagnostic site and/or the remote sites, which facilitate various aspects of the examinations.

207. The server of the Accused Systems is configured to “permit eye-care practitioners to login to a web-based platform to administer eye examinations to customers over a network in real-time,” and “track availability data associated with the eye-care practitioners,” which indicates” which eye-care practitioners are logged into the platform and/or are providing eye examinations through the platform, as required by claim 13. For example, on information and belief, the Accused Systems enable local and remote technicians and medical professionals to login to an online portal associated with performing the remote examinations.

208. The server of the Accused Systems is also configured to “receive a request” to select an eye-care practitioner from a “diagnostic center” (e.g., from an exam site located at Defendants’ or their franchisees’ optical retail stores) that includes “ophthalmic equipment” (e.g., auto-refractors, auto-lensometers, and other instruments) that are connected to an equipment controller (e.g., a server, PC or other computing device) for controlling and operating the equipment, as required by claim 13.

209. The server of the Accused Systems is also configured to “select the eye-care practitioner to administer the eye examination” based on “availability data” to identify eye-care practitioners who are logged-on and not performing eye examinations, as required by claim 13. For example, on information and belief, the Accused Systems include multiple remotely-located technicians and practitioners, whose status and availability is tracked by the Accused Systems in order to connect a customer with a remote technician and/or practitioner to administer the examination.

210. The server of the Accused Systems is also configured to “administer one or more tests to the customer during the eye examination conducted at the at the diagnostic center” utilizing the ophthalmic equipment of the Accused Systems to perform an objective portion utilizing the data generated during one or more objective tests by certain of the ophthalmic equipment and a subjective portion that utilizes an iterative process for presenting a series of questions to the customers that are based on the results of the objective tests and prior responses received from the customers, as required by claim 13. For example, on information and belief, the remote eye examinations performed through Defendants’ and their franchisees’ retail stores include objective tests based on generating and gathering data from auto-refractors, auto-lensometers, and the like, as well as subjective tests based on gathering data using an interactive process with the customer (e.g., a subjective refraction process).

211. The subjective portion of the eye examination of the Accused Systems is administered using an “interactive process” that includes “selecting questions to present to the user based on the objective [tests],” “automatically adjusting ophthalmic equipment” based on the responses received from the customer, and “determining” when to conclude the iterative process based on detecting a particular combination of responses, as required by claim 13. For example, on information and belief, a customer using the Accused Systems is asked a series of questions and provides a series of responses that are used to update an auto-phoropter and conduct a subjective refraction on the customer.

212. The server of the Accused Systems is also configured to “receive customer examination data generated by the ophthalmic equipment” during the eye examination, and “transmit at least a portion” of this data to “a practitioner device associated with an eye care practitioner” (e.g., PCs, laptops, mobile devices, etc. that are used by the eye care practitioners or

professional who administer vision and eye exams to Defendants' and their franchisees' customers), as required by claim 13.

213. The server of the Accused Systems is also configured to "receive customer evaluation data from the practitioner" and generate an eye-health report based on the eye-care practitioner's review and evaluation of the customer examination data, as required by claim 13. For example, on information and belief, the Accused Systems enable the customer to receive an optical prescription, along with a report of any issues or problems discovered during the test, that is based on the remote practitioner's review and analysis of the customer examination data, shortly after the examination is complete.

214. The server of these Accused Systems is "integrated with the diagnostic center" (e.g., connected to the ophthalmic equipment and/or equipment controller at the exam site), as required by claim 14.

215. The Accused Systems are configured to perform a synchronous vision examination by "establishing a real-time connection between the practitioner device" and the diagnostic center, "transmit preliminary refractive error information to the diagnostic center," and "permit the practitioner device associated with the [practitioner] to remotely administer an interactive refraction test over the network via the real-time connection," transmit instructions to control the equipment at the diagnostic center," and "receive updated refractive error information" based on the interactive refraction test from the practitioner device for inclusion in the eye health report, as required by claim 15.

216. These Accused Systems are configured to perform a synchronous vision examination by "establishing a real-time connection between the practitioner device" and the diagnostic center, "permit the practitioner device associated with the [practitioner] to remotely

administer an interactive refraction test over the network via the real-time connection,” utilize instructions to control the equipment at the diagnostic center,” and “receive customer evaluation data from the practitioner device while the synchronous eye health examination is being administered,” wherein a portion of the data is included in the eye health report, as required by claim 17.

217. Defendants have never sought permission from 20/20 Vision to use, or have ever been licensed under, the '062 Patent.

218. As a result, in each instance, Defendants have infringed and continue to infringe claims 13, 14, 15, and 17 of 20/20 Vision's '062 Patent by making, using, selling, offering for sale, franchising, or otherwise distributing its Accused Systems and/or having its Accused Systems made, used, sold, offered for sale, franchised, or otherwise distributed on its behalf by others, such as developers and resellers.

