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DJO Global, Inc.; DJO, LLC; and DJO Consumer, LLC

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

DJO GLOBAL, INC., a California Corporation, DJO, LLC, a Delaware limited liability corporation, and DJO CONSUMER, LLC, a Delaware limited liability corporation,

Plaintiffs,

v.

ERIC GLADER, an individual, ANNEKE MARVIN, an individual, POWERDOT, INC., a Delaware corporation, AND SMARTMISSIMO TECHNOLOGIES PTE LTD., a Singapore private limited company,

Defendants.

CASE NO. **'16CV2208 BAS NLS**

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

(1) Patent Infringement of U.S. Patent Nos. 8,977,366, 8,452,409, 9,220,896 and 9,242,091;

(2) Copyright Infringement;

(3) Violation of the Defend Trade Secrets Act;

(4) Violation of the Uniform Trade Secrets Act, Cal. Civ. Code § 3426 *et seq.*;

(5) Breach of Contract;

(6) Breach of Fiduciary Duty and Duty of Loyalty

(7) Tortious Interference With Contract;

(8) Tortious Interference With Prospective Economic Advantage;

(9) Unfair Business Practices in Violation of Cal. Bus. & Prof. Code § 17200 *et seq.*;

(10) Civil Conspiracy

DEMAND FOR JURY TRIAL

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1 Plaintiffs DJO Global, Inc. (“DJO Global”), DJO, LLC, and DJO Consumer, LLC
2 (“DJO Consumer”) (collectively, “Plaintiff” or “DJO”) make the following allegations
3 against Defendants Powerdot, Inc. (“Powerdot”), Smartmissimo Technologies Pte Ltd.
4 (“ST”), Eric Glader (“Glader”), and Anneke Marvin (“Marvin”) (collectively,
5 “Defendants”):

6 **SUMMARY OF ACTION**

7 1. This is an action for patent infringement, copyright infringement and
8 violations of the Defend Trade Secrets Act, arising under the patent, copyright and trade
9 secret laws of the United States, Titles 35, 17 and 18, respectively, of the United States
10 Code. Plaintiff also asserts the violation of trade secret law under California Civ. Code
11 § 3426, unfair business practices under California Bus. & Prof. Code § 17200, *et seq.*,
12 and breach of contract, breach of fiduciary duty, breach of duty of loyalty, tortious
13 interference, and civil conspiracy under California law. Plaintiff seeks damages,
14 attorneys’ fees, costs, pre-judgment and post-judgment interest, and injunctive relief
15 associated with its sixteen (16) causes of action.

16 2. Amongst other tortious conduct, Defendants Powerdot, Glader, and Marvin
17 conspired to steal, and successfully stole and utilized, DJO’s trade secrets and other
18 confidential information in order to unfairly compete with DJO. Specifically, Powerdot,
19 Glader, and Marvin actively diverted endorsement, sponsorship, and other marketing
20 opportunities away from DJO for the benefit of a competitor, Defendant Powerdot, for
21 which Glader and Marvin both now work. Plaintiff is informed and verily believes that
22 Powerdot is a subsidiary and/or an affiliate of Defendant ST. Powerdot, Glader, and
23 Marvin have violated federal and state law prohibiting the theft of trade secrets, have
24 breached their written agreements with DJO, have breached their fiduciary duties and/or
25 duties of loyalty to DJO, have tortiously interfered with DJO’s contractual relationships
26 with DJO’s other employees, and have tortiously interfered with DJO’s ongoing
27 economic relationships and prospective endorsement and sponsorship opportunities.
28

1 3. DJO designs, manufactures, and/or has manufactured for it, products
2 incorporating the leading technology in the world for neuro-muscular electrical
3 stimulation (NMES), which DJO markets and distributes under the brand COMPEX. In
4 2014, Glader was hired to serve as the Senior Director of Business Development for
5 DJO's COMPEX product line. Glader was responsible for increasing sales and
6 developing business for COMPEX-brand NMES products. Marvin worked with Glader
7 to develop business for the COMPEX brand.

