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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In re:	)	Case No. 16-05968-LT11
SOTERA WIRELESS, INC.,	)	Chapter 11
Debtor.	)	Adversary Case No.
MASIMO CORPORATION,	)	ADVERSARY COMPLAINT FOR
Plaintiff,	)	TRADE SECRET
v.	)	MISAPPROPRIATION UNDER
SOTERA WIRELESS, INC.,	)	CALIFORNIA AND FEDERAL
Defendant.	)	LAW
	)	JURY DEMAND
	)	-and-
	)	DEMAND FOR JUDGMENT BY
	)	DISTRICT JUDGE

1 Plaintiff MASIMO CORPORATION (“Masimo”) hereby complains of
2 Defendant and Debtor in Possession SOTERA WIRELESS, INC. (“Sotera”). In
3 accordance with LBR 7008-1, Masimo respectfully does not consent to the entry
4 of final orders or judgment by the bankruptcy judge if any matters are
5 determined to be core. In support of its Complaint, Masimo alleges as follows:

6 **GENERAL ALLEGATIONS**

7 1. This is a non-core proceeding over which this Court has
8 jurisdiction (but not the Constitutional authority to enter final orders or
9 judgments) pursuant to 28 U.S.C. §§ 157, 959(a), 1331, 1334, & 1367, as well
10 as the Local Rules and Orders of the United States District Court for the
11 Southern District of California and the United States Bankruptcy Court for the
12 Southern District of California governing the reference and the conduct of
13 proceedings arising under or related to cases under Title 11 of the Bankruptcy
14 Code. Masimo respectfully demands the entry of judgment by a district judge
15 and demands a trial by jury on all issues so triable.

16 2. Plaintiff Masimo is a Delaware corporation having its principal
17 place of business at 52 Discovery, Irvine, California 92618.

18 3. Masimo is a medical technology company that develops and
19 manufactures innovative noninvasive patient monitoring technologies.
20 Masimo’s technologies include Masimo’s pioneering Patient SafetyNet System
21 (“Masimo Patient SafetyNet”), which improves patient safety by providing
22 remote monitoring of continuous pulse oximetry, ventilation monitoring, and
23 other patient health parameter monitoring.

24 4. Defendant Sotera is a California corporation having a principal
25 place of business at 10020 Huennekens Street, San Diego, California 92121.
26 Sotera is also the Debtor and Debtor in Possession in this Chapter 11
27 bankruptcy case.

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1 5. Sotera markets and sells its ViSi Mobile product and related
2 services. ViSi Mobile is a monitoring platform that competes with Masimo
3 Patient SafetyNet.

4 **PRIOR LAWSUIT**

5 6. On May 10, 2013, Masimo filed a complaint against Sotera and
6 two individuals who were then employees of Sotera—James Welch and David
7 Hunt—in the Superior Court of the State of California, County of Orange, Case
8 No. 30-2013-00649172-CU-IP-CJC (the “Prior Lawsuit”). The Prior Lawsuit
9 included a claim of trade secret misappropriation against Sotera. Masimo was
10 scheduled to begin trial against Sotera in the Prior Lawsuit on November 7,
11 2016.

12 7. On September 30, 2016 (the “Sotera Petition Date”), Sotera filed
13 its Voluntary Petition for Bankruptcy under Chapter 11, thereby commencing
14 this case. As a result of Sotera’s bankruptcy filing, the Prior Lawsuit was stayed
15 as against Sotera, and that stay has remained as of the filing of this adversary
16 proceeding.

17 **TEMPORAL SCOPE OF ASSERTED CLAIM**

18 8. The trade secret misappropriation claim asserted in this Adversary
19 Complaint is limited to Sotera’s misappropriation of Masimo’s trade secrets on
20 and after the Sotera Petition Date, including Sotera’s ongoing use of its ViSi
21 Mobile product platform, which constitutes ongoing use-based misappropriation
22 of Masimo’s trade secrets contained within ViSi Mobile.

23 9. As such, this Adversary Complaint, the claim asserted herein, and
24 the damages and other relief sought herein are not subject to the stay of the Prior
25 Lawsuit, and they are not subject to the automatic stay of 11 U.S.C. § 362.

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STATEMENT OF FACTS

10. This action seeks relief for the post-petition misappropriation by Sotera of Masimo's trade secrets under both California law and under the United States Defense of Trade Secrets Act of 2016.

