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17 ***Attorneys for Defendant***
Sotera Wireless, Inc.

18 **UNITED STATES DISTRICT COURT**
19 **SOUTHERN DISTRICT OF CALIFORNIA**

20 MASIMO CORPORATION, a
21 California corporation,

22 *Plaintiff,*

23 v.

24 SOTERA WIRELESS, INC., a
25 California corporation,

26 HON HAI PRECISION INDUSTRY
CO., LTD., a Taiwan corporation,

27 *Defendants.*
28

Case No.: 3:19-cv-01100-BAS-NLS

**DEFENDANTS SOTERA
WIRELESS, INC. AND HON HAI
PRECISION INDUSTRY CO.
LTD.'S LPR 3.3 INVALIDITY
CONTENTIONS**

1 **I. INTRODUCTION**

2 Pursuant to the Case Management Order Regulating Discovery and Other
3 Pretrial Proceedings in a Patent Case (ECF No. 41), and Local Patent Rules 3.3 and
4 3.4, Defendants Sotera Wireless, Inc. (“Sotera”) and Hon Hai Precision Industry
5 Co., Ltd. (“Hon Hai”) (collectively, “Defendants”) provide the following Invalidity
6 Contentions.

7 The claims currently asserted by Plaintiff Masimo Corporation (“Masimo”)
8 are as follows:

9 Claim 20 of U.S. Patent No. 9,788,735 (“the ’735 patent”);

10 Claims 16-20 of U.S. Patent No. 9,795,300 (“the ’300 patent”);

11 Claims 1-19 of U.S. Patent No. 9,872,623 (“the ’623 patent”);

12 Claims 1-22 of U.S. Patent No. 10,213,108 (“the ’108 patent”);

13 Claims 1, 6, 7, 8, 13, 14, 18, 19, 23, 25, and 26 of U.S. Patent No. RE47,244
14 (“the RE244 patent”);

15 Claims 1, 6, 7, 8, 13, 14, 18, 19, 23, and 25 of U.S. Patent No. RE47,353
16 (“the RE353 patent”);

17 Claims 1, 6, 7, 8, 13, 14, 18, 19, and 24 of U.S. Patent No. RE47,249
18 (“the RE249 patent”);

19 Claims 1, 2, 3, 4, 7, 12, 13, 14, 15, and 18 of U.S. Patent No. RE47,218
20 (“the RE218 patent”); and

21 Claims 1-8 of U.S. Patent No. 10,255,994 (“the ’994 patent”).

22 These are collectively referred to as the “Asserted Claims” of the “Asserted
23 Patents.” The Invalidity Contentions are limited to these Asserted Claims. Should
24 Masimo be permitted to alter the Asserted Claims, Defendants reserve its right to
25 supplement and amend its Invalidity Contentions.

26 Discovery and Defendants’ investigation is far from complete at this stage. It
27 is possible that Defendants will hereafter discover additional prior art pertinent to
28 the Asserted Claims of the Asserted Patents, and/or learn of earlier priority dates of

1 art, and Defendants reserve their right to seek to amend and/or supplement these
2 contentions within a reasonable time after becoming aware of additional prior art.
3 Prior art not included in these Invalidity Contentions, whether known or unknown
4 to Defendants, may become relevant based on subsequent events. In particular,
5 Defendants are currently unaware of the extent, if any, to which Masimo will
6 contend that limitations of the Asserted Claims are not disclosed in the prior art
7 identified by Defendants. To the extent that such an issue arises, Defendants
8 reserve the right to identify other references, including in the file histories of the
9 Asserted Patents, that would anticipate or render obvious the allegedly missing
10 limitation(s) of the Asserted Claims.

11 Defendants also reserve their right to supplement and/or amend these
12 Invalidity Contentions after the Court has construed disputed claim terms.
13 Defendants' ultimate contentions concerning the validity of the claims of the
14 Asserted Patents may change based upon the Court's construction of the claims or
15 positions that Masimo may take concerning infringement or validity issues after
16 such construction. Nothing contained in these Invalidity Contentions or any
17 accompanying exhibits or claim charts, however, should be understood or deemed
18 to be an express or implied admission or contention with respect to the proper
19 construction or scope of any terms in the Asserted Claims, nor should they be
20 understood to adopt Masimo's stated claim construction or its proposed scope of
21 the Asserted Claims.

22 **II. INVALIDITY**

23 **A. Invalidity Under 35 U.S.C. §§ 102 and/or 103**

24 Below Defendants provide specific portions of prior art references that
25 disclose the elements of the Asserted Claims and render the claims anticipated
26 and/or obvious under 35 U.S.C. §§ 102 and/or 103. Although Defendants have
27 identified at least one citation per element for each reference, each and every
28 disclosure of the same element in the reference is not necessarily identified. The

1 lack of a citation for an element should not be deemed an admission that the
2 element is not disclosed or is not inherent in the reference. In an effort to focus the
3 issues, Defendants identify only exemplary portions of cited references. It should
4 be recognized that persons of ordinary skill in the art will generally read a prior art
5 reference as a whole and in the context of other publications and literature and in
6 light of the knowledge of one of ordinary skill in the art. To understand and
7 interpret any specific statement or disclosure within a prior art reference, such
8 persons would rely on other information within the reference, along with other
9 publications and their scientific or engineering knowledge. Defendants
10 consequently reserve the right to rely upon other unidentified portions of the prior
11 art references and on other publications and expert testimony as to the knowledge
12 of a person of ordinary skill to provide context, and as aids to understanding and
13 interpreting the portions that art identified. Defendants also reserve the right to rely
14 on other portions of the prior art references, other publications, and the testimony
15 of experts to establish that a person of ordinary skill in the art would have been
16 motivated to modify or combine certain cited references so as to render the claims
17 obvious. Further, where Defendants identify a particular figure in a prior art
18 reference, the identification should be understood to encompass the caption and
19 description of the figure and any text relating to the figure in addition to the figure
20 itself. Similarly, where an identified portion of text refers to a figure, the
21 identification should be understood to include the figure as well.

22 **1. Identification of Patents and Printed Publications (Patent**
23 **L.R. 3.3a.)**

24 Defendants identify the following prior art patents and printed publications
25 that render the Asserted Claims invalid under 35 U.S.C. §§ 102(a), (b), (e), and/or
26 35 U.S.C. § 103:

- 27 • U.S. Patent No. 3,608,545 to Novack (“Novack”) was filed on November
28 25, 1968 and issued September 28, 1971.

- 1 • U.S. Patent No. 4,425,921 to Fujisaki (“Fujisaki”) was filed on September
- 2 11, 1981 and issued January 17, 1984.
- 3 • U.S. Patent No. 5,539,706 to Takenaka (“Takenaka”) was filed on
- 4 February 2, 1995 and issued July 23, 1996.
- 5 • U.S. Patent No. 5,865,736 to Baker, Jr. (“Baker”) was filed on September
- 6 30, 1997 and issued February 2, 1999.
- 7 • U.S. Patent No. 5,919,141 to Money (“Money”) was filed on September
- 8 13, 1996 and issued July 6, 1999.
- 9 • U.S. Patent No. 6,241,684 to Amano (“Amano”) was filed on February 2,
- 10 1998 and issued June 5, 2001.
- 11 • U.S. Patent No. 6,510,344 to Halpern (“Halpern”) was filed on March 22,
- 12 2000 and issued January 21, 2003.
- 13 • U.S. Patent No. 6,816,266 to Varshneya (“Varshneya”) was filed on
- 14 November 19, 2002, published May 22, 2003, and issued November 9,
- 15 2004.
- 16 • U.S. Patent No. 6,840,904 to Goldberg (“Goldberg”) was filed on October
- 17 11, 2001, published April 17, 2003, and issued January 11, 2005.
- 18 • U.S. Patent No. 6,897,788 to Khair (“Khair”) was filed on April 17, 2002,
- 19 published August 15, 2002, and issued May 24, 2005.
- 20 • U.S. Patent No. 7,079,035 to Bock (“Bock”) was filed on May 19, 2003,
- 21 published November 24, 2004, and issued July 18, 2006.
- 22 • U.S. Patent No. 7,399,277 to Saidara (“Saidara”) was filed on June 3,
- 23 2004, published February 17, 2005, and issued July 15, 2008.
- 24 • U.S. Patent No. 7,769,436 to Boileau (“Boileau”) was filed on June 4,
- 25 2007 and issued August 3, 2010.
- 26 • U.S. Patent No. 8,597,274 to Sloan (“Sloan”) was filed on May 21, 2010,
- 27 published November 25, 2010, and issued December 3, 2013.
- 28