8 4. For the last several years, through its COMPEX brand, DJO has sponsored
9 events and businesses associated with networks and communities of athletes, agents and
10 trainers. Many of these athletes, agents, and trainers are affiliated with one of the world's
11 most popular high-intensity power training fitness organizations (the "Network"). The
12 Network has millions of social media contacts, followers, and enthusiasts. From 2014 to
13 late 2015, Glader and Marvin helped to strengthen the relationship between COMPEX
14 and the Network. By the middle of 2015, DJO had secured endorsements by several
15 Network-affiliated athletes, who publicized their affiliation with the COMPEX brand via,
16 amongst other methods, their social media accounts. Those athletes generated substantial
17 revenue for DJO in 2015 through early 2016.

18 5. On November 27, 2015, DJO discovered that ST received approval from the
19 United States Food and Drug Administration (FDA) to market and sell a competing
20 NMES product, under the brand name POWERDOT, Model No. PD-01 (the
21 "POWERDOT Product"). Less than three hours after Glader learned that the
22 POWERDOT Product had been approved, Glader proceeded to contact ST to express
23 DJO's interest in forming a business relationship between ST and DJO.

24 6. DJO and ST began conducting negotiations between late November and
25 early December 2015. As part of the negotiations, DJO sought to become a distributor—
26 perhaps the exclusive distributor—for the POWERDOT Product, in a territory to be
27 negotiated between the parties. Despite these efforts, negotiations stalled. On February
28

1 16, 2016, DJO formally notified ST that it would not move forward with a business
2 relationship relating to the POWERDOT Product. In or around April 2016, ST
3 introduced the POWERDOT Product in the United States and became a key market
4 competitor of DJO's COMPEX products.

5 7. In January 2016, Glader began to believe that DJO and ST would not
6 consummate any distribution relationship and decided to formulate a plan to develop a
7 competing business opportunity for DJO's competitors, ST and Powerdot, with him in
8 charge.

9 8. Glader contacted ST's CEO, Alexey Pisarev ("Pisarev") on January 25,
10 2016, to arrange a conference with Pisarev over Skype. That very same day, Glader
11 began sending emails from his DJO email account to his personal email account to
12 stockpile, for his own purposes, the confidential and proprietary trade secret information
13 of DJO that reflected DJO's confidential business and marketing plans and strategies,
14 including known endorsement and sponsorship opportunities for the COMPEX brand.
15 Glader's employment relationship with DJO ended in mid-February 2016.

16 9. Glader next recruited Marvin and successfully lured away three of his other
17 co-workers from DJO's COMPEX marketing department, thereby breaching his
18 contractual obligations not to solicit DJO's employees and consultants. Further, while
19 Marvin remained under contract with DJO, Glader and Marvin actively began to
20 sabotage DJO's relationships with numerous endorsers, sponsorship opportunities, and
21 sales representatives, and eventually diverted many of those endorsers, sales
22 representatives, and other sponsorship opportunities to Powerdot. In so doing, Glader and
23 Marvin breached their contractual obligations to DJO and tortiously interfered with
24 DJO's contractual relationships and prospective economic advantage.

25 10. Powerdot's theft of DJO's marketing strategies and other confidential
26 information is just one of many ways that Powerdot has piggy-backed off of DJO's
27 efforts to develop and market its COMPEX products. Powerdot relied on the regulatory
28

approval for one or more COMPEX products to obtain its own regulatory approval from the FDA. Also, the POWERDOT Product was designed to infringe four of DJO's U.S. patents. Even the instruction manual for the POWERDOT Product infringes DJO's copyright in its original user manuals for the COMPEX products. As set forth hereinbelow, as a result of the willful and malicious violations of the law by Defendants Powerdot, Glader, and Marvin, and their breaches of duties and obligations, DJO is entitled to both monetary and injunctive relief. Defendants must be prevented from continuing to benefit from their unlawful theft and diversion of DJO's business. Defendants have already caused serious irreparable economic and competitive harm to DJO and will continue to do so unless and until halted by this Court.