11. Masimo uses its products and services, including Patient SafetyNet and related services, in interstate and foreign commerce after the Sotera Petition Date.

12. Upon information and belief, Sotera uses its ViSi Mobile product and related services in interstate commerce after the Sotera Petition Date.

13. Upon information and belief, Sotera uses its ViSi Mobile product and related services in foreign commerce after the Sotera Petition Date.

14. Sotera acquired Masimo's trade secrets through the activities of two of Masimo's former employees, Welch and Hunt, who were subsequently employed by Sotera.

15. Sotera continues to employ Welch as its Executive Vice President of Product Development.

16. On information and belief, Sotera has misappropriated, and is continuing to misappropriate, Masimo's trade secrets on or after the Sotera Petition Date including through Sotera's use of Masimo's trade secrets in Sotera's ViSi Mobile product and in Sotera's technical business practices related to ViSi Mobile.

17. Welch and Hunt betrayed Masimo's trust by stealing Masimo's trade secrets, including highly confidential and proprietary Masimo engineering documents, product plans, marketing plans, customer lists, and other highly confidential documents. Sotera continues to benefit from that theft, including through Sotera's inclusion, in its ViSi Mobile product, of Masimo trade secrets stolen by Welch and Hunt.

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1 18. In 2011, Welch, a high-level management employee at Masimo,
2 resigned from Masimo and joined Sotera to work in direct competition with
3 Masimo. After additional employees left Masimo to work at Sotera, Masimo
4 became aware that Sotera was systematically targeting Masimo employees, all
5 of whom had access to Masimo's confidential information and trade secrets.
6 One of these employees was Hunt, who resigned from Masimo in 2012. As
7 Sotera continued to target other Masimo employees, Masimo performed a
8 forensic analysis of Welch and Hunt's laptop computers and email accounts.

9 19. The results showed that at approximately 4:30 a.m. on his last day
10 of work, Welch copied nearly 5,000 Masimo files to an external storage device
11 attached to his laptop computer. These files included numerous highly
12 confidential and proprietary trade secrets, including information directly
13 relevant to Welch's new employment with Sotera. Similarly, Hunt, one day
14 before submitting his letter of resignation to Masimo, between the hours of
15 approximately 4:00 a.m. and 6:00 a.m., emailed Masimo trade secrets to his
16 private email account, including highly confidential information directly
17 relevant to Hunt's new employment with Sotera.

18 **A. Welch**

19 20. Welch, Masimo's Vice President of Systems Engineering and later
20 Masimo's Vice President of General Floor Marketing and Patient Safety, was
21 employed by Masimo from August 1, 2005, to September 16, 2011. At the
22 beginning of his employment with Masimo, Welch signed a nondisclosure
23 agreement in which he promised, among other things, not to disclose or make
24 use of any confidential information except as expressly authorized by Masimo,
25 and as necessary for the performance of his duties on behalf of Masimo. During
26 his employment with Masimo, Welch had access to a vast amount of sensitive
27 proprietary and confidential information, including sensitive technical, financial

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1 and competitive information concerning products and product development
2 plans, trajectories, strategies, and other confidential documents.

3 21. On September 13, 2011, Welch notified Masimo of his intent to
4 resign, stating that his last day would be September 16, 2011. Early on the
5 morning of September 16, 2011, at 4:24 a.m., Welch connected a personal
6 Universal Serial Bus (“USB”) storage device to his Masimo laptop computer,
7 and thereafter he copied nearly 5,000 computer files (totaling over six gigabytes
8 of data) to the device. These computer files included, among other things,
9 highly confidential and proprietary product briefs, technical product
10 requirements, product plans, assembly design requirements, test results, design
11 review files, customer lists and customer information, customer quotes, market
12 analyses, and pricing tools.

13 22. These files are extremely valuable to Masimo, and they would be
14 similarly valuable to Masimo’s competitors and, in particular, to Sotera. Much
15 of the information that Welch copied is highly proprietary, it is kept in strict
16 confidence at Masimo, and it is not disclosed to third parties. Masimo has
17 invested enormous resources in creating much of this information, which
18 derives independent economic value from this information being not generally
19 known to the public or to Masimo’s competitors.

