IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ERMI LLC, Plaintiff, vs. JEFFREY SMITH, Defendant.	)	Civil Action No.

COMPLAINT AND DEMAND FOR JURY TRIAL, INJUNCTIVE RELIEF SOUGHT

Plaintiff ERMI LLC (hereinafter "ERMI" or "Plaintiff"), in support of this Complaint against Defendant Jeffrey Smith (hereinafter "Smith") does hereby allege as follows:

NATURE OF THE ACTION

1. Plaintiff ERMI brings this action for willful patent infringement pursuant to the Patent Act, 35 U.S.C. § 101, *et seq.*, including claims for treble damages, injunctive relief, and attorneys' fees under at least §§ 154, 281, 283-285 of that Title; willful reverse passing-off; willful unfair competition and willful false designation of origin pursuant to the Lanham Act, 15 U.S.C. § 1051, *et seq.*,

including claims for treble damages, disgorgement of profits, injunctive relief, and attorneys' fees arising from Defendant's unlawful conduct in passing-off clinical research studies conducted by or on behalf of ERMI with ERMI devices as his own and by knowingly and intentionally using in commerce trademarks likely to deceive the purchasing public and/or cause confusion with marks owned by ERMI; for Georgia state law willful unfair competition pursuant to Ga. Code. § 10-1-373 including claims for an injunction; and for Georgia willful trademark infringement pursuant to Ga. Code § 10-1-451 including claims for damages, disgorgement of profits, and injunctive relief.

THE PARTIES

2. Plaintiff ERMI is a Delaware limited liability company with its principal offices located at 441 Armour Place NE, Atlanta, Georgia, 30324.

3. ERMI holds legal ownership of, and has standing to sue for infringement of, United States Patent Number 7,547,289 (hereinafter "the '289 Patent") entitled "Shoulder Extension Control Device" which issued on June 16, 2009. **Exhibit 1**.

4. ERMI has standing to sue for infringement of and holds legal ownership of all right, title, interest, and goodwill associated with the trademark ORBIT (hereinafter "ERMI's ORBIT mark") for retail and online retail store services featuring surgical supplies. ERMI's ORBIT mark is currently the subject

of United States trademark application having serial number 88696447. **Exhibit 2**. ERMI's ORBIT mark is registered with the Georgia Secretary of State and has Georgia trademark Registration Number S-29990. **Exhibit 3**.

5. ERMI has standing to sue for infringement of and holds legal ownership of all right, title, interest, and goodwill associated with the trademark TREX (hereinafter "ERMI's TREX mark") for educational services, namely, presentations and speeches in the field of orthopedics and physical rehabilitation. ERMI's TREX mark is currently the subject of United States trademark application having serial number 88696427. **Exhibit 4**. ERMI's TREX mark is registered with the Georgia Secretary of State and has Georgia trademark Registration Number S-29940. **Exhibit 5**.

6. ERMI was formerly incorporated in Georgia as ERMI, Inc. but, effective April 1, 2019, ERMI, Inc. was converted to become ERMI LLC. This conversion has been duly recorded with the United States Patent and Trademark Office with reference to the '289 Patent.

7. On information and belief, Defendant Jeffrey Smith is an individual with a personal residence in this District located at 4124 Whitewater Creek Road NW, Atlanta, Georgia 30327-3945.

8. Defendant Smith is the CEO of OneDirect Health Network, Inc. (hereinafter "OneDirect"), having an address at 2964 Peachtree Road NW, Suite 400, Atlanta, Georgia 30305. **Exhibit 26**.

9. On information and belief, Defendant Smith–in his individual capacity and prior to the formation of OneDirect—personally performed the steps of method Claim 22, either literally or under the Doctrine of Equivalents, of the '289 Patent. **Exhibit 25**.

10. On information and belief, Defendant Smith—in his capacity as CEO of OneDirect—has previously and is presently making, using, selling, leasing, offering for sale, offering for lease, and/or importing, including in this district, products that infringe the '289 Patent. These products include, but are not necessarily limited to, the product marketed to the public as the T-Rex Orbit for Shoulder (hereinafter the "Accused Shoulder Device"). **Exhibit 6**.

11. On information and belief, Defendant—in his capacity as CEO of OneDirect—has previously and is presently using the trademarks T-REX (hereinafter the "infringing T-REX mark") and/or ORBIT (hereinafter the "infringing ORBIT mark") in commerce in connection with the sale, offering for sale, distribution, leasing, and advertising of the Accused Shoulder Device, a product marketed either as the "T-Rex Arc for Knee" device or the "T-Rex Knee" device (hereinafter the "Accused Knee Device") **Exhibit 7**, a product marketed as

the "T-Rex Traverse for Hip" device (hereinafter the "Accused Hip Device"), and a product marketed as the "T-Rex Driver for Ankle" device (hereinafter the "Accused Ankle Device") **Exhibit 8**, and/or other devices and services which use the infringing T-REX mark and/or the infringing ORBIT mark in such a way as to cause confusion, to cause mistake, to deceive as to affiliation, connection, or association of Defendant's Accused Shoulder Device and Accused Knee Device with Plaintiff, or as to the origin, or falsely designate the origin, sponsorship or approval of Defendant's goods, services, or other commercial activities by ERMI, and therefore constitutes false designation of origin and unfair competition.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a) and (b) both because it involves a federal question and also because it involves patents.

13. The amount in controversy exceeds $75,000.

14. This Court has *in personam* jurisdiction over Defendant Smith because he resides in this state, conducts business in this district, and is engaged in patent and trademark infringement in this district.

15. This Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367 over all other claims asserted or that may be asserted that are so related to claims

within the original jurisdiction of this action that they form part of the same case or controversy under Article III of the United States Constitution.

16. Venue is proper in this judicial district pursuant to 28 U.S.C. §§1391 and 1400 because a substantial part of the events giving rise to ERMI's claims occurred in this district, namely Defendant's making, using, selling, leasing, offering for lease, and/or offering to sell and distribute products that infringe the '289 Patent.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

The '289 Patent

17. Dr. Thomas P. Branch (hereinafter "Dr. Branch") is a board certified orthopedic surgeon practicing with TREX Orthopedics, P.C. (hereinafter "TREX Orthopedics"), in Decatur, Georgia. Dr. Branch is the sole owner of TREX Orthopedics which he formed in May 1995. **Exhibit 9**. With his over 30 years of experience, more than 30 published papers, and approximately 20 pending and published patents, Dr. Branch is an innovator in his field.