- 1 • U.S. Patent No. 8,622,902 to Woehrle (“Woehrle”) was filed on January
- 2 19, 2009, claiming priority to an application filed January 21, 2008,
- 3 published December 23, 2010, and issued January 7, 2014.
- 4 • U.S. Patent No. 8,961,416 to Siddiqui (“Siddiqui”) was filed on May 30,
- 5 2007, published October 4, 2007, and issued February 24, 2015.
- 6 • U.S. Patent Publication No. 2002/0098807 to Saarnimo (“Saarnimo”) was
- 7 filed on January 25, 2001 and published July 25, 2002.
- 8 • U.S. Patent Publication No. 2006/0220881 to Al-Ali (“Al-Ali”) was filed
- 9 on March 1, 2006 and published October 5, 2006.
- 10 • U.S. Patent Publication No. 2008/0183054 A1 to Kroeger (“Kroeger”)
- 11 was filed on January 25, 2008, published July 31, 2008, and identifies
- 12 Provisional Application No. 60/887,168, filed on January 30, 2007, as a
- 13 related U.S. application.
- 14 • U.S. Patent Publication No. 2008/0287756 to Lynn (“Lynn”) was filed on
- 15 May 16, 2008 and published November 20, 2008.
- 16 • U.S. Patent Publication No. 2009/0275807 to Sitzman (“Sitzman”) was
- 17 filed on May 2, 2008 and published November 5, 2009.
- 18 • U.S. Patent Publication No. 2009/0326340 to Wang (“Wang”) was filed
- 19 June 30, 2008 and published December 31, 2009.
- 20 • European Patent No. EP 0 920 729 B1 to Zuckerman (“Zuckerman”) was
- 21 filed August 18, 1997, published June 9, 1999, and issued April 5, 2000.
- 22 • European Patent Publication No. EP 0 880 936 A2 to Akai (“Akai”) was
- 23 filed on October 30, 1997 and published December 2, 1998.
- 24 • PCT Publication No. WO00/42911 A1 to Kiani (“Kiani”) was filed on
- 25 January 25, 2000 and published July 27, 2000.
- 26 • PCT Publication No. WO00/44274 to Pougatchev (“Pougatchev”) was
- 27 filed on January 28, 2000 and published August 3, 2000.
- 28

- Malangi, Swaroop, *Simulation and mathematical notation of alarms unit for computer assisted resuscitation algorithm* (2003), Theses 526, New Jersey Institute of Technology, <https://digitalcommons.njit.edu/theses/526>, was published no later than Fall 2003 (“Malangi”).
- Rheineck-Leyssius, A.T. and Kalkman, C.J., *Influence of Pulse Oximeter Lower Alarm Limit on the Incidence of Hypoxaemia in the Recovery Room*, 79 British Journal of Anesthesia 460-464 (1997) (“Kalkman”).
- Tsien, Christine L., *TrendFinder: Automated Detection of Alarmable Trends*, Massachusetts Institute of Technology (June 2000) (“Tsien”).
- Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) specifications: High-speed Physical Layer in the 5 GHZ Band, IEEE Std 802.11(a)-1999, Supplement to IEEE Std 802.11-1999, Institute of Electrical and Electronics Engineers (1999) (“IEEE 802.11a”).

2. Representative Claim Charts (Patent L.R. 3.3b–c.)

Defendants contend that each of the Asserted Claims is anticipated by and/or is rendered obvious in view of one or more of the items or prior art identified above, either alone or in combination. Although Defendants reserve the right to rely on other prior art disclosed or incorporated by reference herein, Defendants identify below representative prior art that renders invalid one or more of the Asserted Claims and includes accompanying claim charts that identify where specifically in each item of prior art each element of each Asserted Claim is found.

Exhibit	Patent	Claim(s) and Reference(s)
A-01	the '735 patent	Obviousness of Claim 20 under § 103 in view of EP0880936A2 (Akai), US Patent No. 6,840,904 (Goldberg), US2002/0098807 (Saarnimo), US Patent No. 4,425,921 (Fujisaki), and WO2000/042911 (Kiani)

1	Exhibit	Patent	Claim(s) and Reference(s)
2			Obviousness of Claim 20 under § 103 in view of US
3			Patent No. 6,840,904 (Goldberg), US2002/0098807
4	A-02	the '735 patent	(Saarnimo), US Patent No. 4,425,921 (Fujisaki), and WO2000/042911 (Kiani)
5			Obviousness of Claim 20 under § 103 in view of
6			WO2000/042911A1 (Kiani), US Patent No.
7	A-03	the '735 patent	6,241,684 (Amano), US2002/0098807 (Saarnimo), and US Patent No. 6,897,788 (Khair)
8			Obviousness of Claim 20 under § 103 in view of US
9	A-04	the '735 patent	Patent No. 5,919,141 (Money) and WO00/44274 (Pougatchev)
10			Obviousness of Claim 20 under § 103 in view of US
11			Patent No. 5,919,141 (Money), WO00/44274 (Pougatchev), US2002/0098807 (Saarnimo), and
12	A-05	the '735 patent	WO2000/042911A1 (Kiani)
13			Obviousness of Claim 20 under § 103 in view of
14			WO00/44274 (Pougatchev), US Patent No. 6,840,904 (Goldberg), US2002/0098807 (Saarnimo), US Patent
15	A-06	the '735 patent	No. 4,425,921 (Fujisaki), and WO2000/042911A1 (Kiani)
16	B-01	the '300 patent	Obviousness of Claims 16-20 under § 103 in view of EP0880936A2 (Akai)
17			Obviousness of Claims 16-20 under § 103 in view of
18	B-02	the '300 patent	EP0880936A2 (Akai) and EP0920729 (Zuckerman)
19	B-03	the '300 patent	Obviousness of Claims 16-20 under § 103 in view of
20			US Patent No. 6,840,904 (Goldberg)
21			Obviousness of Claims 16-20 under § 103 in view of
22	B-04	the '300 patent	US Patent No. 6,840,904 (Goldberg), WO2000/042911A1 (Kiani), and EP0920729 (Zuckerman)
23			Obviousness of Claims 16-20 under § 103 in view of
24	B-05	the '300 patent	WO2000/042911A1 (Kiani) and EP0920729 (Zuckerman)
25			Obviousness of Claims 16-20 under § 103 in view of
26	B-06	the '300 patent	WO2000/042911A1 (Kiani) and US Patent No. 6,897,788 (Khair)
27			Obviousness of Claims 16-20 under § 103 in view of
28	B-07	the '300 patent	WO2000/042911A1 (Kiani) and IEEE 802.11(a)-1999

1	Exhibit	Patent	Claim(s) and Reference(s)
2	B-08	the '300 patent	Obviousness of Claims 16-20 under § 103 in view of WO00/44274 (Pougatchev)
3	B-09	the '300 patent	Obviousness of Claims 16-20 under § 103 in view of WO00/44274 (Pougatchev) and EP0920729 (Zuckerman)
4	B-10	the '300 patent	Obviousness of Claims 16-20 under § 103 in view of US Patent No. 5,919,141 (Money) and WO00/44274 (Pougatchev)
5	B-11	the '300 patent	Obviousness of Claims 16-20 under § 103 in view of US Patent No. 5,919,141 (Money), WO00/44274 (Pougatchev), and EP0920729 (Zuckerman)
6	B-12	the '300 patent	Obviousness of Claims 16-20 under § 103 in view of US Patent No. 5,919,141 (Money), WO00/44274 (Pougatchev), and IEEE 802.11(a)-1999
7	B-13	the '300 patent	Obviousness of Claims 16-20 under § 103 in view of US Patent No. 5,919,141 (Money) and US Patent No. 5,539,706 (Takenaka)
8	B-14	the '300 patent	Obviousness of Claims 16-20 under § 103 in view of US Patent No. 5,919,141 (Money), US Patent No. 5,539,706 (Takenaka), and EP0920729B1 (Zuckerman)
9	B-15	the '300 patent	Obviousness of Claims 16-20 under § 103 in view of US Patent No. 5,919,141 (Money), US Patent No. 5,539,706 (Takenaka), and IEEE 802.11(a)-1999
10	C-01	the '623 patent	Obviousness of Claims 1-19 under § 103 in view of EP0880936A2 (Akai) and US 5,919,141 (Money)
11	C-02	the '623 patent	Obviousness of Claim 1-19 under § 103 in view of EP0880936A2 (Akai) and WO2000/42911 (Kiani)
12	C-03	the '623 patent	Obviousness of Claims 1-19 under § 103 in view of US 6,840,904 (Goldberg) and WO2000/042911 (Kiani)
13	C-04	the '623 patent	Obviousness of Claim 1-19 under § 103 in view of US 6,840,904 (Goldberg), WO2000/042911 (Kiani), and US 5,919,141 (Money)
14	C-05	the '623 patent	Obviousness of Claims 1-19 under § 103 in view of US 5,919,141 (Money) and EP0880936A2 (Akai)
15	C-06	the '623 patent	Obviousness of Claims 1-19 under § 103 in view of US 5,919,141 (Money) and WO00/44274 (Pougatchev)

1	Exhibit	Patent	Claim(s) and Reference(s)
2			Obviousness of Claims 1-19 under § 103 in view of
3	C-07	the '623 patent	WO00/44274 (Pougatchev) and WO2000/42911 (Kiani)
4			Obviousness of Claims 1-19 under § 103 in view of
5	C-08	the '623 patent	WO00/44274 (Pougatchev) and US 5,919,141 (Money)
6			Obviousness of Claims 1-19 under § 103 in view of
7	C-09	the '623 patent	WO2000/42911 (Kiani) and EP0880936A2 (Akai)
8			Obviousness of Claims 1-19 under § 103 in view of
9	C-10	the '623 patent	WO2000/42911 (Kiani) and WO00/44274 (Pougatchev)
10	D-01	the '108 patent	Anticipation of Claims 1-5 and 7-18 under § 102 by EP0880936 (Akai)
11	D-02	the '108 patent	Obviousness of Claims 1-22 under § 103 in view of EP0880936 (Akai)
12			Obviousness of Claims 1-22 under § 103 in view of
13	D-03	the '108 patent	EP0880936 (Akai), US Patent No. 4,425,921 (Fujisaki), and WO2000/042911 (Kiani)
14			Anticipation of Claims 1-22 under § 102 by US
15	D-04	the '108 patent	Patent No. 6,480,904 (Goldberg)
16	D-05	the '108 patent	Obviousness of Claim 20 under § 103 in view of US Patent No. 6,840,904 (Goldberg)
17			Obviousness of Claim 20 under § 103 in view of US Patent No. 6,840,904 (Goldberg), US Patent No.
18	D-06	the '108 patent	4,425,921 (Fujisaki), and WO2000/042911 (Kiani)
19	D-07	the '108 patent	Obviousness of Claims 1-22 under § 103 in view of WO2000/042911A1 (Kiani)
20			Obviousness of Claims 1-22 under § 103 in view of
21	D-08	the '108 patent	WO2000/042911A1 (Kiani), US Patent No. 6,897,788 (Khair), and US Patent No. 6,840,904 (Goldberg)
22			Obviousness of Claims 1-22 under § 103 in view of
23	D-09	the '108 patent	US Patent No. 5,919,141 (Money) and WO00/44274 (Pougatchev)
24			Anticipation of Claims 1-5 and 7-18 under § 102 by
25	D-10	the '108 patent	WO00/44274 (Pougatchev)
26			Obviousness of Claims 1-22 under § 103 in view of
27	D-11	the '108 patent	WO00/44274 (Pougatchev)
28	D-12	the '108 patent	Obviousness of Claims 1-22 under § 103 in view of