20 23. Welch’s Masimo computer was equipped with an automated
21 backup program entitled “Second Copy.” This software is configured to backup
22 file changes when connected to Masimo’s Virtual Private Network (“VPN”). A
23 forensic analysis of Welch’s Masimo laptop computer revealed that
24 approximately one minute after he connected his personal USB storage device,
25 Welch disconnected his computer from Masimo’s VPN, thereby preventing the
26 Second Copy software from detecting the file changes. Shortly thereafter,
27 Welch began transferring thousands of confidential Masimo files to the USB
28 storage device. However, Welch’s activity was detected by another program

1 that logs file copying even when the computer is not connected to Masimo's
2 VPN.

3 24. After leaving Masimo's employment, Welch began working for
4 Sotera. Sotera developed its ViSi Mobile wireless platform for continuous vital
5 signs monitoring for general floor monitoring. Welch worked for Masimo in
6 this same field, and Welch acquired and took with him to Sotera Masimo's trade
7 secrets regarding wireless vital signs monitoring. On information and belief,
8 Welch disclosed Masimo's trade secrets to Sotera in his work there and caused
9 Sotera's ViSi Mobile product to incorporate Masimo's trade secrets. On
10 information and belief, Welch also caused Sotera's technical business practices
11 related to the deployment of its ViSi Mobile product to incorporate Masimo's
12 trade secrets. On information and belief, Sotera uses the Masimo trade secrets
13 that Welch stole to solicit customers for Sotera's benefit and to the detriment of
14 Masimo.

15 **B. Hunt**

16 25. Hunt worked as a Strategic Account Manager for Masimo, which
17 employment included targeting, selling, and installing Masimo solutions for the
18 general floor. Hunt was employed by Masimo from May 15, 2000, to July 27,
19 2012. Like Welch, Hunt had access to Masimo's highly confidential and
20 proprietary trade secrets, including highly confidential information regarding
21 Masimo's general floor monitoring solutions, Masimo Patient SafetyNet,
22 strategic plans, the identity of installed customers, target customers, and
23 customers that had expressed interest in Masimo Patient SafetyNet.

24 26. During the last month of his employment with Masimo, Hunt acted
25 on behalf of Sotera to steal confidential and proprietary Masimo information.
26 For example, at least by July 18, 2012, nine days before Hunt terminated his
27 employment with Masimo, Sotera had provided Hunt with a Sotera email
28 account, which Hunt actively used during his employment at Masimo. In

1 addition, on June 25, 2012, Hunt emailed a file entitled "Sotera Target List"
2 from his personal email account to his Masimo email account. That same day,
3 Hunt also emailed Masimo computer files to his personal email account. These
4 files contained Masimo's highly confidential and proprietary information
5 regarding, among other things, installations of Masimo Patient SafetyNet,
6 Masimo's customers, target customers, contacts, and other documents regarding
7 Masimo's products. For example, in a single email that Hunt transmitted to his
8 personal account on June 25, 2012, Hunt attached (i) a confidential Masimo
9 organizational chart listing Masimo's sales force; (ii) a highly detailed customer
10 list for Masimo's Patient SafetyNet; and (iii) a Sotera brochure for Sotera's
11 competing ViSi Mobile product. In June and July, 2012, Hunt continued to
12 transmit emails to his personal account attaching Masimo's confidential and
13 proprietary information.

14 27. On the morning of Sunday, July 15, 2012, one day before Hunt
15 submitted his letter of resignation to Masimo, Hunt transmitted a series of
16 emails from his Masimo email account to his personal email account attaching
17 files containing highly confidential and proprietary Masimo information. These
18 files included detailed confidential information specifically relevant to the
19 general floor monitoring business of Masimo and highly valuable to Hunt and
20 Sotera. The files included detailed customer lists that contained not only the
21 customer's contact information, but also information concerning, among other
22 things, (i) individual customer needs; (ii) contact notes; (iii) the status of current
23 discussions and proposed next steps; (iv) estimated close dates; (v) the
24 probabilities of closing particular deals; (vi) pricing information and analysis;
25 (vii) profit margins; (viii) previously sold equipment; and (ix) details and
26 analyses of individual customers' computer networks.

27 28. Although Hunt's sales responsibilities at Masimo encompassed a
28 variety of product lines, Hunt emailed to his personal account a carefully

1 selected subset of confidential information that was directly relevant to the
2 general floor monitoring business of Masimo—the very business in which
3 Sotera competes with Masimo. Hunt emailed that Masimo confidential
4 information to his personal email account while he was employed by Masimo.