18. Dr. Branch invented the ERMI program – a line of, *inter alia*, patented shoulder, knee, ankle, and elbow extension control devices to aid in physical rehabilitation and range of motion restoration following surgery or injury.

19. One of the devices Dr. Branch invented includes a new and useful Shoulder Extension Control device and method for which he filed a United States provisional application on December 13, 2001.

20. One year later, on December 13, 2002, Dr. Branch filed a United States non-provisional application having serial number 10/318,988 (hereinafter the "Application"). The Application claimed priority to the provisional patent application.

21. Dr. Branch assigned the Application, and any patents issuing therefrom, to ERMI. The assignment included all rights under the patents including the right to sue for past infringement.

22. The Application published to the public on July 10, 2003.

23. Prosecution commenced in the United States Patent and Trademark Office ("Patent Office") and the Patent Office issued a first office action on January 13, 2006, in which Claims 1 through 6 of the Application were allowed and declared patentable by the Patent Office.

24. Prosecution continued as to the remaining claims in the Application. The Patent Office never rejected Claims 1 through 6.

25. On March 16, 2009, the Patent Office issued a notice of allowance indicating that Claims 1 through 6 remained allowable and that Claims 31 through 46 were also allowable.

26. The Patent Office issued United States Patent 7,547,289, the '289 Patent as shown in **Exhibit 1**, on June 16, 2009 with 22 total claims.

27. Exemplary Independent Claim 1 of the '289 Patent is directed to:

An apparatus for manipulating the shoulder joint of the left or right arm of a human user, said apparatus comprising:

a frame including spaced apart first and second mounting locations;

an arm carriage configured to manipulate said shoulder joint of said user, said arm carriage configured to be mounted to one of said first and second mounting locations of said frame;

a power unit configured to provide power upon control by said user, said power unit configured to be mounted to the other of said first and second mounting locations of said frame;

a linkage intermediate said arm carriage and said power unit, said linkage configured to transfer power from said power unit to said arm carriage;

said arm carriage, said power unit, and said linkage configured to allow said arm carriage and said power unit to be switched between said first and second mounting locations and operated in alternating modes, such that in a first operating mode said arm carriage can manipulate the right arm of

said user, and such that in a second operating mode said arm carriage can manipulate the left arm of said user.

28. Exemplary Independent Claim 22 of the '289 Patent is directed to:

A method of manipulating the shoulder of a user while seated in a substantially upright position, said user having an upper arm and a forearm, said method comprising the steps of:

A) providing an apparatus itself comprising:

1) a frame;

2) a seat for a user to sit in such that said user can sit in said seat in said substantially upright sitting position while facing a direction substantially along a first axis, said axis being substantially horizontal;

3) an upper arm assembly pivotably mounted relative to said frame about a second axis, said second axis being substantially parallel to said first axis; and

4) a forearm assembly pivotably mounted relative to said upper arm assembly about a third axis and configured to capture the forearm of the user during manipulation of the arm of the user, said third axis being substantially orthogonal to said second axis;

B) securing the forearm of a user to said forearm assembly;

C) selectively discouraging relative movement of said forearm assembly with respect to said upper arm assembly while at the same time allowing said upper arm assembly and said forearm assembly to both pivot together relative to said frame about said second axis;

D) pivoting said upper arm assembly about said second axis relative to said frame while at the same time said relative movement of said forearm assembly with respect to said upper arm assembly is discouraged such that abduction/adduction of the shoulder is created;

E) selectively discouraging relative movement of said upper arm assembly with respect to said frame while at the same time allowing relative movement of said forearm assembly relative to said upper arm assembly and said frame about said third axis; and

F) pivoting said forearm assembly about said third axis with respect to said upper arm assembly and with respect to said frame while at the same time said relative movement of said upper arm assembly with respect to said frame is discouraged such that external rotation is created at said shoulder.

29. The First Maintenance Fee for the '289 Patent was paid on October 1, 2012.

30. The Second Maintenance Fee for the '289 Patent was paid on December 1, 2016.

31. The '289 Patent is valid and enforceable.

ERMI's TREX Mark

32. Dr. Branch, TREX Orthopedics, and ERMI have continuously used the TREX mark in commerce in connection with Dr. Branch's orthopedic practice as well as educational services since at least 1996. Further, as an innovator in his field, Dr. Branch regularly offers his services of presentations, talks, and speeches on the topics of orthopedics, orthopedic surgery, and sports medicine under the TREX mark, a service he provides throughout the country. The TREX mark is widely recognized in the orthopedics field in connection with Dr. Branch and TREX Orthopedics as is evidenced by recognition on numerous websites. **Exhibit 10.**

33. On November 4, 2019, TREX Orthopedics assigned all rights, title, interest, and goodwill in and to the TREX mark, including all common law rights, to ERMI. **Exhibit 11.** The assignment included all rights under the trademark including the right to bring actions and recover for past infringement.

34. On November 18, 2019, ERMI filed a trademark application with the United States Patent and Trademark Office to register the TREX mark. The USPTO application has been assigned serial number 88696427.

35. On November 25, 2019, ERMI filed a trademark application with the state of Georgia in order to register the TREX mark in Georgia.

36. On December 4, 2019, the Georgia Secretary of State officially registered ERMI's TREX mark. *See* **Exhibit 5**.

ERMI's ORBIT Mark

37. In 2004, Dr. Branch invented a new medial subacrominal suture passer for use, *inter alia*, in rotator cuff surgery.

38. On March 3, 2004, Dr. Branch formed Orbit Surgical Equipment, LLC (hereinafter "Orbit Surgical"), a Georgia Limited Liability Company with principal places of business located at 441 Armour Pl, Suite A, Atlanta, GA, 30324. **Exhibit 12**. Orbit Surgical was formed in order to manufacture and market Dr. Branch's new suture passer which Dr. Branch named and marketed under the ORBIT™ mark.

39. Dr. Branch's Orbit™ device allows for a medical approach to rotator cuff surgery. Dr. Branch's Orbit™ device has been used in at least 140 consecutive cases. This use was presented at the International Society of Arthroplasty, Knee Surgery and Orthopeadic Sports Medicine.

40. On November 4, 2019, Orbit Surgical assigned all rights, title, interest, and goodwill in and to the ORBIT mark, including all common law rights, to ERMI. **Exhibit 13**. The assignment included all rights under the trademark including the right to bring actions and recover for past infringement.

41. On November 18, 2019, ERMI filed a trademark application with the United States Patent and Trademark Office to register ERMI's ORBIT mark. The USPTO application has been assigned serial number 88696447. *See* **Exhibit 2**.