1	Exhibit	Patent	Claim(s) and Reference(s)
2			WO00/44274 (Pougatchev), US Patent No. 4,425,921
3			(Fujisaki), and WO2000/042911 (Kiani)
4	E-01	the RE244 patent	Anticipation of Claims 1, 6-8, 13, 18, 19, 23, 25, 26
5			under § 102 in view of Baker; Obviousness of Claim
6			14 in view of Baker under § 103
7	E-02	the RE244 patent	Obviousness of Claim 14 under § 103 over U.S.
8			Patent No. 5,865,736 (Baker) in view of U.S. Patent
9			No. 6,510,344 (Halpern) or U.S. Patent Publication
10			No. 2006/0220881 (Al-Ali) or U.S. Patent Publication
11			No. 2009/0326340 (Wang)
12	E-03	the RE244 patent	Anticipation of Claims 1, 6-8, 13, 18, 19, 23, 25
13			under § 102 by U.S. Patent No. 3,608,545 (Novack);
14			Alternatively, obviousness of claims 1, 6-8, 13, 14,
15			18, 19, 23, 25 and 26 under § 103 in view of Novack
16	E-04	the RE244 patent	Obviousness of Claim 14 under § 103 in view of U.S.
17			Patent No. 3,608,545 (Novack) and U.S. Patent No.
18			6,510,344 (Halpern) or U.S. Patent Publication No.
19			2006/0220881 (Al-Ali) or U.S. Patent Publication No.
20			2009/0326340 (Wang)
21	E-05	the RE244 patent	Obviousness of claims 1, 6-8, 13, 14, 18, 19, 23, 25
22			and 26 under § 103 in view of U.S. Patent No.
23			3,608,545 (Novack) and U.S. Patent No. 5,865,736
24			(Baker)
25	E-06	the RE244 patent	Obviousness of Claim 14 under § 103 in view of U.S.
26			Patent No. 3,608,545 (Novack) and U.S. Patent No.
27			5,865,736 (Baker) and U.S. Patent No. 6,510,344
28			(Halpern) or U.S. Patent Publication No.
			2006/0220881 (Al-Ali) or U.S. Patent Publication No.
			2009/0326340 (Wang)
	E-07	the RE244 patent	Anticipation of Claims 1, 6-8, 13, 18, 19, 23, 25
			under § 102 in view of U.S. Patent No. 8,961,416
			(Siddiqui); Alternatively, obviousness of Claims 1, 6-
			8, 13, 14, 18, 19, 23, 25, 26 under § 103 in view of
			Siddiqui
	E-08	the RE244 patent	Obviousness of Claims 1, 6-8, 13, 14, 18, 19, 23, 25,
			26 under § 103 in view of U.S. Patent No. 8,961,416
			(Siddiqui), U.S. Patent Publication No. 2009/0326340
			(Wang), and <i>Simulation and mathematical notation...</i>
			(Malangi)

Exhibit	Patent	Claim(s) and Reference(s)
E-09	the RE244 patent	Anticipation of Claims 1, 6-8, 13, 18, 19, 23, 25 under § 102 in view of U.S. Patent No. 7,399,277 (Saidara); Alternatively, obviousness of Claims 1, 6-8, 13, 14, 18, 19, 23, 25, 26 under § 103 in view of Saidara
E-10	the RE244 patent	Obviousness of Claims 1, 6-8, 13, 14, 18, 19, 23, 25, 26 under § 103 in view of U.S. Patent No. 7,399,277 (Saidara), U.S. Patent Publication No. 2009/0326340 (Wang), and <i>Simulation and mathematical notation...</i> (Malangi)
E-11	the RE244 patent	Anticipation of Claims 1, 6-8, 13, 18, 19, 23, 25 under § 102 in view of U.S. Patent No. 6,816,266 (Varshneya); Alternatively, obviousness of Claims 1, 6-8, 13, 14, 18, 19, 23, 25, 26 under § 103 in view of Varshneya.
E-12	the RE244 patent	Obviousness of Claim 14 under § 103 in view of Varshneya and U.S. Patent No. 6,510,344 (Halpern) or U.S. Patent Publication No. 2006/0220881 (Al-Ali) or U.S. Patent Publication No. 2009/0326340 (Wang).
E-13	the RE244 patent	Obviousness of Claim 26 under § 103 in view of Varshneya and U.S. Patent No. 5,865,736 (Baker).
E-14	the RE244 patent	Anticipation of Claims 1, 6-8, 13, 14, 18, 19, 23, 25, 26 under § 102 by U.S. Patent Publication No. 2009/0326340 (Wang); Alternatively, obviousness of Claims 1, 6-8, 13, 14, 18, 19, 23, 25, 26 under § 103 in view of Wang
E-15	the RE244 patent	Obviousness of Claims 1, 6-8, 13, 14, 18, 19, 23, 25, 26 under § 103 in view of U.S. Patent Publication No. 2009/0326340 (Wang), U.S. Patent No. 7,399,277 (Saidara) and <i>Simulation and mathematical notation...</i> (Malangi)
E-16	the RE244 patent	Anticipation of Claims 1, 6-8, 13, 18, 19, 23, 25, 26 under § 102 in view of U.S. Patent Publication No. 2009/0275807 (Sitzman); Alternatively, obviousness of Claims 1, 6-8, 13, 14, 18, 19, 23, 25, 26 under § 103 in view of Sitzman
E-17	the RE244 patent	Obviousness of Claims 1, 6-8, 13, 14, 18, 19, 23, 25, 26 under § 103 in view of U.S. Patent Publication No. 2009/0275807 (Sitzman) and U.S. Patent No.

Exhibit	Patent	Claim(s) and Reference(s)
		5,865,736 (Baker)
E-18	the RE244 patent	Obviousness of Claim 14 under § 103 in view of U.S. Patent Publication No. 2009/0275807 (Sitzman) and U.S. Patent No. 6,510,344 (Halpern) or U.S. Patent Publication No. 2006/0220881 (Al-Ali) or U.S. Patent Publication No. 2009/0326340 (Wang)
E-19	the RE244 patent	Obviousness of Claim 14 under § 103 in view of U.S. Patent Publication No. 2009/0275807 (Sitzman) and U.S. Patent No. 5,865,736 (Baker) and U.S. Patent No. 6,510,344 (Halpern) or U.S. Patent Publication No. 2006/0220881 (Al-Ali) or U.S. Patent Publication No. 2009/0326340 (Wang)
E-20	the RE244 patent	Anticipation of Claims 1, 6-8, 13, 18, 19, 25, 26 under § 102 to U.S. Patent No. 8,622,902 (Woehrle); Alternatively, obviousness of Claims 1, 6-8, 13, 14, 18, 19, 23, 25, 26 under § 103 to Woehrle
E-21	the RE244 patent	Obviousness of Claim 14 under § 102 to U.S. Patent No. 8,622,902 (Woehrle) and U.S. Patent No. 6,510,344 (Halpern) or U.S. Patent Publication No. 2006/0220881 (Al-Ali) or U.S. Patent Publication No. 2009/0326340 (Wang)
F-01	the RE353 patent	Anticipation of Claims 1, 6-8, 13, 18, 19, 23, 25 under § 102 in view of Baker; Obviousness of Claim 14 in view of Baker under § 103
F-02	the RE353 patent	Obviousness of Claim 14 under § 103 over U.S. Patent No. 5,865,736 (Baker) in view of U.S. Patent No. 6,510,344 (Halpern) or U.S. Patent Publication No. 2006/0220881 (Al-Ali) or U.S. Patent Publication No. 2009/0326340 (Wang)
F-03	the RE353 patent	Anticipation of Claims 1, 6-8, 13, 18, 19, 23, 25 under § 102 by U.S. Patent No. 3,608,545 (Novack); Alternatively, obviousness of claims 1, 6-8, 13, 14, 18, 19, 23, 25 under § 103 in view of Novack.
F-04	the RE353 patent	Obviousness of Claim 14 under § 103 in view of U.S. Patent No. 3,608,545 (Novack) and U.S. Patent No. 6,510,344 (Halpern) or U.S. Patent Publication No. 2006/0220881 (Al-Ali) or U.S. Patent Publication No. 2009/0326340 (Wang)
F-05	the RE353 patent	Obviousness of claims 1, 6-8, 13, 14, 18, 19, 23, 25