5 29. The information that Hunt stole is extremely valuable to Masimo,
6 and it would be especially valuable to Masimo’s competitor, Sotera. The
7 information is highly proprietary, it is kept in strict confidence at Masimo, and it
8 is not disclosed to third parties because it derives independent economic value
9 from being not generally known to the public or to Masimo’s competitors.

10 30. Masimo takes a number of precautions to maintain the secrecy of
11 its confidential documents. For example, Masimo labels documents as
12 “CONFIDENTIAL AND PROPRIETARY,” it restricts them from disclosure to
13 third parties, and it restricts them to Masimo employees on a need-to-know
14 basis. Masimo also has a policy in place regarding the use of Masimo
15 computers and related equipment that governs how Masimo’s computer systems
16 may be used. Masimo’s policy also governs the protection of Masimo’s
17 confidential information. Masimo has a document management system that
18 restricts access to confidential documents to only those Masimo employees with
19 proper security credentials and a need to access the document. Masimo also
20 requires employees to sign agreements precluding them from disclosing or
21 making use of any confidential information except as authorized by Masimo and
22 as necessary for the performance of their duties as Masimo employees. Masimo
23 implemented such policies in order to maintain the confidentiality of sensitive
24 documents and trade secrets.

25 31. Even Hunt recognized the significance of the confidential and
26 proprietary Masimo information that he stole. For example, in April, 2012,
27 Hunt forwarded a copy of one of the spreadsheets that he later stole to two

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1 Masimo employees stating, "Please don't distribute this to [Area Managers].
2 This is great data."

3 32. After submitting his letter of resignation on July 16, 2012, Hunt
4 continued to transmit Masimo confidential and proprietary information from his
5 Masimo email account to his personal email account. Hunt emailed that
6 Masimo confidential information to his personal email account while he was
7 employed by Masimo and, unbeknownst to Masimo, also employed by Sotera.

8 33. For example, on July 24, 2012, Hunt transmitted to his personal
9 email account copies of Masimo's internal deal sheets containing details of
10 current quotes for specific Masimo customers. The files that Hunt took also
11 included details regarding the internal, technical operation of Masimo's patient
12 monitoring products. In addition, a forensic analysis of Hunt's Masimo laptop
13 revealed that in his last two weeks of employment, Hunt deleted nearly 4,000
14 folders and files from his laptop, including the Masimo files that he stole. On
15 his last day of employment, Hunt attempted to delete permanently every email
16 in the inbox of his Masimo computer.

17 34. Shortly after he left Masimo, Hunt began working as a Regional
18 Sales Manager for Sotera, targeting the wireless monitoring market. On
19 information and belief, Hunt has utilized the information that he took from
20 Masimo to compete with Masimo in his new position at Sotera at least to solicit
21 customers for Sotera's benefit and to the detriment of Masimo.

22 35. On information and belief, Hunt disclosed Masimo's trade secrets
23 to Sotera in his work there and caused Sotera's ViSi Mobile product to
24 incorporate Masimo's trade secrets. On information and belief, Hunt also
25 caused Sotera's technical business practices related to the deployment of its
26 ViSi Mobile product to incorporate Masimo's trade secrets.

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1 **C. Sotera**

2 36. Sotera improperly acquired Masimo's trade secrets from Welch
3 and Hunt, including technical trade secrets regarding the operation of Masimo's
4 products. Sotera and knew and had reason to know that Welch and Hunt used
5 improper means to acquire Masimo's trade secrets, including through their
6 breach of their duty to Masimo to maintain the secrecy of Masimo's trade
7 secrets.

8 37. On information and belief, Sotera knowingly began employing
9 Hunt while he was still employed at Masimo. For example, before Hunt left
10 Masimo's employment, Sotera provided Hunt with an active Sotera email
11 account, a brochure for Sotera's competing product, and a "Target List" of
12 desired Sotera customers.

13 **FIRST CLAIM FOR RELIEF:**

14 **POST-PETITION TRADE SECRET MISAPPROPRIATION UNDER**
15 **THE CALIFORNIA UNIFORM TRADE SECRETS ACT**

16 38. Masimo hereby realleges and incorporates by reference the
17 allegations set forth in Paragraphs 1 through 37.

18 39. This is a cause of action for Misappropriation of Trade Secrets under
19 the Uniform Trade Secrets Act, Cal. Civ. Code §§ 3426 *et seq.*, based upon
20 Sotera's post-petition wrongful and improper use of confidential and proprietary
21 Masimo trade secret information on or after the Sotera Petition Date.