42. On January 9, 2020, ERMI filed a trademark application with the state of Georgia in order to register ERMI's ORBIT mark in Georgia. *See* **Exhibit 3**.

ERMI's Devices

43. ERMI is a company that manufactures and sells medical devices throughout the United States. The name ERMI is an acronym that stands for "End Range Motion Improvement."

44. Many of ERMI's devices are shown and cataloged on ERMI's website, www.getmotion.com.

45. ERMI advertises its products on its website, in videos, in printed media, via word of mouth as well as in connection with seminars, trade shows, symposia, conferences, and the like.

46. One of these products is the ERMI Shoulder Flexionater® device which is designed to increase motion for those with restricted external rotation, abduction, flexion, and internal rotation. **Exhibit 14**.

47. ERMI has made in excess of 1,400 ERMI Shoulder Flexionater® devices.

48. ERMI also makes a number of different devices for the knee. One such device is the ERMI Knee Flexionater® device. **Exhibit 15**.

49. ERMI also makes devices for ankles. One such device is the ERMI Ankle Flexionater®. **Exhibit 16**.

50. ERMI has made in excess of 2,400 ERMI Knee and Ankle Flexionater® devices.

51. The ERMI Shoulder, Knee, and Ankle Flexionater® devices are distributed directly by ERMI through a network of sales representatives across the country.

52. The ERMI Shoulder, Knee, and Ankle Flexionater® devices have been tested and the results of the testing have been published.

53. Each ERMI Shoulder Flexionater® device is covered by the claims of the '289 Patent and each ERMI Shoulder Flexionater® is marked with the '289 Patent number. **Exhibit 17**.

54. ERMI's website publically states and puts the public on notice that its devices are patented.

55. In addition to showing the images, descriptions, and videos of the ERMI Shoulder, Knee, and Ankle Flexionater® devices on its website, ERMI exhibits the ERMI Shoulder, Knee, and Ankle Flexionater® devices at trade shows around the country.

ERMI's Clinical Research

56. Generally, clinical research is a component of medical and health research intended to produce knowledge valuable for understanding human disease, preventing and treating illness, and promoting health.

57. In the area of medical devices of the type invented, manufactured, and marketed by ERMI, doctors, professors, and engineers will clinically study the medical devices for effectiveness in treating various medical conditions. The results of these clinical studies are often published and peer reviewed.

58. The cost of clinical studies is significant as is the time investment both by ERMI and others.

59. Clinical studies, and the published results therefrom, are an important part of medical device commercial enterprises as such studies help to validate the effectiveness of the medical devices which is important to regulatory agencies, medical professionals, prescribing doctors, medical clinics, and patients.

60. Numerous clinical studies have taken place with respect to ERMI's devices including clinical studies with respect to the ERMI Shoulder Flexionater® device and the ERMI Knee Flexionater® device.

61. On information and belief, Defendant understands the value, importance, and expense associated with clinical studies.

The Papotto and Mills Knee Flexionater® Device Study

62. Basil A. Papotto (hereinafter "Papotto") is a Physical Therapist who previously practiced with TREX Orthopedics.

63. Timothy Mills (hereinafter "Mills") is a Physician Assistant who previously practiced with TREX Orthopedics.

64. Pappotto and Mills conducted a randomized clinical trial of the ERMI Knee Flexionater® Device.

65. ERMI sponsored the Pappotto and Mills Knee Flexionater® Device Study as a part of a multi-site research study. The study published in 2012.

66. The Pappotto and Mills Knee Flexionater® Device Study published as: Papotto BA, Mills, TJ. Treatment of severe flexion deficits following total knee arthroplasty: A Randomized clinical trial. *Orthopaedic Nursing* 2012; 31(1):29-34.

67. The Pappotto and Mills Knee Flexionater® Device Study is very valuable to ERMI.

68. The Pappotto and Mills Knee Flexionater® Device Study shows that the ERMI Knee Flexionater® device performs significantly better than a low intensity device.

The Dempsey, Branch, Mills, and Karsch Shoulder Flexionater® Device Study

69. Dr. Amanda Dempsey (hereinafter "Dempsey") is an orthopedic surgeon who previously practiced with TREX Orthopedics.

70. Dr. Robert Karsch (hereinafter "Karsch") is an orthopedic surgeon who previously practiced with TREX Orthopedics.

71. Dempsey, Branch, Mills, and Karsch conducted a retrospective cohort study to compare range of motion, subjective outcomes, and the prevalence of reoperation in groups of frozen shoulder patients with either low or moderate/high irritability treated with the same total end range time-maximizing protocol.

72. ERMI sponsored the Dempsey, Branch, Mills, and Karsch Study which utilized the ERMI Shoulder Flexionater® Device. The study published in 2011.

73. The Dempsey, Branch, Mills, and Karsch Study published as: Dempsey AL, Mills, TJ, Karsch RM, and Branch TP. Maximizing total end range time is safe and effective for the conservative treatment of frozen shoulder patients. American Journal of Physical Medicine & Rehabilitation 2011;90(9): 738-745.

74. The Dempsey, Branch, Mills, and Karsch Study showed that the ERMI Shoulder Flexionater® Device is safe and effective in treating patients. An important point in this publication is that the ERMI Shoulder Flexionater® Device can treat patients with low or medium/high irritability in their shoulder with equal effectiveness. This fact is important because it was previously thought that one should not use devices such as the ERMI Shoulder Flexionater® Device or should not stretch the shoulder in patients with high irritability in their shoulder.

75. The Dempsey, Branch, Mills, and Karsch Shoulder Flexionater® Device Study is very valuable to ERMI.

The Stephenson, Quimbo, and Gu Knee Flexionater® Device Study

76. Judith J. Stephenson (hereinafter "Stephenson") is a Research Scientist with HealthCore, Inc. (hereinafter "HealthCore").

77. Ralph A. Quimbo (hereinafter "Quimbo") is a Vice President of Life Sciences Research at HealthCore.

78. Tao GU (hereinafter "GU") was previously a Senior Researcher with HealthCore, and is presently an Associate Director of Oncology with Bristol-Myers Squibb.

79. Stephenson, Quimbo, and GU conducted a clinical study to determine if differences in costs and risks of re-hospitalization and/or re-operation exist between arthrofibrosis patients treated with low intensity stretch (LIS) or high intensity stretch (HIS) mechanical therapies, or physical therapy alone (No Device).

80. Specifically, the high intensity stretch device used in the Stephenson, Quimbo, and GU study was the ERMI Knee Flexionater® device.