1	Exhibit	Patent	Claim(s) and Reference(s)
2			under § 103 in view of U.S. Patent No. 3,608,545
3			(Novack) and U.S. Patent No. 5,865,736 (Baker).
4			Obviousness of Claim 14 under § 103 in view of U.S.
5			Patent No. 3,608,545 (Novack) and U.S. Patent No.
6			5,865,736 (Baker) and U.S. Patent No. 6,510,344
7	F-06	the RE353 patent	(Halpern) or U.S. Patent Publication No. 2006/0220881 (Al-Ali) or U.S. Patent Publication No. 2009/0326340 (Wang)
8			Anticipation of Claims 1, 6-8, 13, 18, 19, 23, 25
9			under § 102 in view of U.S. Patent No. 8,961,416
10	F-07	the RE353 patent	(Siddiqui); Alternatively, obviousness of Claims 1, 6-8, 13, 14, 18, 19, 23, 25 under § 103 in view of Siddiqui
11			Obviousness of Claims 1, 6-8, 13, 14, 18, 19, 23, 25
12			under § 103 in view of U.S. Patent No. 8,961,416
13	F-08	the RE353 patent	(Siddiqui), U.S. Patent Publication No. 2009/0326340 (Wang), and <i>Simulation and mathematical notation...</i> (Malangi)
14			Anticipation of Claims 1, 6-8, 13, 18, 19, 23, 25
15			under § 102 in view of U.S. Patent No. 7,399,277
16			(Saidara); Alternatively, obviousness of Claims 1, 6-
17	F-09	the RE353 patent	8, 13, 14, 18, 19, 23, 25 under § 103 in view of Saidara
18			Obviousness of Claims 1, 6-8, 13, 14, 18, 19, 23, 25
19			under § 103 in view of U.S. Patent No. 7,399,277
20	F-10	the RE353 patent	(Saidara), U.S. Patent Publication No. 2009/0326340 (Wang), and <i>Simulation and mathematical notation...</i> (Malangi)
21			Anticipation of Claims 1, 6-8, 13, 18, 19, 23, 25
22			under § 102 in view of U.S. Patent No. 6,816,266
23			(Varshneya); Alternatively, obviousness of Claims 1,
24	F-11	the RE353 patent	6-8, 13, 14, 18, 19, 23, 25 under § 103 in view of Varshneya
25			Obviousness of Claim 14 under § 103 in view of
26	F-12	the RE353 patent	Varshneya and U.S. Patent No. 6,510,344 (Halpern) or U.S. Patent Publication No. 2006/0220881 (Al-Ali) or U.S. Patent Publication No. 2009/0326340 (Wang)
27			Anticipation of Claims 1, 6-8, 13, 14, 18, 19, 23, 25
28	F-13	the RE353 patent	under § 102 by U.S. Patent Publication No.

1	Exhibit	Patent	Claim(s) and Reference(s)
2			2009/0326340 (Wang); Alternatively, obviousness of
3			Claims 1, 6-8, 13, 14, 18, 19, 23, 25 under § 103 in
4			view of Wang
5			Obviousness of Claims 1, 6-8, 13, 14, 18, 19, 23, 25
6			under § 103 in view of U.S. Patent Publication No.
7	F-14	the RE353 patent	2009/0326340 (Wang), U.S. Patent No. 7,399,277
8			(Saidara) and <i>Simulation and mathematical</i>
9			<i>notation...</i> (Malangi)
10	F-15	the RE353 patent	Anticipation of Claims 1, 6-8, 13, 18, 19, 23, 25
11			under § 102 in view of U.S. Patent Publication No.
12			2009/0275807 (Sitzman); Alternatively, obviousness
13	F-16	the RE353 patent	of Claims 1, 6-8, 13, 14, 18, 19, 23, 25 under § 103 in
14			view of Sitzman
15			Obviousness of Claims 1, 6-8, 13, 14, 18, 19, 23, 25
16			under § 103 in view of U.S. Patent Publication No.
17	F-17	the RE353 patent	2009/0275807 (Sitzman) and U.S. Patent No.
18			5,865,736 (Baker)
19			Obviousness of Claim 14 under § 103 in view of U.S.
20			Patent Publication No. 2009/0275807 (Sitzman) and
21	F-18	the RE353 patent	U.S. Patent No. 6,510,344 (Halpern) or U.S. Patent
22			Publication No. 2006/0220881 (Al-Ali) or U.S. Patent
23			Publication No. 2009/0326340 (Wang)
24			Obviousness of Claim 14 under § 103 in view of U.S.
25			Patent Publication No. 2009/0275807 (Sitzman) and
26			U.S. Patent No. 5,865,736 (Baker) and U.S. Patent
27	F-19	the RE353 patent	No. 6,510,344 (Halpern) or U.S. Patent Publication
28			No. 2006/0220881 (Al-Ali) or U.S. Patent Publication
			No. 2009/0326340 (Wang)
			Anticipation of Claims 1, 6-8, 13, 18, 19, 25 under
			§ 102 to U.S. Patent No. 8,622,902 (Woehrle);
			Alternatively, obviousness of Claims 1, 6-8, 13, 14,
			18, 19, 23, 25 under § 103 to Woehrle
			Obviousness of Claim 14 under § 103 to U.S. Patent
			No. 8,622,902 (Woehrle) and U.S. Patent No.
			6,510,344 (Halpern) or U.S. Patent Publication No.
	F-20	the RE353 patent	2006/0220881 (Al-Ali) or U.S. Patent Publication No.
			2009/0326340 (Wang)
	G-01	the RE249 patent	Anticipation of Claims 1, 6-8, 13, 18, 19, 24 under
			§ 102 in view of Baker; Alternatively, obviousness of

1	Exhibit	Patent	Claim(s) and Reference(s)
2			Claim 14 in view of Baker under § 103
3	G-02	the RE249 patent	Obviousness of Claim 14 under § 103 over U.S. Patent No. 5,865,736 (Baker) in view of U.S. Patent No. 6,510,344 (Halpern) or U.S. Patent Publication No. 2006/0220881 (Al-Ali) or U.S. Patent Publication No. 2009/0326340 (Wang)
4	G-03	the RE249 patent	Anticipation of Claims 1, 6-8, 13, 18, 19, 24 under § 102 by U.S. Patent No. 3,608,545 (Novack); Alternatively, obviousness of claims 1, 6-8, 13, 14, 18, 19, 24 under § 103 in view of Novack.
5	G-04	the RE249 patent	Obviousness of Claim 14 under § 103 in view of U.S. Patent No. 3,608,545 (Novack) and U.S. Patent No. 6,510,344 (Halpern) or U.S. Patent Publication No. 2006/0220881 (Al-Ali) or U.S. Patent Publication No. 2009/0326340 (Wang)
6	G-05	the RE249 patent	Obviousness of claims 1, 6-8, 13, 14, 18, 19, 24 under § 103 in view of U.S. Patent No. 3,608,545 (Novack) and U.S. Patent No. 5,865,736 (Baker).
7	G-06	the RE249 patent	Obviousness of Claim 14 under § 103 in view of U.S. Patent No. 3,608,545 (Novack) and U.S. Patent No. 5,865,736 (Baker) and U.S. Patent No. 6,510,344 (Halpern) or U.S. Patent Publication No. 2006/0220881 (Al-Ali) or U.S. Patent Publication No. 2009/0326340 (Wang)
8	G-07	the RE249 patent	Anticipation of Claims 1, 6-8, 13, 18, 19, 24 under § 102 in view of U.S. Patent No. 8,961,416 (Siddiqui); Alternatively, obviousness of Claims 1, 6-8, 13, 14, 18, 19, 24 under § 103 in view of Siddiqui
9	G-08	the RE249 patent	Obviousness of Claims 1, 6-8, 13, 14, 18, 19, 24 under § 103 in view of U.S. Patent No. 8,961,416 (Siddiqui), U.S. Patent Publication No. 2009/0326340 (Wang), and <i>Simulation and mathematical notation...</i> (Malangi)
10	G-09	the RE249 patent	Anticipation of Claims 1, 6-8, 13, 18, 19, 24 under § 102 in view of U.S. Patent No. 7,399,277 (Saidara); Alternatively, obviousness of Claims 1, 6-8, 13, 14, 18, 19, 24 under § 103 in view of Saidara
11	G-10	the RE249 patent	Obviousness of Claims 1, 6-8, 13, 14, 18, 19, 24 under § 103 in view of U.S. Patent No. 7,399,277