THE PARTIES

11. Plaintiff DJO Global, Inc. is a California corporation with a principal place of business at 1430 Decision Street, Vista, California 92081.

12. Plaintiff DJO, LLC is a Delaware corporation with a principal place of business at 1430 Decision Street, Vista, California 92081. DJO, LLC is a subsidiary of DJO Global, Inc.

13. Plaintiff DJO Consumer, LLC is a Delaware corporation with a place of business at 1325 Sycamore Ave, Suite B, Vista, California 92081. DJO Consumer, LLC is a subsidiary of DJO, LLC.

14. Defendant Powerdot is a Delaware corporation having an address registered with the State of California at 570 Paloma Court, Encinitas, California 92024.

15. Defendant ST is a Singapore corporation, with offices at #28-01 4 Shenton Way Singapore, 068807 Singapore.

16. Defendant Glader was the Senior Director of Business Development for Plaintiff's COMPEX brand NMES devices. Plaintiff is informed and verily believes that

1 Glader is the registered agent in the State of California for Powerdot, and that Glader
2 resides at 570 Paloma Court, Encinitas, California 92024.

3 17. Defendant Marvin was an independent contractor for DJO, who worked with
4 Glader to develop business for the COMPEX brand. Plaintiff is informed and verily
5 believes that Marvin is currently an employee of or a consultant for Powerdot. Plaintiff
6 is informed and verily believes that Marvin has an office at 31809 Via Saltio, Temecula
7 California 92592.

8 **JURISDICTION & VENUE**

9 18. This Court has subject matter jurisdiction over this case pursuant to 35
10 U.S.C. § 271, 17 U.S.C. § 106, 18 U.S.C. § 1836(c) and 28 U.S.C. §§ 1331, 1338(a), (b),
11 1367, and 1400.

12 19. This Court has personal jurisdiction over Powerdot, Glader, and Marvin
13 because they are present, doing business and/or residing in this District, because they
14 have committed tortious acts and violated Plaintiff's intellectual property rights in this
15 District, and they knew or should have known that such conduct would cause injury to
16 Plaintiff in the State of California.

17 20. This Court has personal jurisdiction over ST because ST is doing business in
18 the State of California by manufacturing and importing the POWERDOT Product into
19 the United States and by making that product available for sale within and into California
20 and this District. ST sells the POWERDOT Product via the website
21 www.mypowerdot.com without geographic restriction throughout the U.S., often with
22 free nationwide shipping, including shipment within, and into, the State of California and
23 this District.

24 21. Venue is proper in the United States District Court for the Southern District
25 of California under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b)

FACTUAL ALLEGATIONS**A. The COMPEX Brand and DJO's Marketing Team for DJO's COMPEX-Brand NMES Products**

22. Compex was established in Switzerland in the mid-1980s, and has become a world leader in research, development and the application of electrical stimulation for health purposes—including but not limited to neuro-muscular electrical stimulation (NMES) products. COMPEX-brand NMES devices are favored by professional trainers, coaches, and athletes because they enable athletes to safely customize their training and exercise routines and to recover more quickly from intense exercise. COMPEX-brand NMES devices enable a more efficient workout, with less risk of injury, allowing the athlete to achieve peak performance. DJO acquired the COMPEX brand and business in 2006.

23. The COMPEX-brand products are manufactured and marketed by Plaintiff DJO, LLC's Consumer Business division. The President of DJO, LLC's Consumer Business division is Toby Bost ("Bost"). In the spring and early summer of 2014, the team in Bost's marketing department included Matthew Williams, Sales Director ("Williams"), Jason Zinn, Director of e-Commerce ("Zinn"), and Robert Castaneda, Customer Care Representative ("Castaneda").