81. Stephenson, Quimbo, and GU published their study as: Stephenson, JJ, Quimbo, RA, and GU, T. Knee-attributable medical costs and risk of re-surgery among patients utilizing non-surgical treatment options for knee and arthrofibrosis

in a managed care population. Current Medical Research & Opinion 2010; 26(f):1109-1118.

82. The Stephenson, Quimbo, and GU Study was conducted independently by HealthCore at the request of ERMI and published in 2010.

83. The Stephenson, Quimbo, and GU Study shows that patients treated with ERMI's Knee Flexionater® Device have a significantly lower risk of rehospitalization and lower knee-attributable medical costs.

84. The Stephenson, Quimbo, and Gu Knee Flexionater® Device Study is very valuable to ERMI.

The Uhl and Jacobs Knee Flexionater® Device Study

85. Dr. Timothy L. Uhl (hereinafter "Dr. Uhl") is the Director of Musculoskeletal Laboratory with the University of Kentucky College of Health Sciences and Dr. Uhl practices physical therapy and athletic training with the University of Kentucky College of Health Sciences.

86. Dr. Cale A. Jacobs was formerly the Director of Research and Development with ERMI and is presently an Assistant Professor of Research with the University of Kentucky College of Medicine.

87. Dr. Uhl and Dr. Jacobs conducted a study which measures the force that the ERMI Knee Flexionater® Device can apply on a knee and compares it to other treatment modalities. The study published in 2011.

88. Dr. Uhl and Dr. Jacob's study was sponsored by ERMI and published as Torque measures of common therapies for the treatment of flexion contractures. The Journal of Arthroplasty 2011;26(2):328-334.

89. The Uhl and Jacobs Knee Flexionater® Device Study is very valuable to ERMI.

The Palmer, Branch, Mills, and Karsch Knee Flexionater® Device Study

90. Dr. Branch, Dr. Karsch, Mills, and Marissa T. Palmer (hereinafter "Palmer") conducted a study which tested whether adding home mechanical therapy to traditional physical therapy by a physical therapist would significantly reduce the need for surgical management of loss of knee flexion after surgery or injury.

91. The study by Dr. Branch, Dr. Karsch, Mills, and Palmer showed that treatment using the ERMI Knee Flexionater® Device is safe and effective. The study published in 2003.

92. The study published as: "Branch, TP, Karsch, RE, Mills, TJ, and Palmer MT. Mechanical therapy for loss of knee flexion. The American Journal of Orthopedics 2003;32(4):195-200.

93. The Palmer, Branch, Mills, and Karsch Knee Flexionater® Device Study is very valuable to ERMI.

Mr. Eduardo M. Marti Visits ERMI

94. Mr. Eduardo M. Marti (hereinafter "Mr. Marti") contacted ERMI on November 7, 2013 via email seeking to sell distribution rights to an unrelated product.

95. Mr. Marti met with ERMI on December 13, 2013 and visited Dr. Branch's office at TREX Orthopedic, P.C..

96. ERMI devices and related literature, including the ERMI Shoulder Flexionater® device and related literature, the ERMI Knee Flexionater® device, and the ERMI Ankle Flexionater® Device were on display at TREX Orthopedic during Mr. Marti's visit on December 13, 2013. Mr. Marti was exposed to both ERMI's TREX mark, the ERMI Shoulder Flexionater® device, the ERMI Knee Flexionater® device, and the ERMI Ankle Flexionater® device during his visit.

97. On information and belief, Mr. Marti observed the ERMI Shoulder Flexionater® device, the ERMI Knee Flexionater® device, the ERMI Ankle Flexionater® device, and related literature during his visit to TREX Orthopedic.

98. On information and belief, Mr. Marti observed the patent markings showing the '289 patent number on the ERMI Flexionater ® device.

99. On information and belief, Mr. Marti knew at the time he visited ERMI that he did not have the rights to work with ERMI as he proposed.

T-Rex Accused Shoulder, Knee, Ankle, and Hip Devices

100. Following Mr. Marti's meeting with ERMI at TREX Orthopedic in December 2013, Mr. Marti founded a company named T-Rex Rehab, LLC (hereinafter "Rehab") in May 2014.

101. Rehab is a Florida limited liability company which has the same address as Mr. Marti, namely 19274 South Hibiscus Street, Weston, Florida 33332.

102. On June 4, 2014, Mr. Marti filed United States provisional patent application 62/007,541 directed to a Powered Knee Exerciser. On August 27, 2014, Mr. Marti filed United States provisional patent application 62/042,399 directed to a 3 Axis Actuator Driven Therapy Shoulder Device. On March 18, 2015, Mr. Marti filed United States provisional patent application 62/134,633 directed to Knee and Shoulder Exercisers. Mr. Marti assigned each of these three provisional applications to Rehab. Mr. Marti is listed as a co-inventor on each of the patent applications.

103. Based on these provisional patent applications, Mr. Marti also filed several non-provisional patent applications, which were also assigned to Rehab.

104. During the prosecution of Mr. Marti's non-provisional patent applications, Mr. Marti filed Information Disclosure Statements which, *inter alia*, included citations to ERMI's website, www.getmotion.com. **Exhibit 18**.

105. This citation to ERMI's intellectual property appears on the face of numerous patents obtained by Mr. Marti, Rehab, T-Rex Rehab, and OneDirect include at least: US Patent No. 9,669,249; US Patent No. 10,220,234; and US Patent No. 10,293,198.

106. Mr. Marti, through his companies Rehab and Team Post Op, then went on to sell a line of joint extension control devices that directly compete with ERMI's devices under the infringing "T-REX" mark within months of their visit to ERMI.

107. The products made and distributed by Rehab include the Accused Shoulder Device, the Accused Knee Device, the Accused Hip Device, and the Accused Ankle Device.

108. On information and belief, Mr. Marti has been and is involved in the advertising activities of Rehab including publication of brochures, internet publications, and trade show exhibits. Mr. Marti is now or was previously the "National Sales Director" of OneDirect.

109. Rehab advertises the Accused Shoulder Device on its website at https://trexrehab.com/t-rex-orbit-for-shoulder/, the Accused Knee Device, the Accused Ankle, and the Accused Hip Device on its website at https://trexrehab.com/t-rex-machines/.

110. Rehab's website includes citations to the same clinical research that tested and commented on the ERMI devices.

111. Rehab's website cites to at least the following ERMI clinical studies: The Papotto and Mills Study; The Stephenson, Quimbo, and GU Study; and The Uhl and Jacobs Study. **Exhibit 19.** Notably, the Rehab website misspells Dr. Uhl's name as "Uhi."