219. On information and belief, Defendants' acts of infringement of the '062 Patent have been committed and are being committed with full knowledge of 20/20 Vision's rights in the '062 Patent, and Defendants have acted and are continuing to act despite an objectively high likelihood that their actions constitute infringement of the '062 Patent, and Defendants knew or should of known of that objectively high risk.

220. On information and belief, Defendants knew or should have known of 20/20 Vision's rights in the '062 Patent by at least August 2015, when Defendants VPH and Campen entered into various Telehealth Agreements which granted Defendants certain licenses and rights to use 20/20 Vision's proprietary telehealth software and other intellectual property. Additionally, Defendants had actual knowledge of 20/20 Vision's patents, including the '062 Patent, by at least March 30 2017, when 20/20 Vision sent a letter to Defendants notifying them

of their infringement of the '062 Patent. As a result, Defendants' continued and ongoing acts constitute willful and deliberate infringement of the '062 Patent.

221. As a direct and proximate result of Defendants' infringement of the '062 Patent, 20/20 Vision has suffered and continues to suffer damage. 20/20 Vision is entitled to recover damages from Defendants to compensate for such infringement, in an amount to be determined at trial.

222. The acts of infringement by Defendants identified herein have caused and will continue to cause irreparable injury to 20/20 Vision, for which it has no adequate remedy at law, unless and until Defendants are enjoined from further infringement by this Court in accordance with 35 U.S.C. § 283. Considering the competitive relationship and balance of the hardships between the parties, a remedy in equity, such as a permanent injunction is warranted and would be in the public interest.

PRAYER FOR RELIEF

Wherefore, 20/20 Vision respectfully requests that this Court enter judgment and provide relief as follows:

A. That Defendants VPH, Stanton, and Campen be ordered to account for and pay to 20/20 Vision the damages resulting from Defendants' breach of the Telehealth Agreements, including all unpaid amounts that were due and owed to 20/20 Vision as of the termination of the agreements, any lost profits, and/or any other costs and expenses, as well as any applicable interest and/or penalty amounts, together with pre-judgment and post-judgment interest thereon;

B. That Defendants be preliminarily and permanently enjoined from disclosing or utilizing 20/20 Vision's trade secrets and other proprietary and confidential information;

C. That Defendants be preliminarily and permanently enjoined from engaging in unfair competition;

D. That Defendants be preliminarily and permanently enjoined from engaging in any activities that are in any way based on any use of 20/20 Vision's trade secrets and/or confidential and/or proprietary information for the period of time that would be needed for Defendants to independently obtain such information without relying in any way upon 20/20 Vision's trade secrets and/or confidential and/or proprietary information;

E. That 20/20 Vision be awarded compensation, monetary damages and punitive damages for Defendants' misappropriation, unfair competition, and unjust enrichment, in an amount to be ascertained at trial, together with interest thereon;

F. That 20/20 Vision be awarded exemplary and punitive damages under New York law for Defendants' willful, intentional, and/or tortious acts;

G. That Defendants have infringed, and continue to willfully infringe, the '062 Patent;

H. That Defendants, and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents and all others acting in active concert or privity therewith, either directly or indirectly, including (without limitation) Brocwell and Stanton, be permanently enjoined from any further direct, indirect and/or joint infringement of the '062 Patent pursuant to 35 U.S.C. § 283;

I. That Defendants be ordered to account for and pay to 20/20 Vision the damages resulting from Defendants' infringement of the Asserted Patent, including lost profits, costs and expenses, together with pre-judgment and post-judgment interest thereon, and all other damages permitted pursuant to 35 U.S.C. § 284, including enhanced damages up to three times the amount

of damages found or measured and costs, and in any event an amount no less than a reasonable royalty;

J. That Defendants be ordered to account for any infringing sales not presented at trial and an award by the Court of additional damages to 20/20 Vision for any such infringing sales;

K. That this case be adjudged to be an exceptional case pursuant to 35 U.S.C. § 285, 18 U.S.C. § 1836, and the laws of Florida (as applicable) and awarding 20/20 Vision its reasonable attorney's fees and costs incurred in connection with this action; and

L. That 20/20 Vision be awarded any and all further legal and equitable relief that the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

20/20 Vision hereby respectfully requests a trial by jury on all issues in this action so triable by right pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: June 8, 2018

Respectfully submitted,

s/ Taylor F. Ford

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**(Motion to appear pro hac vice
forthcoming)*

*** (Joseph J. Richetti and Alexander
Walden were previously admitted to appear
pro hac vice in the now-consolidated case
M&D Optical Franchise, LLC v. 20/20
Vision Center, LLC, No. 9:18-cv-80023-
RLR. In an abundance of caution, new
motions to appear pro hac vice are
forthcoming.*

Counsel for Plaintiff
20/20 Vision Center, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on June 8, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will serve a notice of electronic filing on all counsel or parties of record on the Service List below.

s/ Robyn M. Kramer
Robyn M. Kramer
Florida Bar No.: 0118300

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