1	Exhibit	Patent	Claim(s) and Reference(s)
2			(Saidara), U.S. Patent Publication No. 2009/0326340
3			(Wang), and <i>Simulation and mathematical notation...</i>
4			(Malangi)
5	G-11	the RE249 patent	Anticipation of Claims 1, 6-8, 13, 18, 19, 24 under
6			§ 102 in view of U.S. Patent No. 6,816,266
7			(Varshneya); Alternatively, obviousness of Claims 1,
8			6-8, 13, 14, 18, 19, 23, 24 under § 103 in view of
9			Varshneya
10	G-12	the RE249 patent	Obviousness of Claim 14 under § 103 in view of
11			Varshneya and U.S. Patent No. 6,510,344 (Halpern)
12			or U.S. Patent Publication No. 2006/0220881 (Al-Ali)
13			or U.S. Patent Publication No. 2009/0326340 (Wang)
14	G-13	the RE249 patent	Obviousness of Claim 24 under § 103 in view of
15			Varshneya and U.S. Patent No. 5,865,736 (Baker)
16	G-14	the RE249 patent	Anticipation of Claims 1, 6-8, 13, 14, 18, 19, 24
17			under § 102 by U.S. Patent Publication No.
18			2009/0326340 (Wang); Alternatively, obviousness of
19			Claims 1, 6-8, 13, 14, 18, 19, 24 under § 103 in view
20			of Wang
21	G-15	the RE249 patent	Obviousness of Claims 1, 6-8, 13, 14, 18, 19, 24
22			under § 103 in view of U.S. Patent Publication No.
23			2009/0326340 (Wang), U.S. Patent No. 7,399,277
24			(Saidara) and Simulation and mathematical notation
25			of alarms unit for computer assisted resuscitation
26			algorithm (Malangi)
27	G-16	the RE249 patent	Anticipation of Claims 1, 6-8, 13, 18, 19, 24 under
28			§ 102 in view of U.S. Patent Publication No.
			2009/0275807 (Sitzman); Alternatively, obviousness
			of Claims 1, 6-8, 13, 14 18, 19, 24 under § 103 in
			view of Sitzman
	G-17	the RE249 patent	Obviousness of Claims 1, 6-8, 13, 14, 18, 19, 24
			under § 103 in view of U.S. Patent Publication No.
			2009/0275807 (Sitzman) and U.S. Patent No.
			5,865,736 (Baker)
	G-18	the RE249 patent	Obviousness of Claim 14 under § 103 in view of U.S.
			Patent Publication No. 2009/0275807 (Sitzman) and
			U.S. Patent No. 6,510,344 (Halpern) or U.S. Patent
			Publication No. 2006/0220881 (Al-Ali) or U.S. Patent
			Publication No. 2009/0326340 (Wang)

Exhibit	Patent	Claim(s) and Reference(s)
G-19	the RE249 patent	Obviousness of Claim 14 under § 103 in view of U.S. Patent Publication No. 2009/0275807 (Sitzman) and U.S. Patent No. 5,865,736 (Baker) and U.S. Patent No. 6,510,344 (Halpern) or U.S. Patent Publication No. 2006/0220881 (Al-Ali) or U.S. Patent Publication No. 2009/0326340 (Wang)
G-20	the RE249 patent	Anticipation of Claims 1, 6-8, 13, 18, 19, 24 under § 102 to U.S. Patent No. 8,622,902 (Woehrle); Alternatively, obviousness of Claims 1, 6-8, 13, 14, 18, 19, 24 under § 103 to Woehrle
G-21	the RE249 patent	Obviousness of Claim 14 under § 103 to U.S. Patent No. 8,622,902 (Woehrle) and U.S. Patent No. 6,510,344 (Halpern) or U.S. Patent Publication No. 2006/0220881 (Al-Ali) or U.S. Patent Publication No. 2009/0326340 (Wang)
H-01	the RE218 patent	Anticipation of Claims 1-4, 7, 12-15, and 18 under § 102 by Bock
H-02	the RE218 patent	Anticipation of Claims 1-4, 7, 12-15, and 18 under § 102 by Boileau
H-03	the RE218 patent	Anticipation of Claims 1-4, 7, 12-15, and 18 under § 102 by Sloan
I-01	the '994 patent	Anticipation of Claims 1, 2, 5, and 6 under § 102 by Tsien
I-02	the '994 patent	Obviousness of Claims 2-4 and 6-8 under § 103 by Tsien in view of US2008/0183054 (Kroeger)
I-03	the '994 patent	Obviousness of Claims 1-8 under § 103 by Kalkman in view of US2008/0183054 (Kroeger)
I-04	the '994 patent	Anticipation of Claims 1-8 under § 102 by US2008/0287756 (Lynn)

3. Motivations to Combine

A person of ordinary skill in the art would have been motivated to combine the references identified above and in the attached exhibits for numerous reasons at the relevant time. In general, the reason, motivation, or suggestion to modify or combine the references in the manner claimed can be found in the explicit and/or implicit teachings and the prior art as a whole, the general knowledge of those

1 skilled in the art, including knowledge of trends in the field and knowledge that the
2 art is of special interest or importance in the field, and from the fact that the
3 references are in the same field of endeavor and/or seek to solve a common problem.

4 One of ordinary skill in the art would have been motivated to investigate the
5 various existing solutions, systems, publications, and/or patents describing the
6 field to address his particular needs. A person of ordinary skill would have been
7 motivated to combine the identified prior art based on the nature of the problem to
8 be solved, the teachings of the prior art, and the knowledge of persons of ordinary
9 skill in the art. These combinations and modifications of the prior art which render
10 obvious the asserted claims of the patents-in-suit arise from ordinary innovation,
11 ordinary skill, common sense, or would have been obvious to try or otherwise
12 predictable. Design improvements and other market forces would have prompted
13 those combinations and modifications. Additional detail regarding the motivation
14 to combine particular prior art references is provided in the above identified
15 exhibits.

16 **B. Other Invalidity Grounds (Patent L.R. 3.3d–e)**

17 One or more of the Asserted Claims of the Asserted Patents are invalid for
18 lack of written description and/or enablement under 35 U.S.C. § 112 ¶ 1, and for
19 failing to comply with the definiteness requirements of 35 U.S.C. § 112 ¶ 2.
20 Below, Defendants set forth exemplary limitations that are invalid for failing to
21 comply with one or more these requirements. Defendants contend that each
22 dependent claim that depends from an independent claim that is invalid, as
23 identified below, is also invalid for the same reasons. Defendants further expressly
24 reserve the right to raise and address, once the parties have exchanged claim terms
25 and constructions, any indefiniteness issues arising out of those exchanges.
26
27
28

1 **1. Grounds of Invalidity for Indefiniteness Under 35 U.S.C.**
2 **§112(2) (Patent L.R. 3.1d)**

3 One or more of the Asserted Claims are also invalid as indefinite because
4 they contain at least one term or limitation that fails to inform those skilled in the
5 art “with reasonable certainty . . . about the scope of the inventions.” *Nautilus, Inc.*
6 *v. Biosig Instr., Inc.*, 134 S. Ct. 2120, 2124 (2014). Although the question of
7 whether a given claim term is indefinite may turn on claim construction positions
8 (including claim construction positions advocated by Masimo), Defendants allege
9 that the Asserted Claims identified above are invalid because they include
10 limitations and/or claim terms that fail to satisfy the definiteness requirement of 35
11 U.S.C. § 112 ¶ 2.

12 At least certain of the Asserted Claims of the ’735 Patent violates 35 U.S.C.
13 §112, ¶ 2. For example, Claim 20 is indefinite because the term “the housing having
14 a size and shape configured to be secured to the lower arm of the patent” does not
15 inform a person having ordinary skill in the art (“PHOSITA”), with reasonable
16 certainty, of the invention’s scope. Neither claim 20 nor the specification provides
17 any limits as to how large or small the housing could be in order to meet this
18 limitation. The specification provides no guidance for what housings are improperly
19 sized or not shaped to fit on a lower arm of a patient. A PHOSITA would have no
20 idea whether the housing they developed meets this limitation. Furthermore, each
21 patient’s arm will have a different size. The specification further provides no
22 guidance for whether a size and shape will fit some but not all patients. Claim 20 is
23 further indefinite because the term “a top of the first sensor port is located below the
24 front of the housing” does not inform a PHOSITA, with reasonable certainty, of the
25 invention’s scope. A front of the housing is undefined. For example, a PHOSITA
26 would not understand, with reasonable certainty, how, if at all, the “front of the
27 housing” is different from the claimed “front side,” or whether the “front of the
28 housing” is it the face of the first side.

1 At least certain of the '300 Patent Asserted Claims are indefinite for failure
2 to meet the requirements of 35 U.S.C. § 112, ¶ 2. For example, Claims 16–20 do
3 not inform a PHOSITA, with reasonable certainty, as to the scope of the claims
4 because the term “wherein the first sensor port is positioned on the device such
5 that a wire extending from the first sensor communication port to the first type of
6 physiological sensor arrangement extends from the device along an axis
7 perpendicular to a face of the device upon which the first sensor port is positioned”
8 is indefinite. It is unclear how the position of a port has any impact on the
9 extending direction of a wire. Wires can include bends or will move with gravity.
10 The port has no impact on the extending direction of the wire.

11 At least certain of the '623 Patent Asserted Claims are indefinite for failure
12 to meet the requirements of 35 U.S.C. § 112, ¶ 2. For example, Claims 1–16 do not
13 inform a PHOSITA, with reasonable certainty, as to the scope of those claims. A
14 PHOSITA would not understand the meaning of the term “tail,” which is not a
15 term of art, nor what is the difference, if any, between a “tail” and a “cable.”
16 Moreover, these claims independently fail to meet the requirements of paragraph
17 two because the term “wherein the first sensor port is positioned on the first side of
18 the housing such that, when the tail is physically coupled to the first sensor port,
19 the tail extends from the first sensor port along an axis perpendicular to a face of
20 the first side of the housing on which the first sensor port is positioned” is
21 indefinite. It is unclear how the position of a port has any impact on the extending
22 direction of a wire. Wires can include bends or will move with gravity. The port
23 has no impact on the extending direction of the wire. Thirdly, Claims 1–16 fail to
24 meet the requirements of paragraph two because the term “a housing configured
25 for, and having a size and shape configured for, mounting to a lower arm of the
26 patient” is indefinite. Neither Claim 1 nor the specification provides any limits as
27 to how large or small the housing could be in order to meet the limitation “having
28 a size and shape configured to be secured to the lower arm of a patient”. The

1 specification provides no guidance for what housing are improperly sized or
2 shaped to not fit on a lower arm of a patient, which will necessarily be of various
3 sizes. Claim 3 of the '623 Patent is further independently indefinite because the
4 term “wherein the digit of the patient is the thumb” is indefinite. The specification
5 explains that the pulse oximeter attaches to a finger, and FIG. 4A illustrates that
6 the finger is the patient’s middle finger. However, if the pulse oximeter were
7 connected to the thumb, the wire could not extend perpendicularly to a front face
8 of the housing because the wire would extend at an angle towards the patient’s
9 thumb. In order for the wire to extend perpendicularly, the pulse oximeter must
10 attach to the middle finger. A PHOSITA would not understand how the wire could
11 extend both perpendicularly and toward a patient’s thumb.