112. Rehab and OneDirect's brochure also cites to at least the following ERMI clinical studies: The Papotto and Mill Study; The Dempsey, Branch, Mills, and Karsch Study; The Stephenson, Quimbo, and GU Study; The Uhl and Jacobs Study; and the Palmer, Branch, Mills, and Karsch Study. **Exhibit 20**. Notably, the Rehab/OneDirect brochure misspells Dr. Uhl's name as "Uhi" and Dr. Karsch's name as "Kairsh."

113. Upon information and belief, Defendant has cited to ERMI's clinical research in advertising of the Accused Shoulder Device and the Accused Knee Device.

114. Rehab's advertisements, including those on its website, include videos showing the Accused Shoulder Device, the Accused Knee Device, and the Accused Ankle Device being used by a person.

115. Rehab's advertisements include commercial brochures which have been distributed to consumers identifying Rehab as the source of the Accused

Shoulder Device and the Accused Knee Device. *See, e.g.*, **Exhibit 20 and Exhibit 21**.

116. In September 2015, a Georgia corporation named T-Rex Investment, Inc. (hereinafter "T-Rex Investment") was formed in Georgia.

117. On information and belief, T-Rex Investment was formed as an acquisition company for the purpose of acquiring Rehab.

118. On information and belief, on March 9, 2016, T-Rex Investment completed the purchase of at least a portion of Rehab's assets, which included certain patents, patent applications, and distribution channels related to the T-Rex products.

119. On information and belief, a Georgia corporation named OneDirect Health Network, Inc. purchased 77% of T-Rex Investment.

120. On information and belief, Mr. Marti maintains ownership of at least a portion of Rehab.

OneDirect's Relationship with Rehab, Mr. Marti, Mr. Kaiser, and Kaiser Medical

121. On information and belief, on March 9, 2016, at least a portion of Rehab's assets, including certain patents, patent applications, and distribution channels related to the T-Rex products, were purchased by T-Rex Investment, Inc. (hereinafter "T-Rex Investment"), a Georgia corporation with principal offices located at 2964 Peachtree Road NW, Suite 400, Atlanta, Georgia, 30305.

122. T-Rex Investment was formed in September 2015.

123. On information and belief, T-Rex Investment was formed as an acquisition company by OneDirect Health Network, Inc. ("OneDirect") for the purpose of acquiring Rehab.

124. On information and belief, as part of its acquisition of Rehab assets including patents, OneDirect and T-Rex Investment learned of the prosecution history of Mr. Marti's and Mr. Kaiser's patent application including the information disclosure filed by Mr. Marti and Mr. Kaiser identifying the ERMI devices as prior art relevant to patentability.

125. On information and belief, after learning about the history of the Marti and Kaiser patents, OneDirect purchased 77% of T-Rex Investment.

126. T-Rex Investment was listed as the applicant and/or the assignee on at least US Patent Nos. 9,669,249; 10,220,234; and 10,293,198. Each of these patents explicitly list ERMI's website and the devices displayed thereon as prior art references. As applicant and/or assignee of these patents, T-Rex Investment had knowledge of or was willfully blind to the existence of the ERMI devices and the '289 Patent.

127. On information and belief, OneDirect and T-Rex Investment knew that Mr. Kaiser had been sued in his individual capacity by Lantz Medical which

had previously completed an asset purchase of the assets of Kaiser Medical and entered into a non-compete with Mr. Kaiser.

128. On information and belief, OneDirect and T-Rex Investment knew that Mr. Marti was named as working with Mr. Kaiser in the Lantz Action.

129. On information and belief, OneDirect and T-Rex Investment knew that Mr. Marti and Mr. Kaiser had been accused of selling and offering to sell products for which they had no rights and were contractually obligated not to sell or offer to sell.

130. OneDirect identifies Rehab as one of its "Companies" on its website, https://mackenzie-patsey-cepr.squarespace.com/, stating that it works with Rehab "from inception to distribution." OneDirect's website links to Rehab's website, trexrehab.com, identified above, where Rehab advertises the Accused Device. **Exhibit 22**.

131. On February 17, 2016, Mr. Kaiser and Kaiser Medical sent an invoice for 7 "T-Rex" shoulder devices to OneDirect noting that the devices were being shipped to "Dave Long" at 523 W. Algonquin, Arlington Heights, IL 60005. **Exhibit 23**.

132. Also on February 17, 2016, Mr. Kaiser and Kaiser Medical sent an invoice to OneDirect for an additional 49 "T-REX" shoulder devices noting that the devices were being shipped to: "Kip Bembry" at 604 Birkdale Ct., Martiez

[SIC], GA 30907; Dave Long at 523 W. Algonquin, Arlington Heights, IL 600005 [SIC]; and to "Mark Levitt, OneDirect" at 1755 West Oak Parkway, Marietta, GA 30062. **Exhibit 24.** The purchase price for these machines "FOB Southampton, NJ" totaled $134,120.00.

133. In April 2016, OneDirect stated in a memorandum as follows:

> Competition:
>
> Our primary competition for the TREX line of products is Atlanta-based End Range Motion Improvement or ERMI (www.getmotion.com). The company is privately-held. ERMI manufactures and distributes products under the ERMI brand, such as the ERMI Knee Extensionater®, ERMI MPJ Extensionater®, ERMI Shoulder Flexionater® and the ERMI Elbow Extensionater® II. The Company has conducted 26 separate physician interviews, 17 separate distributor interviews and 6 visits to Veterans Administration facilities in our target market. Our findings indicate that ERMI has significant service related issues with the Veterans Administration and independent Physicians. Additionally, after careful inspection of the ERMI line of products we believe them to be substandard in manufacturing quality and design. The flagship ERMI Knee (Ankle) Flexionater® includes a garden-variety folding chair as part of the apparatus. Further, none of the ERMI products are Wi-Fi or Bluetooth enabled to facilitate any form of data tracking or Physician monitoring.

134. OneDirect has "careful[ly] inspect[ed] the ERMI line of products" including the ERMI Shoulder Flexionater® device.

135. ERMI distributes the ERMI Shoulder Flexionater® devices with the '289 patent number affixed thereon. *See* **Exhibit 17.**

136. On information and belief, OneDirect saw the '289 patent number affixed to the ERMI Shoulder Flexionater® device during its "careful inspection" of the ERMI device.

137. On information and belief, Mr. Kaiser and Kaiser Medical were and/or are selling the Accused Shoulder Device to OneDirect using the "T-REX" mark and/or the "ORBIT" mark.