22 40. Masimo's confidential trade secret information is currently, and was
23 at the time of Sotera's acquisition, secret. All individuals with access to Masimo's
24 confidential trade secret information were instructed to keep it secret, and they
25 were subject to obligations to keep Masimo's confidential trade secret information
26 secret. Additionally, Masimo's confidential trade secret information is not
27 generally known to the public or to other persons who can obtain economic value
28 from its disclosure or use.

1 41. Masimo's confidential trade secret information has actual and
2 potential independent economic value because it is secret. The actual and
3 potential independent economic value of Masimo's confidential trade secret
4 information is derived from its secrecy because it gives Masimo an actual and
5 potential business advantage over others who do not know the information and
6 who could obtain economic value from its disclosure or use.

7 42. Masimo made reasonable efforts under the circumstances to keep
8 Masimo's confidential trade secret information secret. For example, Masimo's
9 efforts included marking documents confidential, instructing individuals with
10 access to the information to treat Masimo's confidential trade secret information
11 as confidential, restricting access to the information, and requiring individuals
12 with access to such confidential information to sign confidentiality and non-
13 disclosure agreements.

14 43. Through its post-petition activities, Sotera has misappropriated, and
15 is continuing to misappropriate, Masimo's confidential trade secret information by
16 use. Specifically, Sotera has used and is continuing to use Masimo's confidential
17 trade secret information, without Masimo's express or implied consent, through
18 offering for sale, selling, supporting, upgrading, developing, testing, and using its
19 ViSi Mobile product which includes Masimo's trade secrets acquired by Welch
20 and Hunt.

21 44. Through its post-petition activities, Sotera has also used, and is
22 continuing to use Masimo's confidential trade secret information, without
23 Masimo's express or implied consent, through offering for sale, selling, and
24 practicing its technical business practices related to its ViSi Mobile product.
25 Sotera also is continuing to use Masimo's confidential trade secret information,
26 without Masimo's express or implied consent.

27 45. Masimo was harmed by Sotera's use of Masimo's confidential trade
28 secret information on or after the Sotera Petition Date, and Sotera's actions were

1 substantial factors in causing Masimo's harm. Additionally, Masimo is continuing
2 to be harmed by Sotera's ongoing use of Masimo's confidential trade secret
3 information, and Sotera's actions are substantial factors in causing Masimo's
4 ongoing harm. As a direct and proximate result of Sotera's willful, improper,
5 knowing, malicious, and unlawful use of Masimo's trade secrets, Masimo has
6 suffered, and will continue to suffer, great harm and damage. Masimo will
7 continue to be irreparably damaged unless Sotera is enjoined from further use of
8 Masimo's confidential trade secret information in its ViSi Mobile products.

9 46. Sotera was unjustly enriched by Sotera's use of Masimo's
10 confidential trade secret information on or after the Sotera Petition Date, and
11 Sotera's actions were substantial factors in causing Sotera to be unjustly enriched.
12 Additionally, Sotera is continuing to be unjustly enriched by Sotera's ongoing use
13 of Masimo's confidential trade secret information, and Sotera's actions are
14 substantial factors in causing Sotera's ongoing unjust enrichment. Sotera was and
15 continues to be unjustly enriched because its misappropriation of Masimo's
16 confidential trade secret information caused and is continuing to cause Sotera to
17 receive a benefit that it otherwise would not have achieved.

18 47. In the event that neither damages nor unjust enrichment caused by
19 Sotera's misappropriation of Masimo's confidential trade secret information on or
20 after the Sotera Petition Date is provable at trial, Masimo is entitled to a
21 reasonable royalty for the period of time that Sotera's use of Masimo's
22 confidential trade secret information on or after the Sotera Petition Date could
23 have been prohibited.

24 48. The aforementioned acts of Sotera in wrongfully misappropriating
25 Masimo's trade secrets were on or after the Sotera Petition Date, and continue to
26 be, willful, malicious, and done knowingly, warranting an award of reasonable
27 attorneys' fees, as provided by Cal. Civ. Code § 3426.4, and exemplary damages,
28 as provided by Cal. Civ. Code §§ 3294 and 3426.3(c).