12 At least certain of the '108 Patent Asserted Claims are indefinite for failure
13 to meet the requirements of 35 U.S.C. § 112, ¶ 2. For example, Claims 1–18 fail to
14 inform a PHOSITA, with reasonable certainty, as to the scope of the claims
15 because the term “wherein the first sensor port is positioned on the first side of the
16 housing such that, when the tail is physically coupled to the first sensor port, the
17 tail extends from the first sensor port along an axis perpendicular to a face of the
18 first side of the housing on which the first sensor port is positioned” is indefinite. It
19 is unclear how the position of a port has any impact on the extending direction of a
20 wire. Wires can include bends or will move with gravity. The port has no impact
21 on the extending direction of the wire. Claim 2 also fails to inform a PHOSITA,
22 with reasonable certainty, as to the scope of the claim because the term “a tail
23 configured to electrically convey the signal” is indefinite. A PHOSITA would not
24 understand the meaning of the term “tail,” which is not a term of art, nor the
25 difference, if any, between a “tail” and a “cable.” Claims 4 and 8 also fail to
26 inform a PHOSITA, with reasonable certainty, as to the scope of those claims
27 because the term “wherein the digit of the patient is the thumb” is indefinite. The
28 specification explains that the pulse oximeter attaches to a finger, and FIG. 4A

1 illustrates that the finger is the patient's middle finger. However, if the pulse
2 oximeter were connected to the thumb, the wire could not extend perpendicularly
3 to a front face of the housing because the wire would extend at an angle towards
4 the patient's thumb. In order for the wire to extend perpendicularly, the pulse
5 oximeter must attach to the middle finger. A PHOSITA would not understand how
6 the wire could extend both perpendicularly and toward a patient's thumb.

7 All Asserted Claims of the RE244 patent are invalid as indefinite under 35
8 U.S.C. § 112, ¶ 2. The claim term "determine that the measurement of the
9 physiological parameter satisfies an alarm activation threshold" (claim 1), and minor
10 variations of that claim term in claims 8, 13, 18, and 19, does not inform a
11 PHOSITA, with reasonable certainty, as to the scope of the claims because a
12 PHOSITA would not understand whether the alarm has been activated or not before
13 initiation of the parameter-specific alarm "delay" or "suspension" period of time.

14 All Asserted Claims of the RE353 patent are invalid as indefinite under 35
15 U.S.C. § 112, ¶ 2. The claim term "determine that an alarm should be activated in
16 response to the measurement of the physiological parameter satisfying an alarm
17 activation threshold" (claim 1), and minor variations of that claim term in claims 8,
18 13, 18, and 19, does not inform a PHOSITA, with reasonable certainty, as to the
19 scope of the claims because a PHOSITA would not understand whether the alarm
20 has been activated or not before initiation of the parameter-specific alarm
21 "suspension" period of time.

22 All Asserted Claims of the RE249 patent are invalid as indefinite under 35
23 U.S.C. § 112, ¶ 2 because the claim terms "hold," "holding," "hold initiator," and
24 "parameter-specific alarm *hold* period of time" do not inform a PHOSITA, with
25 reasonable certainty, as to the scope of the claims. These claim terms are not
26 referenced in the specification, nor were they found in the original claims of the
27 original '121 patent. These claim terms are not terms of art and a person of
28 ordinary skill in the art would not know whether these claim terms are used

1 interchangeably with, or whether they differ in scope from, the “suspend” and
2 “suspension” claim terms found in the original ‘121 patent.

3 All Asserted Claims of the RE249 patent are invalid as indefinite under 35
4 U.S.C. § 112, ¶ 2. The claim term “determine whether an alarm condition exists by
5 determining whether an activation threshold has been satisfied by the measurement
6 of the physiological parameter” (claim 1), and minor variations of that claim term
7 in claims 8, 13, 18, and 19, does not inform a PHOSITA, with reasonable
8 certainty, as to the scope of the claims because a PHOSITA would not understand
9 whether the alarm has been activated or not before initiation of the parameter-
10 specific alarm “hold” period of time.

11 At least certain of the RE218 Patent Asserted Claims are indefinite for
12 failure to meet the requirements of 35 U.S.C. § 112, ¶ 2. The claims of the RE218
13 Patent do not inform, with reasonable specificity, a PHOSITA as to the scope of
14 the claims because a PHOSITA would not understand the terms “offset” and
15 “diminishing” in view of the specification. Moreover, the term “when at least one
16 oxygen saturation value obtained over the first period of time exceeds a first alarm
17 threshold, determine whether a first alarm should be triggered” does not inform a
18 PHOSITA, with reasonable certainty, as to the scope of Claim 1 because a
19 PHOSITA, reading the specification, would not understand when the alarm should
20 be triggered and when it should not.

21 Discovery is early, and Defendants may well become aware of additional
22 information relevant to these and possibly other invalidity defenses. Discovery,
23 including expert discovery, may also reveal additional claim limitations that do not
24 meet the requirements of § 112, ¶ 2. Defendants reserve their right to supplement
25 or amend these grounds or to assert other grounds of invalidity consistent with the
26 evidence. In addition, Defendants reserve the right to supplement or amend these
27 contentions in view of claim construction positions and/or arguments made by
28 Masimo.

1 **2. Grounds of Invalidity for Lack of Written Description,**
2 **Enabling Disclosure, or Failure to Describe the Best Mode**
3 **Under 35 U.S.C. §112(1) (Patent L.R. 3.1e)**

4 One or more Asserted Claims of the Asserted Patents are invalid under
5 § 112 ¶ 1 for failing to particularly point out and distinctly claim the subject matter
6 which the patentee regards as its alleged invention such that one skilled in the
7 relevant art would be reasonably apprised of the bounds of the asserted claims
8 when read in light of the specification. To satisfy the written description
9 requirement, the patent “must clearly allow persons of ordinary skill in the art to
10 recognize that the inventor invented what is claimed.” *Ariad Pharm., Inc. v. Eli*
11 *Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (*en banc*); *see Kao Corp. v.*
12 *Unilever U.S., Inc.*, 441 F.3d 963, 967–68 (Fed. Cir. 2006). The specifications of
13 the Asserted Patents fail to meet the written description requirement of § 112 ¶ 1
14 with respect to the Asserted Claims because, among other reasons, one skilled in
15 the art could not clearly conclude from the patent that the inventor possessed an
16 invention that includes all of the claimed limitations.

17 Section 112 ¶ 1 also requires a patent to describe “the manner and process of
18 making and using [the claimed invention], in such full, clear, concise, and exact
19 terms as to enable any person skilled in the art to which it pertains, or with which it
20 is most nearly connected, to make and use the same.” A patent must disclose
21 enough to permit a person of skill in the art, after reading the specification, to
22 “practice the claimed invention without undue experimentation.” *Sitrick v.*
23 *Dreamworks, LLC*, 516 F.3d 993, 999 (Fed. Cir. 2008). Moreover, “[t]he full
24 scope of the claimed invention must be enabled.” *Id.* at 999–1000 (“Because the
25 asserted claims are broad enough to cover both movies and video games, the
26 patents must enable both embodiments.”). “Enabling the full scope of each claim is
27 ‘part of the quid pro quo of the patent bargain.’” *Id.*

28 Certain of the Asserted Claims of the ’735 Patent fail to meet the
requirements of § 112, ¶ 1. For example, Claim 20 of the ’735 Patent violates the

1 written description requirement under 35 U.S.C. §112, ¶ 1 because the specification
2 does not describe or unequivocally show that a strap is specifically mounted to the
3 back side of a housing. The specification merely mentions that the “case 412” is
4 “mounted to the wrist strap 411”. Furthermore, it is unclear from FIG. 3 and 4A
5 where the strap mount to the case 412 (e.g. rear, sides, somewhere else). Without
6 specific support, this limitation lacks written description support. Moreover, the
7 term “wherein the front side of the housing comprises a... bezel” of claim 20 of the
8 ’735 Patent also violates the written description requirement because the
9 specification never mentions, describes or illustrates a bezel. Furthermore, the term
10 “first... second... third... ports” of Claim 20 of the ’735 Patent violates the written
11 description and/or enablement requirement(s) under 35 U.S.C. §112, ¶ 1 because
12 the specification never describes or illustrates a wearable unit having three ports.
13 The only wrist-mounted module described and illustrated by the specification only
14 has one port (shown in FIG. 4A). Although the specification states that the wrist-
15 mounted module 410 can include input ports, a PHOSITA would be unable to
16 practice the claimed invention, without undue experimentation, because the
17 PHOSITA would be unable to create a device that is “sized and shaped to fit on a
18 wrist” that also has at least three ports. In addition, term “wirelessly transmit a
19 transmit signal . . . to a separate computing device configured to display, on a
20 remote display, the measurement...” of Claim 20 of the ’735 Patent violates the
21 written description requirement because the specification only describes the
22 wearable device as transmitting wireless data to a bedside monitor. A bedside
23 monitor is not simply a separate computing device but a very specific device for
24 bedside monitoring of a patient, which is not described in the ’735 Patent.