138. Soon after the purchase of these Accused Shoulder Devices, a creditor of OneDirect filed a UCC Financing Statement with respect to the devices OneDirect had just purchased from Mr. Kaiser and Kaiser Medical.

139. On information and belief, Defendant has knowledge of and/or is willfully blind to the claims of the '289 Patent.

140. On information and belief, Marti, Rehab, T-Rex, and OneDirect operate as a single entity to manufacture, sell, lease, distribute, advertise, and promote the Accused Device.

Smith's Distribution of the Accused Device

141. On information and belief, Smith—in his capacity as CEO of OneDirect—is a current and/or former distributor of Rehab products, including the Accused Device.

142. On information and belief, Smith was a former distributor of Rehab products, including the Accused Device, in his individual capacity and prior to his assuming the role of CEO of OneDirect.

143. On information and belief, Defendant Smith—in his individual capacity—has personally performed the steps of method Claim 22, either literally or under the Doctrine of Equivalents, of the '289 Patent.

144. On information and belief, Defendant Smith personally performed the steps of method Claim 22 prior to the formation of OneDirect

145. On information and belief, Smith has in the past and/or presently sells, offers for sale, leases, and/or offers for lease Rehab's and OneDirect's products, including the Accused Shoulder, Knee, Ankle, and Hip Devices, in Georgia, including in this district.

146. On information and belief, Smith has demonstrated the Accused Device to customers and potential customers.

147. On information and belief, Smith has distributed the Accused Device to customers.

148. On information and belief, Smith is aware of Rehab's brochure, **Exhibit 21**, or others like it, which, in addition to showing the Accused Device, also shows a photograph of the ERMI Shoulder Flexionater® device, **Exhibit 14**.

149. On information and belief, Smith has visited facilities, such as medical facilities, trade shows, or conferences, where the ERMI Shoulder Flexionater® device is used or displayed.

150. On information and belief, Smith is familiar with the ERMI Shoulder Flexionater® device and has knowledge of and/or is willfully blind to the claims of the '289 Patent.

151. On information and belief, Smith is familiar with ERMI's ORBIT mark and ERMI's TREX mark.

152. On information and belief, Smith has used and continues to use the infringing T-Rex mark and the infringing Orbit mark in commerce on the Accused Device and other devices, in advertising, and in promotion of the Accused Device and other devices.

Smith's Reverse Passing-Off

153. ERMI has invested considerable time, talent, and financial resources in its clinical research studies.

154. ERMI's clinical research studies have scientifically evaluated and specifically demonstrated the effectiveness of ERMI's Shoulder Flexionater® Device and ERMI's Knee Flexionater® Device, among other ERMI devices.

155. On information and belief, Smith was aware of the ERMI clinical research studies.

156. A consumer, seeing the ERMI clinical research studies cited by Smith would assume that the research pertained to the Accused Shoulder Device and/or the Accused Knee Device rather than an ERMI device.

157. Smith has not purchased, paid for, or contributed in any way to any of the ERMI clinical research studies.

158. Smith—in his capacity as CEO of OneDirect—has misrepresented ERMI's clinical research studies as his own and/or as applicable to the Accused Shoulder Device and/or the Accused Knee Device.

159. Smith cites to the ERMI clinical research studies in order to deceive the consuming public.

160. No studies have been published studying the effectiveness of the Accused Shoulder Device and/or the Accused Knee Device.

COUNT I – WILLFUL DIRECT PATENT INFRINGEMENT

35 U.S.C. §271(a)

161. ERMI hereby incorporates paragraphs 1–160 above as if fully set forth herein.

162. Defendant has directly infringed and continues to directly infringe at least Claims 1 and 22 of the '289 Patent through using, selling, distributing, leasing, offering for lease, and/or offering to sell and distribute the Accused Device. **Exhibit 27**.

163. On information and belief, Defendant Smith—in his individual capacity—has personally performed the steps of method Claim 22, either literally or under the Doctrine of Equivalents, of the '289 Patent.

164. On information and belief, Defendant Smith personally performed the steps of method Claim 22 prior to the formation of OneDirect.

165. The Accused Device is an apparatus for manipulating the shoulder joint of an arm of a user and embodies at least Claim 1 of the '289 Patent, and its use by Defendant infringes at least method Claim 22 of the '289 Patent.

166. Defendant has literally infringed and continues to literally infringe at least one claim of the '289 Patent.

167. Defendant has infringed and continues to infringe at least one claim of the '289 Patent pursuant to the Doctrine of Equivalents.

168. On information and belief, Defendant uses and has used the Accused Device at various trade shows, in demonstration of the device, and/or in testing.

169. Defendant had knowledge of the '289 Patent at least as early as August 27, 2015, the date Mr. Marti filed an Information Disclosure Statement with the United States Patent Office listing the getmotion.com website during prosecution of the patent applications Mr. Marti assigned to Rehab.

170. Defendant has willfully infringed and continues to willfully infringe the '289 Patent. Despite its knowledge of the '289 Patent, Defendant has sold and

continues to sell the Accused Device in complete and reckless disregard of ERMI's patent rights.

171. As a result of Defendant's unlawful activities, ERMI has suffered and will continue to suffer irreparable harm.

172. Defendant's infringement of the '289 Patent has injured and continues to injure ERMI in an amount to be proven at trial, but not less than a reasonable royalty.

COUNT II – INDIRECT PATENT INFRINGEMENT

35 U.S.C. §271(b); 35 U.S.C. §271(c)

173. ERMI hereby incorporates paragraphs 1–172 above as if fully set forth herein.

174. On information and belief, Defendant markets, advertises, demonstrates, sells, distributes, leases, offers to lease, and offers to sell and distribute the Accused Device to third parties including doctors, medical practices, care facilities, and directly to end user patients.

175. Defendant has induced and continues to induce infringement of at least Claims 1 and 22 of the '289 Patent under 35 U.S.C. §271(b).

176. In addition to directly infringing the '289 Patent, Defendant indirectly infringes by instructing, directing and/or requiring others, including doctors, medical practices, care facilities, and end user patients, to perform the steps of

method Claim 22, either literally or under the Doctrine of Equivalents, of the '289 Patent, where all of the steps of the method claim are performed by either Defendant or his customers, doctors, medical practices, care facilities, end user patients, or some combination thereof.

177. The patients directly infringe the '289 Patent by using the Accused Device to treat their shoulders.

178. The doctors, care providers, and medical practices also directly infringe the '289 patent by prescribing the Accused Devices to patients, by providing instructions on use to patients, and by controlling and directing patients' use of the Accused Device. Defendant has direct knowledge and/or is willfully blind to the fact that he is inducing others, including doctors, medical practices, care facilities, and end user patients, to infringe by practicing, either themselves or in conjunction with Defendant, method Claim 22 of the '289 Patent.