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SECOND CLAIM FOR RELIEF:
POST-PETITION TRADE SECRET MISAPPROPRIATION UNDER
THE FEDERAL DEFENSE OF TRADE SECRETS ACT

49. Masimo hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 37 and 40 through 47.

50. This is a cause of action for Misappropriation of Trade Secrets under the Federal Defense of Trade Secrets Act of 2016, 18 U.S.C. §§ 1836 *et seq.*, based upon Sotera’s wrongful and improper use of confidential and proprietary Masimo trade secret information on or after the Sotera Petition Date.

51. Masimo’s confidential trade secret information is related to Masimo’s Patient SafetyNet product and related services, which are and have been used in interstate commerce on or after the Sotera Petition Date.

52. Masimo’s confidential trade secret information is related to Masimo’s Patient SafetyNet product and related services, which are and have been used in foreign commerce on or after the Sotera Petition Date.

53. Masimo’s confidential trade secret information is related to Sotera’s ViSi Mobile product and related services, which, upon information and belief, are and have been used in interstate commerce on or after the Sotera Petition Date.

54. Masimo’s confidential trade secret information is related to Masimo ViSi Mobile product and related services, which, upon information and belief, are and have been used in foreign commerce on or after the Sotera Petition Date.

55. Masimo’s confidential trade secret information is currently, and was at the time of Sotera’s acquisition, secret. All individuals with access to Masimo’s confidential trade secret information were instructed to keep it secret, and they were subject to obligations to keep Masimo’s confidential trade secret information secret. Additionally, Masimo’s confidential trade secret information is not

1 generally known to the public or to other persons who can obtain economic value
2 from its disclosure or use.

3 56. Masimo's confidential trade secret information is currently, and was
4 at the time of Sotera's acquisition, secret. All individuals with access to Masimo's
5 confidential trade secret information were instructed to keep it secret, and they
6 were subject to obligations to keep Masimo's confidential trade secret information
7 secret. Additionally, Masimo's confidential trade secret information is not
8 generally known to the public or to other persons who can obtain economic value
9 from its disclosure or use.

10 57. Masimo's confidential trade secret information has actual and
11 potential independent economic value from not being generally known to, and not
12 being readily ascertainable through proper means by, another person who can
13 obtain economic value from the disclosure or use of it. The actual and potential
14 independent economic value of Masimo's confidential trade secret information is
15 derived from its secrecy because it gives Masimo an actual and potential business
16 advantage over others who do not know the information and who could obtain
17 economic value from its disclosure or use.

18 58. Masimo has taken reasonable measures to keep its confidential trade
19 secret information secret. For example, Masimo's efforts included marking
20 documents confidential, instructing individuals with access to the information to
21 treat Masimo's confidential trade secret information as confidential, restricting
22 access to the information, and requiring individuals with access to such
23 confidential information to sign confidentiality and non-disclosure agreements.

24 59. Through its post-petition activities, Sotera has misappropriated, and
25 is continuing to misappropriate, Masimo's confidential trade secret information by
26 use. Specifically, Sotera has used and is continuing to use Masimo's confidential
27 trade secret information, without Masimo's express or implied consent, through
28 offering for sale, selling, supporting, upgrading, developing, testing, and using its

1 ViSi Mobile product which includes in its product firmware Masimo's trade
2 secrets acquired by Welch and Hunt.

3 60. Through its post-petition activities, Sotera has also used, and is
4 continuing to use Masimo's confidential trade secret information, without
5 Masimo's express or implied consent, through offering for sale, selling, and
6 practicing its technical business practices related to the deployment of its ViSi
7 Mobile product at customer locations. Sotera also is continuing to use Masimo's
8 confidential trade secret information, without Masimo's express or implied
9 consent.

10 61. Masimo was harmed by Sotera's use of Masimo's confidential trade
11 secret information on or after the Sotera Petition Date, and Sotera's actions were
12 substantial factors in causing Masimo's harm. Additionally, Masimo is continuing
13 to be harmed by Sotera's ongoing use of Masimo's confidential trade secret
14 information, and Sotera's actions are substantial factors in causing Masimo's
15 ongoing harm. As a direct and proximate result of Sotera's willful, improper,
16 knowing, malicious, and unlawful use of Masimo's trade secrets, Masimo has
17 suffered, and will continue to suffer, great harm and damage. Masimo will
18 continue to be irreparably damaged unless Sotera is enjoined from further use of
19 Masimo's confidential trade secret information in its ViSi Mobile products.