25 Certain of the Asserted Claims of the ’300 Patent fail to meet the
26 requirements of § 112, ¶ 1. For example, Claims 16–20 do not meet the written
27 description requirements and/or enablement requirements because the specification
28 never describes or illustrates a wearable unit having three ports. The only wrist-

1 mounted module described and illustrated by the specification only has one port
2 (shown in FIG. 4A). Although the specification states that the wrist-mounted
3 module 410 can include input ports, a PHOSITA would be unable to practice the
4 claimed invention, without undue experimentation, because the PHOSITA would be
5 unable to create a device that is “sized and shaped to fit on a wrist” that also has at
6 least three ports. Moreover, these claims also fail to meet the written description
7 requirements because, although these claims include the limitation “wirelessly
8 transmit the transmit signal to a receiving patient monitoring device that is not
9 wired to the wearable physiological monitoring device,” the specification only
10 describes the wearable device as transmitting wireless data to a bedside monitor.
11 A bedside monitor is not simply a separate computing device but a very specific
12 device for bedside monitoring of a patient, which is not described in the
13 ’300 Patent.

14 Certain of the Asserted Claims of the ’623 Patent fail to meet the
15 requirements of § 112, ¶ 1. For example, Claims 1–19 do not meet the written
16 description requirements and/or enablement requirements because the specification
17 never describes or illustrates a wearable unit having three ports. The only wrist-
18 mounted module described and illustrated by the specification only has one port
19 (shown in FIG. 4A). Although the specification states that the wrist-mounted
20 module 410 can include input ports, a PHOSITA would be unable to practice the
21 claimed invention, without undue experimentation, because the PHOSITA would
22 be unable to create a device that is “sized and shaped to fit on a wrist” that also has
23 at least three ports. Moreover, these claims also fail to meet the written description
24 requirements because, although these claims include the limitation “wirelessly
25 transmit the transmit signal to a receiving patient monitoring device that is not
26 wired to the wearable physiological monitoring device”, the specification only
27 describes the wearable device as transmitting wireless data to a bedside monitor.
28 A bedside monitor is not simply a separate computing device but a very specific

1 device for bedside monitoring of a patient, which is not described in the
2 '623 Patent. Claims 1-19 of the '623 Patent also independently do not meet the
3 written description requirement because the specification does not describe or
4 unequivocally show that a strap is specifically mounted to the back side of a
5 housing.

6 Certain of the Asserted Claims of the '108 Patent fail to meet the
7 requirements of § 112, ¶ 1. For example, Claims 1–22 do not meet the written
8 description requirements and/or enablement requirements because the specification
9 never describes or illustrates a wearable unit having three ports. The only wrist-
10 mounted module described and illustrated by the specification only has one port
11 (shown in FIG. 4A). Although the specification states that the wrist-mounted
12 module 410 can include input ports, a PHOSITA would be unable to practice the
13 claimed invention, without undue experimentation, because the PHOSITA would
14 be unable to create a device that is “sized and shaped to fit on a wrist” that also has
15 at least three ports. Moreover, these claims also fail to meet the written description
16 requirements because, although these claims include the limitation “wirelessly
17 transmit the transmit signal to a receiving patient monitoring device that is not
18 wired to the wearable physiological monitoring device”, the specification only
19 describes the wearable device as transmitting wireless data to a bedside monitor.
20 A bedside monitor is not simply a separate computing device but a very specific
21 device for bedside monitoring of a patient, which is not described in the
22 '623 Patent. Claims 1-22 of the '108 Patent also independently do not meet the
23 written description requirement because the specification does not describe or
24 unequivocally show that a strap is specifically mounted to the back side of a
25 housing.

26 All Asserted Claims of the RE244 patent are invalid for failing to meet the
27 written description requirement of 35 U.S.C. § 112, ¶ 1. To the extent that Masimo
28 contends the parameter-specific alarm “delay” period of time as used in all

1 Asserted Claims of the RE244 patent encompasses the ViSi System's alarm delays
2 that are used to delay *activation* of an alarm until a physiological parameter
3 exceeds a threshold for a predetermined amount of time (i.e., the time delay is *part*
4 *of* the alarm threshold), the specification of the RE244 patent does not provide
5 written description for such a broad claim scope under 35 U.S.C. § 112, ¶ 1. The
6 specification makes clear that "delay" and "suspension" are not synonymous.
7 Alarm "suspensions" are only described in the specification as the silencing of an
8 alarm *after* it has been activated, with such "suspension" periods of time
9 correspond with the amount of time required to *treat* an alarm condition, and the
10 alarm *resumes* after the suspension period of time expires. For example, the RE244
11 patent describes:

12 An audible alarm may be temporarily suspended by
13 pressing an alarm silence button so as to prevent
14 unnecessary disturbance to the patient and distraction of
15 the caregiver. During alarm suspension, visual alarms
16 remain active if an alarm condition persists after a
17 predetermined alarm suspend period, the audible alarm
 resumes. The alarm suspend period is typically long
 enough to give a caregiver sufficient time to intervene
 with appropriate patient treatment yet short enough to
 ensure that patient health is not endangered if
 intervention is not effective.

18 RE244 patent, 2:33-42; *see also* Abstract.

19 In contrast, the specification only references alarm "delay" in a single
20 sentence as an example of "other alarm features," distinct from "suspensions," and
21 the referenced "delay" is explicitly described as applying to *all* enabled parameters
22 (i.e., *not* parameter-specific): "Other alarm features apply to both slow treatment
23 and fast treatment parameters. For example, an alarm delay of 0, 5, 10 or 15
24 seconds applies to all enabled parameters." RE244, 6:38-40. Accordingly, all
25 Asserted Claims of the RE244 patent are invalid for lack of written description
26 because there is no written description support for a parameter-specific "delay,"
27 nor is there written description support for a "delay" that is part of an alarm
28

1 threshold and is used to delay activation of an alarm until a physiological
2 parameter exceeds a threshold for a predetermined amount of time.

3 To the extent that Masimo contends the parameter-specific alarm
4 “suspension” period of time as used in all Asserted Claims of the RE244 patent
5 encompasses the ViSi System’s alarm delays that are used to delay *activation* of an
6 alarm until a physiological parameter exceeds a threshold for a predetermined
7 amount of time (i.e., the time delay is *part of* the alarm threshold), the specification
8 of the RE244 patent does not provide written description for such a broad claim
9 scope under 35 U.S.C. § 112, ¶ 1. Alarm “suspensions” are only described in the
10 specification as the silencing of an alarm *after* it has been activated, with such
11 “suspension” periods of time correspond with the amount of time required to *treat*
12 an alarm condition, and the alarm *resumes* after the suspension period of time
13 expires. For example, the RE244 patent describes:

14 An audible alarm may be temporarily suspended by
15 pressing an alarm silence button so as to prevent
16 unnecessary disturbance to the patient and distraction of
17 the caregiver. During alarm suspension, visual alarms
18 remain active if an alarm condition persists after a
19 predetermined alarm suspend period, the audible alarm
resumes. The alarm suspend period is typically long
enough to give a caregiver sufficient time to intervene
with appropriate patient treatment yet short enough to
ensure that patient health is not endangered if
intervention is not effective.

20 RE244 patent, 2:33-42; *see also* RE244 patent, Abstract.

21 Accordingly, all Asserted Claims of the RE244 patent are invalid for lack of
22 written description because there is no written description support for a parameter-
23 specific alarm “suspension” that is part of an alarm threshold and is used to delay
24 activation of an alarm until a physiological parameter exceeds a threshold for a
25 predetermined amount of time.

26 Similarly, all Asserted Claims of the RE244 patent fail to meet the written
27 description requirement under § 112, ¶ 1 because the specification does not
28 describe, suggest or illustrate “delaying” or “suspending” an alarm before it has

1 been activated. Accordingly, to the extent that Masimo contends that the limitation
2 “determine that the measurement of the physiological parameter satisfies an alarm
3 activation threshold” (claim 1), and minor variations of that claim term in claims 8,
4 13, 18, and 19, does not require activation of the alarm prior to initiation of the
5 parameter-specific alarm “delays” and “suspensions”, the claims are invalid for
6 lacking written description.

7 All Asserted Claims of the RE244 patent are invalid under 35 U.S.C. § 112,
8 ¶ 1 because there is no written description support for “delaying,” or “suspending,”
9 visual alarms, but that is encompassed by each independent claim. “Delaying” or
10 “suspending” visual alarms was also not included in the original claims of the
11 original ‘121 patent. The specification of the RE244 patent only describes
12 silencing audible alarms for a predetermined amount of time after an alarm is
13 activated, but do not suggest, describe or illustrate suspension of visual alarms.

14 All Asserted Claims of the RE244 patent are invalid under 35 U.S.C. § 112,
15 ¶ 1 because there is no written description support for initiating a “delay” or
16 “suspension” of an alarm automatically. The specification of the RE244 patent
17 only describes a *user* initiating an alarm “delay” or “suspension” by, for example,
18 pressing an alarm silence button. To the extent that the claims of the RE244 patent
19 are broad enough to encompass automatic initiation of an alarm “delay” or
20 “suspension,” by the claimed system or method, the claims lack written support.