24. Bost recruited Glader in June and July 2014 to serve as the Senior Director of Business Development. On July 25, 2014, Glader executed an agreement between himself and DJO entitled "Confidentiality and Intellectual Property Agreement" (the "Glader Employment Agreement," attached as Exhibit A). Glader began working for DJO in August 2014. In November 2014, DJO hired Marvin as an independent consultant under a "Master Consulting Agreement" dated November 3, 2014 (the "Marvin Consultant Agreement," attached as Exhibit B). In February 2016, when DJO ended its employment relationship with Glader, Glader and DJO further executed a Confidential

1 Separation Agreement and General Release of All Claims dated February 29, 2016 (the
2 “Glader Separation Agreement,” attached as Exhibit C, filed under seal).

3 **B. The Terms of Glader’s and Marvin’s Agreements with DJO**

4 **1. The Glader Employment Agreement**

5 25. In a section entitled “Best Efforts and Loyalty,” the Glader Employment
6 Agreement provides as follows:

7 I will not engage in any activity or have any outside interest that might
8 deprive Company of my loyalty, interfere with the satisfactory performance
9 of my duties or be harmful or detrimental to Company. I will dedicate all of
10 my working time to the Company and use best efforts to . . . remain loyal
11 . . . and avoid conflicts of interest. I understand that it will be a conflict of
12 interest for me to pursue business activities that compete with Company
13 while employed with the Company. I will promptly inform the Company of
14 any business opportunities related to the Company’s line of business.

15 (Ex. A, at ¶ 3.1.)

16 26. A section entitled “Non-Solicitation of Employees and Sales
17 Representatives” provides as follows:

18 I agree that for a period of one (1) year after the termination of my
19 employment with Company for any reason, I will not knowingly interfere
20 with the Company’s relationship with an employee or sales representative
21 that I have worked with or received Confidential Information about by
22 soliciting, inducing or encouraging such an employee or sales representative
23 (independent contractor) of the Company to leave the Company (regardless
24 of who first initiates the communication) or to otherwise alter his or her
25 existing business relationship with the Company to the Company’s
26 detriment.

27 (*Id.* at ¶ 3.3.)
28

27. A section entitled “Employee Obligation to Notify Company of Work for New Employer” provides as follows:

To enable Company to monitor my compliance with the obligations imposed by this Agreement, for a period of one (1) year following the termination of my employment I agree to notify Company in writing of the identity of my new employer (if any) and of my job title and responsibilities at least ten (10) days before I begin such responsibilities.

(*Id.* at ¶ 3.5.)

28. A section entitled “Non-disclosure of Confidential Information” provides as follows:

I will not disclose, use, disseminate . . . or publish Confidential Information. I understand and agree that my obligations not to disclose, use, disseminate . . . or publish Confidential Information shall continue after the termination of my employment for any reason.

(*Id.* at ¶ 5.1.)

29. A section entitled “Return of Information and Materials” provides as follows:

I will immediately return to Company any and all Confidential Information and any and all information and materials relating to Company’s business, products, personnel, suppliers or customers, whether or not such material is deemed to be confidential or proprietary. Thereafter, any continued possession will be deemed to be unauthorized. I shall not retain any copies of correspondence, memoranda, reports . . . or other documents in any form whatsoever (including information contained in computer memory or on any computer disk) relating in any way to the affairs of Company and which were entrusted to me or obtained by me at any time during my employment with Company.

1 (*Id.* at ¶ 5.2.)

2 30. A section entitled “Return of Company Property” provides as follows:
3 Upon termination of my employment with Company for any reason
4 whatsoever, I will return to Company any and all property in my possession
5 which belongs to Company, including the following: . . . all customer files,
6 account files, price lists, product information, training manuals, promotional
7 materials and handbooks, and all other documents relating to Company’s
8 business, products, personnel, suppliers and customers.

9 (*Id.* at ¶ 5.3.)