20 62. Sotera was unjustly enriched by Sotera's use of Masimo's
21 confidential trade secret information on or after the Sotera Petition Date, and
22 Sotera's actions were substantial factors in causing Sotera to be unjustly enriched.
23 Additionally, Sotera is continuing to be unjustly enriched by Sotera's ongoing use
24 of Masimo's confidential trade secret information, and Sotera's actions are
25 substantial factors in causing Sotera's ongoing unjust enrichment. Sotera was and
26 continues to be unjustly enriched because its misappropriation of Masimo's
27 confidential trade secret information caused and is continuing to cause Sotera to
28 receive a benefit that it otherwise would not have achieved.

63. In the event that neither damages nor unjust enrichment caused by Sotera's misappropriation of Masimo's confidential trade secret information on or after the Sotera Petition Date is provable at trial, Masimo is entitled to a reasonable royalty for Sotera's use of Masimo's confidential trade secret information on or after the Sotera Petition Date.

64. The aforementioned acts of Sotera in wrongfully misappropriating Masimo's trade secrets were on or after the Sotera Petition Date, and continue to be, willful, malicious, and done knowingly, warranting an award of reasonable attorneys' fees as provided by 18 U.S.C. § 1836(b)(3)(D), and exemplary damages, as provided by 18 U.S.C. § 1836(b)(3)(C).

DEMAND FOR JUDGMENT

WHEREFORE, Masimo demands judgment in its favor against Sotera for the following relief:

A. That Sotera be adjudged to have misappropriated Masimo's trade secrets, on or after the Sotera Petition Date, in violation of the California Uniform Trade Secrets Act, Cal. Civ. Code § 3426 *et seq.*, and that Sotera's acts in doing so be adjudged willful, malicious, and done knowingly;

B. That Sotera be adjudged to have misappropriated Masimo's trade secrets, on or after the Sotera Petition Date, in violation of the United States Defense of Trade Secrets Act of 2016, 18 U.S.C. §§ 1836 *et seq.*, and that Sotera's acts in doing so be adjudged willful, malicious, and done knowingly;

C. That Sotera be adjudged to have been unjustly enriched by that post-petition misappropriation;

D. That Sotera, its respective agents, servants, employees, and attorneys, and all those persons in active concert or participation with Sotera, be forthwith temporarily, preliminarily, and thereafter permanently required to return all of Masimo's trade secrets and enjoined from further using and disclosing to any third parties any of Masimo's trade secrets;

1 E. That Sotera be enjoined from selling or offering to sell any product,
2 including Sotera's ViSi Mobile product, that includes or uses any of Masimo's
3 trade secrets;

4 F. That Sotera be enjoined from using any technical business practice,
5 including deployment of Sotera's ViSi Mobile product at customer locations,
6 that includes or uses any of Masimo's trade secrets;

7 G. That Sotera be directed to file with this Court and to serve on
8 Masimo within thirty (30) days after the service of the injunction, a report in
9 writing, under oath, setting forth in detail the manner and form in which Sotera
10 has complied with the injunction;

11 H. That Sotera be required to account to Masimo for any and all gains,
12 profits, and advantages derived by Sotera, and all damages sustained by Masimo,
13 by reason of Sotera's acts complained herein;

14 I. That Masimo be awarded exemplary damages from Sotera pursuant
15 to Cal. Civ. Code §§ 3294 and 3426.3(c); and

16 J. That this Court award such other and further relief as this Court
17 may deem just.

18 KNOBBE, MARTENS, OLSON & BEAR, LLP

19
20 Dated: October 7, 2016

By: /s/ John W. Holcomb

21 John W. Holcomb
22 Attorneys for Plaintiff MASIMO
CORPORATION

23 **JURY DEMAND and DEMAND FOR JUDGMENT BY DISTRICT**

24 **JUDGE**

25 Plaintiff MASIMO CORPORATION ("Masimo") respectfully does not
26 consent to the entry of final orders or judgment by the bankruptcy judge if any

27 ///

28 ///

1 matters are determined to be core. Masimo hereby demands a trial by jury on
2 all issues so triable.

3 KNOBBE, MARTENS, OLSON & BEAR, LLP

4
5 Dated: October 7, 2016

By: /s/ John W. Holcomb

6 John W. Holcomb
7 Attorneys for Plaintiff MASIMO
8 CORPORATION

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