179. By advertising, distributing, leasing, and/or selling the Accused Devices to others, Defendant has knowingly and intentionally aided, abetted, and induced others to directly infringe at least one claim of the '289 Patent.

180. The Accused Device has no substantial non-infringing use.

181. By offering to sell/lease and selling/leasing the Accused Device to others, including health care providers and end-users, with the requisite knowledge (including willful blindness) of the '289 Patent, requisite knowledge (including

willful blindness) that the Accused Device has no substantial non-infringing use, and requisite knowledge (including willful blindness) that his conduct would lead to—and in fact did lead to—direct infringement, Defendant has contributed and is contributing to the infringement by others of at least Claims 1 and 22 of the '289 Patent.

COUNT III – LANHAM ACT REVERSE PASSING-OFF

15 U.S.C. §1125(a)

182. Paragraphs 1–181 are incorporated herein by reference as though set forth in their entirety.

183. All of the ERMI Clinical Research Studies utilized the ERMI Shoulder Flexionater® Device and/or the ERMI Knee Flexionater® Device.

184. None of the ERMI Clinical Research Studies utilized the Accused Shoulder Device or the Accused Knee Device.

185. The Clinical Research Studies, as used by Defendant, are branded by Defendant on its website and/or in advertising brochures with the Infringing T-REX mark and/or the Infringing Orbit mark.

186. The Clinical Research Studies, as used by Defendant are represented by Defendant as originating by and/or as studying the Accused Shoulder Device and/or the Accused Knee Device.

187. Through the actions complained of herein, Defendant has willfully made and is making false, deceptive, and misleading representations and descriptions constituting false designation of origin made in and in connection with interstate commerce, including, without limitation, false designations of origin of the ERMI Clinical Research Studies.

188. Defendant's false designations of origin are likely to cause consumer confusion as to the origin of the ERMI Clinical Research Studies, including without limitation, by causing consumers to believe falsely that Defendant originated the ERMI Clinical Research Studies and that the ERMI Clinical Research Studies actually studied the Accused Shoulder Device and the Accused Knee Device.

189. Defendant's false designations of origin constitute reverse passing-off and unfair competition and violate ERMI's rights under at least 15 U.S.C. §1125(a).

190. Defendant's false designations of origin in reverse passing-off have reasonably and foreseeably damaged and will continue to damage ERMI in an amount to be determined at trial.

191. Defendant's willful actions make this case an exceptional case within the meaning of 15 U.S.C. §1117.

COUNT IV – LANHAM ACT FALSE DESIGNATION OF ORIGIN

15 U.S.C. §1125(a)

192. Paragraphs 1–191 are incorporated herein by reference as though set forth in their entirety.

193. ERMI is the owner of all common law rights in the word mark TREX for use in association with educational services, namely, presentations and speeches in the field of orthopedics and physical rehabilitation.

194. ERMI and its predecessors in interest have used ERMI's TREX mark in commerce since at least 1996.

195. ERMI is the owner of all common law rights in the word mark ORBIT for retail and online retail store services featuring surgical supplies.

196. ERMI and its predecessors in interest have used ERMI's ORBIT mark in commerce since at least 2004.

197. Defendant, without consent from ERMI, adopted, used, and continues to use in commerce the infringing T-REX mark in association with medical devices and services including the Accused Shoulder Device and/or the Accused Knee Device.

198. Defendant, without consent from ERMI, adopted, used, and continues to use in commerce the infringing ORBIT mark in association with medical devices and services including the Accused Shoulder Device and/or the Accused Knee Device.

199. On information and belief, Defendant had prior knowledge of ERMI's trademark rights in ERMI's TREX mark and in ERMI's ORBIT mark prior to Defendant's adoption and use of the infringing T-REX mark and the infringing ORBIT mark.

200. Use of the infringing T-REX mark in connection with the sale, offering for sale, distribution, and advertising of Defendant's goods and services is likely to cause confusion, mistake, or deception with respect to the source of the goods.

201. Use of the infringing ORBIT mark in connection with the sale, offering for sale, distribution, and advertising of Defendant's goods and services is likely to cause confusion, mistake, or deception with respect to the source of the goods.

202. ERMI has been damaged and, in absence of relief from this Court, will continue to be damaged by the use of Defendant's infringing T-REX mark in connection with Defendant's goods and services.

203. ERMI has been damaged and, in absence of relief from this Court, will continue to be damaged by the use of Defendant's infringing ORBIT mark in connection with Defendant's goods and services.

204. Defendant has used and is using, in commerce, in connection with the sale, offer for sale, distribution, and advertising of goods and services, the

infringing T-REX mark in such a manner as is likely to cause confusion, or to cause mistake, deceive as to the affiliation, connection or association as to the origin, or falsely designate the origin, sponsorship, or approval of the goods and services to consumers in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

205. Defendant has used and is using, in commerce, in connection with the sale, offer for sale, distribution, and advertising of goods and services, the infringing ORBIT mark in such a manner as is likely to cause confusion, or to cause mistake, deceive as to the affiliation, connection or association as to the origin, or falsely designate the origin, sponsorship, or approval of the goods and services to consumers in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

COUNT V – GEORGIA TRADEMARK INFRINGEMENT

Ga. Code §10-1-451

206. Paragraphs 1–205 are incorporated herein by reference as though set forth in their entirety.

207. ERMI is the owner of ERMI's TREX mark which is the subject of Georgia Trademark Registration Number S-29940. **Exhibit 5**.

208. Defendant has used and/or continues to use in commerce the infringing T-REX mark in connection with Defendant's products and services,

which include but are not necessarily limited to the Accused Shoulder Device and the Accused Knee Device.

209. Defendant has manufactured, used, displayed, or sold products and/or services which use the infringing T-REX mark.

210. Use of the infringing T-REX mark in connection with the sale, offering for sale, distribution, and advertising of all Defendant's goods and services is likely to cause confusion, mistake, or deception with respect to the source of the goods.

211. ERMI has been damaged and, in absence of relief from this Court, will continue to be damaged by the use of Defendant's infringing T-REX mark in connection with Defendant's goods and services.

212. Defendant's conduct has been in willful violation of Ga. Code §10-1-451 entitling ERMI to recover from Defendant all profits Defendant derived from such wrongful manufacture, use, display, and/or sale, and all damages suffered by ERMI as a result of such wrongful manufacture, use, display, or sale.