10 31. A section entitled “Authorized Use of Company Computers” provides as
11 follows:

12 I will not knowingly use Company computers, e-mail or email access, or
13 access to the Company’s electronic data storage devices of any kind, to
14 pursue or prepare to pursue competing business interests or to undertake
15 other activities that would be harmful to the Company’s legitimate business
16 interests.

17 (*Id.* at ¶ 5.4.)

18 32. A section entitled “Special Remedies” provides as follows:

19 I recognize that any breach by me of Sections 3, 4 or 5 of this Agreement
20 will cause Company irreparable harm that cannot be compensated
21 adequately by an award of monetary damages. I agree that company may
22 seek and obtain injunctive relief in addition to damages Company recover at
23 law.

24 (*Id.* at ¶ 7.1.)

25 **2. The Marvin Consultant Agreement**

26 33. In a section entitled “No Diversion,” the Marvin Consultant Agreement
27 provides as follows:
28

1 Consultant shall not divert or attempt to divert or take advantage of or
2 attempt to take advantage of any actual or potential business or opportunities
3 of DJO . . . which the Consultant became aware of as the result of
4 Consultant's consulting relationship with DJO.

5 (Ex. B, at ¶ 11(b).)

6 **3. The Glader Separation Agreement**

7 34. In a section entitled [REDACTED] the Glader Separation
8 Agreement provides as follows:

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 (Ex. C, at [REDACTED])

16 35. A section entitled [REDACTED]
17 [REDACTED] provides as follows:

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 (*Id.* at [REDACTED])

36. The Glader Separation Agreement also [REDACTED]

[REDACTED]

37. A section entitled [REDACTED]

[REDACTED] provides as follows:

[REDACTED]

[REDACTED]

(*Id.* at [REDACTED])

38. Paragraph [REDACTED] provides as follows:

[REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 (*Id.* at [REDACTED])

6 **C. DJO's Confidential Information and Efforts to Protect Its Trade Secrets**

7 39. DJO has expended, and continues to expend, significant time, effort and
8 resources to develop and execute marketing plans and strategies to develop business for
9 the COMPEX products. One of DJO's marketing strategies is to secure endorsements
10 and sponsorships by well-known athletes. As part of these sponsorship deals, athlete
11 endorsers often post photographs and/or statements to their social media accounts
12 demonstrating the use of the COMPEX-brand equipment and/or praising or explaining
13 the benefits of the COMPEX products. Such social media posts often include a discount
14 code, whereby followers of the athlete endorser can use that code to receive a discount
15 for the online purchase of COMPEX products. DJO monitors and tracks the usage of
16 those discount codes to glean useful marketing and financial information, including at
17 least (1) how much revenue each athlete endorser generates for DJO; (2) which athlete
18 endorsers generate the most revenue for DJO; and (3) DJO's return on investment for
19 each athlete endorser.

20 40. DJO considers all aspects of its marketing strategies and financial
21 information to be its confidential and proprietary trade secret information, including at
22 least: (1) the amount of revenue generated by each COMPEX product; (2) the names and
23 personal contact information of athlete endorsers for the COMPEX products; (3) the
24 names and personal contact information of potential athlete endorsers for the COMPEX
25 products; (4) the terms of any executed and/or standard endorsement agreements between
26 DJO and any athlete endorsers; (5) the amount of revenue each athlete endorser generates
27 for DJO; (6) the amount of compensation paid to each athlete endorser; (7) the value of
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DJO's return on investment for each athlete endorser; (8) the types of activities that each athlete endorser is expected to perform on behalf of DJO; (9) the nature and extent of DJO's marketing efforts towards athletic trainers as outside sales consultants or representatives for COMPEX products; (10) the amount of revenue generated by such outside athletic trainer sales consultants or representatives; (11) the marketing budget, budget allocations, and strategies for DJO's radio, podcast, television, Internet and print advertisements; and (12) the return on investment for DJO's media advertising efforts; amongst other information.