21 All Asserted Claims of the RE353 patent are invalid for failing to meet the
22 written description requirement of 35 U.S.C. § 112, ¶ 1. To the extent that Masimo
23 contends the parameter-specific alarm “suspension” period of time as used in all
24 Asserted Claims of the RE353 patent encompasses the ViSi System’s alarm delays
25 that are used to delay *activation* of an alarm until a physiological parameter
26 exceeds a threshold for a predetermined amount of time (i.e., the time delay is *part*
27 *of* the alarm threshold), the specification of the RE353 patent does not provide
28 written description for such a broad claim scope under 35 U.S.C. § 112, ¶ 1. Alarm

1 “suspensions” are only described in the specification as the silencing of an alarm
2 *after* it has been activated, with such “suspension” periods of time correspond with
3 the amount of time required to *treat* an alarm condition, and the alarm *resumes*
4 after the suspension period of time expires. For example, the RE353 patent
5 describes:

6 An audible alarm may be temporarily suspended by
7 pressing an alarm silence button so as to prevent
8 unnecessary disturbance to the patient and distraction of
9 the caregiver. During alarm suspension, visual alarms
10 remain active if an alarm condition persists after a
11 predetermined alarm suspend period, the audible alarm
resumes. The alarm suspend period is typically long
enough to give a caregiver sufficient time to intervene
with appropriate patient treatment yet short enough to
ensure that patient health is not endangered if
intervention is not effective.

12 RE353 patent, 2:33-42; *see also* RE353 patent, Abstract.

13 Accordingly, all Asserted Claims of the RE353 patent are invalid for lack of
14 written description because there is no written description support for a parameter-
15 specific alarm “suspension” that is part of an alarm threshold and is used to delay
16 activation of an alarm until a physiological parameter exceeds a threshold for a
17 predetermined amount of time.

18 Similarly, none of the Asserted Claims of the RE353 patent meet the written
19 description requirement under § 112, ¶ 1 because the specification does not
20 describe, suggest or illustrate “suspending” an alarm before it has been activated.
21 Accordingly, to the extent that Masimo contends that the limitation “determine that
22 an alarm should be activated in response to the measurement of the physiological
23 parameter satisfying an alarm activation threshold” (claim 1), in addition to minor
24 variations of that claim term in claims 8, 13, 18, and 19, does not require activation
25 of the alarm prior to initiation of the parameter-specific alarm “suspension”, the
26 claims are invalid for lacking written description.

27 All Asserted Claims of the RE353 patent are invalid under 35 U.S.C. § 112,
28 ¶ 1 because there is no written description support for “suspending” visual alarms,

1 but that is encompassed by each independent claim. “Suspending” visual alarms
2 was also not included in the original claims of the original ‘121 patent. The
3 specification of the RE353 patent only describes silencing audible alarms for a
4 predetermined amount of time after an alarm is activated, but do not suggest,
5 describe or illustrate suspension of visual alarms.

6 All Asserted Claims of the RE353 patent are invalid under 35 U.S.C. § 112,
7 ¶ 1 because there is no written description support for initiating a “suspension” of
8 an alarm automatically. The specification of the RE353 patents only describe a
9 *user* initiating an alarm “suspension” by, for example, pressing an alarm silence
10 button. To the extent that the claims of the RE353 patent are broad enough to
11 encompass automatic initiation of an alarm “suspension” by the claimed system or
12 method, the claims lack written support.

13 All claims of the RE249 patent are invalid for lack of written description
14 under 35 U.S.C. § 112, ¶ 1. The terms “hold,” “holding,” “hold initiator,” and
15 “parameter-specific alarm *hold* period of time” do not appear in the specification,
16 and did not appear in the claims of the original patent, U.S. Patent No. 9,153,121
17 (the “‘121 patent”). Accordingly, these claim terms lack written description
18 support under 35 U.S.C. § 112, ¶ 1.

19 To the extent that Masimo contends the parameter-specific alarm “hold”
20 period of time as used in all Asserted Claims of the RE249 patent encompasses the
21 ViSi System’s alarm delays that are used to delay *activation* of an alarm until a
22 physiological parameter exceeds a threshold for a predetermined amount of time
23 (i.e., the time delay is *part of* the alarm threshold), the specification of the RE249
24 patent does not provide written description for such a broad claim scope under 35
25 U.S.C. § 112, ¶ 1.

26 The RE249 patent specification only describes alarm “suspension” periods
27 of time, which is taught in the specification as the silencing of an alarm *after* it has
28 been activated, with such “suspension” periods of time correspond with the

1 amount of time required to *treat* an alarm condition, and the alarm *resumes* after
2 the suspension period of time expires. For example, the RE244 patent describes:

3 An audible alarm may be temporarily suspended by
4 pressing an alarm silence button so as to prevent
5 unnecessary disturbance to the patient and distraction of
6 the caregiver. During alarm suspension, visual alarms
7 remain active if an alarm condition persists after a
8 predetermined alarm suspend period, the audible alarm
resumes. The alarm suspend period is typically long
enough to give a caregiver sufficient time to intervene
with appropriate patient treatment yet short enough to
ensure that patient health is not endangered if
intervention is not effective.

9 RE244 patent, 2:33-42; *see also* Abstract.

10 To the extent “hold” is used interchangeably with “suspension,” all Asserted
11 Claims of the RE249 patent are invalid for lack of written description because
12 there is no written description support for a parameter-specific alarm “hold” period
13 of time that is part of an alarm threshold and is used to delay activation of an alarm
14 until a physiological parameter exceeds a threshold for a predetermined amount of
15 time.

16 Similarly, none of the Asserted Claims of the RE249 patent meet the written
17 description requirement under § 112, ¶ 1 because the specification does not
18 describe, suggest or illustrate “holding” an alarm before it has been activated.
19 Accordingly, to the extent that Masimo contends that the limitation “determine
20 whether an alarm condition exists by determining whether an activation threshold
21 has been satisfied by the measurement of the physiological parameter” (claim 1),
22 in addition to minor variations of that claim term in claims 8, 13, 18, and 19, does
23 not require activation of the alarm prior to initiation of the parameter-specific
24 alarm “suspension”, the claims are invalid for lacking written description.

25 All Asserted Claims of the RE249 patent are invalid under 35 U.S.C. § 112,
26 ¶ 1 because there is no written description support for “holding” visual alarms, but
27 that is encompassed by each independent claim. “Holding” visual alarms was also
28 not included in the original claims of the original ‘121 patent. The specification for

1 the RE249 patent only describes silencing audible alarms for a predetermined
2 amount of time after an alarm is activated, but do not suggest, describe or illustrate
3 suspension of visual alarms.

4 All Asserted Claims of the RE249 patent are invalid under 35 U.S.C. § 112,
5 ¶ 1 because there is no written description support for initiating a “hold” of an
6 alarm automatically. The specification of the RE249 patent only describes a *user*
7 initiating an alarm “suspension” by, for example, pressing an alarm silence button.
8 To the extent that the claims of the RE249 patent are broad enough to encompass
9 automatic initiation of an alarm “hold” periods of time by the claimed system or
10 method, the claims lack written support.

11 Certain of the Asserted Claims of the RE218 Patent fail to meet the
12 requirements of § 112, ¶ 1. For example, the specification fails to enable or provide
13 sufficient written description support for the claim limitation “and at an offset from
14 the at least one oxygen saturation value, wherein the offset is diminished as a
15 difference between the at least one first oxygen saturation value and the lower limit
16 diminishes”, as recited in Claims 1, 12, and incorporated in the dependent Asserted
17 Claims. The specification never describes an offset or a diminishing of a difference
18 or diminishing of a lower limit.

19 **C. Additional Grounds of Invalidity**

20 The Asserted Claims of the Asserted Patents are further invalid for
21 additional reasons. For example, the RE218, RE244, RE249, RE353 patents are
22 also invalid under the original patent rule, recapture doctrine, and overlooked
23 aspects doctrine. In addition, Claims 1–8 of the 218 patent are directed toward an
24 abstract idea and are invalid under section 101. *Alice Corp. v. CLS Bank*
25 *International*, 573 U.S. 208 (2014).

26 These additional grounds of invalidity are merely illustrative of additional
27 reasons why the Asserted Claims of the Asserted Patents are invalid. Because
28 Local Patent Rule 3.3 only requires the disclosure of invalidity ground under 35

1 U.S.C. §§ 102, 103 and 112, the foregoing theories of invalidity are not provided
2 with this disclosure. Defendants' investigation is on-going and Defendants reserve
3 the right to supplement and/or amend the above-identified grounds of invalidity.

4 **D. Document Production**

5 Sotera has produced copies of the prior art references identified herein
6 pursuant to Patent L.R. 3.3.a that do not appear in the file history of the patents at
7 issue. These documents include, but are not limited to, Bates numbers
8 SOTERA00000001 – SOTERA00001034.

9 Sotera has produced documents sufficient to show the operation of any
10 aspects or elements of the Accused Instrumentalities identified by the patent
11 claimant in its Patent L.R. 3.1.a chart. These documents include, but are not
12 limited, to Bates numbers SOTERA00003595 – SOTERA00009046.

13 Sotera has made source code for the Accused Instrumentalities available for
14 inspection at the offices of local counsel, Procopio, Cory, Hargreaves & Savitch
15 LLP in San Diego, CA. Review will take place pursuant to the Protective Order for
16 this matter, and on dates agreed to by the parties.

1 Date: March 20, 2020

Respectfully submitted,

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 20th day of March 2020, I caused the foregoing
3 to be served via email on all counsel of record at the following:

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