213. ERMI will continue to suffer irreparable harm and damage unless Defendant's wrongful manufacture, use, display, and/or sale of goods and services in association with the infringing TREX mark is enjoined by this Court.

COUNT VI – LANHAM ACT UNFAIR COMPETITION

15 U.S.C. §1125(a)

214. Paragraphs 1–213 are incorporated herein by reference as though set forth in their entirety.

215. Defendant's activities described in this Complaint constitute violations of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a) in that Defendant's conduct is likely to cause confusion or mistake among the purchasing public and also misrepresents the nature and quality of ERMI's goods and services.

216. Defendant's activities have occurred in interstate commerce and have damaged ERMI.

COUNT VII GEORGIA UNFAIR AND DECEPTIVE TRADE PRACTICES

Ga. Code §10-1-373

217. Paragraphs 1–216 are incorporated herein by reference as though set forth in their entirety.

218. Defendant's activities described in this Complaint constitute willful deceptive trade practices, as defined in Section 10-1-373 of the Georgia Code as ERMI has been irreparably harmed and damaged, and is likely to continue to be irreparably harmed and damaged, absent an injunction by this Court, by the deceptive trade practices of the Defendant.

219. Because Defendant's activities have been willful as alleged in this Complaint, ERMI is entitled to its attorneys' fees.

COUNT VIII GEORGIA COMMON LAW UNFAIR COMPETITION

220. Paragraphs 1–219 are incorporated herein by reference as though set forth in their entirety.

221. Defendant's activities described in this Complaint constitute unfair acts that have damaged the legitimate business activities related to ERMI's manufacture, sale, offering for sale, advertising, using, and distributing to the public medical equipment and supplies including ERMI's Shoulder Flexionater® Device and ERMI's Knee Flexionater® Device, among other products. Defendant's illegal activities have been in and affected commerce including among the purchasing public. Therefore, those activities by Defendant constitute unfair and deceptive acts and practices in the State of Georgia pursuant to the common law of Georgia.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ERMI LLC, by and through the undersigned, hereby respectfully asks the Court to enter judgment against Defendant, granting the following relief:

A. An entry of judgment holding that Defendant has infringed and is infringing the '289 Patent in violation of 35 U.S.C. §271(a); has induced infringement and is inducing infringement of the '289 Patent in violation of 35 U.S.C. §271(b); and has contributed to and is contributing to the infringement of the '289 Patent in violation of 35 U.S.C. §271(c);

B. An entry of judgment holding that Defendant has willfully infringed the '289 Patent;

C. An entry of judgment holding that Defendant has engaged in willful reverse passing-off by passing-off clinical research relating to ERMI's Shoulder Flexionater® Device and/or ERMI's Knee Flexionater® Device as his own in violation of 15 U.S.C. §1125(a);

D. An entry of judgment holding that Defendant has made willful false designations of origin in violation of 15 U.S.C. §1125(a);

E. An entry of judgment holding that Defendant has committed willful trademark infringement in violation of Ga. Code §10-1-451;

F. An entry of judgment holding that Defendant has committed willful deceptive trade practices in violation of Ga. Code §10-1-373;

G. An entry of judgment holding that Defendant has committed Georgia Common Law Unfair Competition;

H. A permanent injunction against Defendant, and all those acting in concert or participation with Defendant, from:

a. Using, making, leasing, offering to lease, selling, offering to sell, or importing any device which infringes the '289 Patent for the life of the '289 Patent including, but not limited to, the Accused Shoulder Device and colorable imitations thereof;

b. Inducing others to use, make, lease, offer to lease, sell, offer to sell, or import any device which infringes the '289 Patent for the life of the '289 Patent including, but not limited to, the Accused Shoulder Device and colorable imitations thereof;

c. Contributing to or aiding others in using, making, leasing, offering to lease, selling, offering to sell, or importing any device which infringes the '289 Patent for the life of the '289 Patent including, but not limited to, the Accused Shoulder Device and colorable imitations thereof;

d. Using any trademark, service mark, logo, trade name, domain name or designation confusingly similar to ERMI's TREX mark and/or ERMI's ORBIT mark; and

e. Unfairly competing with ERMI.

I. An injunction against Defendant and all those acting in concert with Defendant from reverse passing-off the ERMI Clinical Research as his own;

J. That this Court order the impounding and destruction of any and all Accused Shoulder Devices, as violative of the '289 Patent, in the possession of the Defendant;

K. That this Court order the impounding and destruction of any and all Accused Shoulder Devices, Accused Knee Devices, Accused Ankle Devices, and

Accused Hip Devices as violative of the ERMI's rights in ERMI's TREX mark, in the possession of the Defendant;

L. That this Court order the impounding and destruction of any and all Accused Shoulder Devices, Accused Knee Devices, Accused Ankle Devices, and Accused Hip Devices as violative of ERMI's rights in ERMI's Orbit mark, in the possession of the Defendant;

M. An award to ERMI for the full amount of damages sustained, including, but not limited to, any and all damage remedies available pursuant to the patent laws of the United States, 35 U.S.C. §§ 271, *et. seq*. and the Lanham Act, 15 U.S.C. §1051, *et seq.,* which include, but are not limited to, lost profits, a reasonable royalty award, prejudgment interest, post judgment interest, treble damages, and monetary compensation for past and/or future corrective advertising;

N. A determination that Defendant's patent infringement, trademark infringement, and unfair competition has been willful, wanton, and deliberate and that the damages against it be increased up to treble on this basis or for any other basis in accordance with the law;

O. A determination that Defendant's reverse passing-off has been willful, wanton, and deliberate and that the damages against it be increased up to treble on this basis or for any other basis in accordance with the law;

P. A finding that this case is exceptional and an award to ERMI of its costs and reasonable attorneys' fees, as provided by 35 U.S.C. §285 and 15 U.S.C. §1117;

Q. A finding that ERMI is the prevailing party and an award of costs and attorneys' fees as provided by GA Code §10-1-373;

R. An accounting of all profits earned as a result of Defendant's Lanham Act violations including false designation of origin and unfair competition together with all pre-judgment and post-judgment interest at the maximum allowable rate from the first date of any Lanham Act violation in accordance with 15 U.S.C. §1117;

S. An award of all profits earned by Defendant as a result of Defendant's violations of GA Code §10-1-373; and

T. Such further and additional relief this Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff, ERMI LLC hereby demands trial by jury of all issues so triable.

Respectfully submitted this 6th day of April, 2020.

Edward Hine, Jr., P.C.

By: /s/ Edward Hine, Jr.
Edward Hine, Jr.

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