41. In order to protect its trade secrets and confidential information, DJO undertakes substantial effort and expense to maintain the confidentiality of its trade secrets. To maintain its confidentiality, DJO does not publish this information. Rather, it is disseminated only to those individuals within DJO who have a need to know. In fact, DJO makes clear to all employees, through written policies, that its employees and consultants have a duty to maintain the confidentiality of any DJO confidential information they may acquire as part of their daily responsibilities. DJO also carefully polices its employees, and requires them to enter into confidentiality and non-disclosure agreements. DJO even extends its efforts to its endorsers—DJO includes confidentiality provisions in its contracts with endorsers, including those signed by the celebrity endorsers noted in this Complaint, that prohibit disclosure of the terms of those agreements.

42. One such agreement is the Glader Employment Agreement, which prohibits the use, disclosure or dissemination of DJO's "Confidential Information" in Paragraph 5.1. Paragraph 2.4 of the Glader Employment Agreement defines "Confidential Information" as follows:

"Confidential Information" refers to an item of information or a compilation of information, in any form (tangible or intangible), related to the Company's business that Company has not made public or authorized public

disclosure of, and that is not generally known to the public through proper means. . . . Confidential Information includes, but is not limited to: (a) Company's business plans and analysis, customer and prospective customer lists, marketing plans and strategies, research and development data, buying practices, human resource information and personnel files, financial data, operational data, methods, techniques, technical data, know-how, innovations, computer programs, un-patented inventions, and trade secrets; and (b) information about the business affairs of third parties (including, but not limited to, clients and acquisition targets) that such third parties provide to Company in confidence. . . . I acknowledge that items of Confidential Information are Company's valuable assets and have economic value, actual or potential, because they are not generally known by the public or others who could use them to their own economic benefit and/or to the competitive disadvantage of the Company, and thus, should be treated as Company's trade secrets.

D. DJO's Efforts to Market and Sell the COMPEX Products

43. In the fall of 2014, through Bost, Glader, Marvin, and their business development team, DJO forged ties between COMPEX and the Network. Marvin is an active member of the Network, and DJO hired Marvin as an independent consultant as part of its strategy of strengthening ties between COMPEX products and the Network.

44. In October and November 2014, DJO—again, through Bost, Glader, Marvin, and the business development team—expended significant efforts to secure sponsorships of DJO's COMPEX-brand products by certain celebrity athletes associated with the Network, including Celebrity Athlete A and Celebrity Athlete B. DJO executed Endorsement Agreements with both Celebrity Athlete A and Celebrity Athlete B in mid-November 2014, with the terms of those agreements lasting through the end of December 2015.

1 45. Celebrity Athlete A's Instagram account has over 950,000 followers. During
2 Celebrity Athlete A's sponsorship of COMPEX, among other activities, Celebrity Athlete
3 A was obligated to blog or post pictures and/or videos on Facebook, Twitter, Instagram
4 and/or other social media, explaining the benefits of the COMPEX products. Those posts
5 typically included an alphanumeric code that would enable Celebrity Athlete A's
6 followers to purchase one or more COMPEX products at a discount. Celebrity Athlete
7 A's social media posts related to COMPEX have generated significant revenue for DJO.

8 46. Celebrity Athlete B's Instagram account has over 250,000 followers. During
9 Celebrity Athlete B's sponsorship of COMPEX, among other activities, Celebrity Athlete
10 B was obligated to blog or post pictures and/or videos on Facebook, Twitter, Instagram
11 and/or other social media, explaining the benefits of the COMPEX products. Those posts
12 typically included an alphanumeric code that would enable Celebrity Athlete B's
13 followers to purchase one or more COMPEX products at a discount. Celebrity Athlete
14 B's social media posts related to COMPEX have generated significant revenue for DJO.

15 47. During 2015, the DJO team continued working to build a relationship with
16 the Network, and to secure new sponsorship and marketing opportunities, disseminating
17 promotional information on the benefits of its COMPEX-brand Products. On March 1,
18 DJO executed an Endorsement Agreement with Celebrity Athlete C, another athlete
19 associated with the Network. The term of Celebrity Athlete C's sponsorship agreement
20 lasted through March 1, 2016.

21 48. Celebrity Athlete C's Instagram account has over 250,000 followers. During
22 Celebrity Athlete C's sponsorship of COMPEX, among other activities, Celebrity Athlete
23 C was obligated to blog or post pictures and/or videos on Facebook, Twitter, Instagram
24 and/or other social media, explaining the benefits of the COMPEX-brand products.
25 Those posts typically included an alphanumeric code that would enable Celebrity Athlete
26 C's followers to purchase one or more COMPEX products at a discount. Celebrity
27
28

1 Athlete C's social media posts related to COMPEX have generated significant revenue
2 for DJO.

3 49. In or around the summer of 2015, DJO was presented with an opportunity,
4 whereby the COMPEX brand could sponsor a popular fitness podcast featuring
5 humorous and informative interviews on the subject of bodybuilding, powerlifting and
6 athletic training (the "Podcast"). Sponsoring the Podcast was yet another opportunity for
7 forging ties between the COMPEX brand and the Network, as that podcast often features
8 guests from within, and discussions of the fitness methodologies favored by, various
9 members of the Network.

10 50. Plaintiff is informed and verily believes that the Podcast averages over
11 120,000 downloads per episode. COMPEX's sponsorship of the Podcast had an initial
12 term lasting through August 2016.

13 51. Towards the end of 2015, DJO—again, through Bost, Glader, Marvin, and
14 the business development team—expended significant efforts to secure the sponsorship
15 of the COMPEX products by Celebrity Athlete D. Celebrity Athlete D executed an
16 Endorsement Agreement for the COMPEX products on December 29, 2015, which was
17 executed by Glader on behalf of DJO on January 19, 2016 (the "Celebrity Athlete D
18 Endorsement Agreement," attached as Exhibit D, filed under seal).

19 52. Celebrity Athlete D's Instagram account has over 331,000 followers. During
20 Celebrity Athlete D's sponsorship of COMPEX, among other activities, Celebrity Athlete
21 D was obligated to blog or post pictures and/or videos on Facebook, Twitter, Instagram
22 and/or other social media, explaining the benefits of the COMPEX products. Those posts
23 may include an alphanumeric code that would enable Celebrity Athlete D's followers to
24 purchase one or more COMPEX products at a discount.

25 53. The term of the Celebrity Athlete D Endorsement Agreement, [REDACTED]
26 [REDACTED]
27 [REDACTED]
28

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 **E. Overview of the COMPEX-Brand Muscle Stimulators and the POWERDOT**
6 **Product**

7 54. DJO offers several different wired models of muscle stimulators under the
8 COMPEX brand, including the COMPEX Edge, the COMPEX Performance, and the
9 COMPEX Sport Elite brand products. All of those COMPEX muscle stimulators include
10 (i) a standalone control device, having a screen and buttons comprising a user interface
11 for controlling the stimulation, as well as an internal power source and internal circuits
12 for generating electrical signals that safely stimulate muscles; (ii) sets of electrodes for
13 adhering to the skin of a user; and (iii) a set of wires for connecting the standalone
14 control device to the sets of electrodes.

15 55. In April 2015, DJO received approval from the FDA to market its COMPEX
16 Wireless product. Unlike all of the other COMPEX devices listed above—each of which
17 use wires to directly connect the standalone user-interface control device to the
18 electrodes—the COMPEX Wireless product uses special wireless user interface devices
19 that are operably connected to each electrode. Specifically, in the COMPEX Wireless
20 product, each electrode directly interfaces, both mechanically and electrically, with its
21 own battery-powered muscle stimulation device, and each muscle stimulation device is
22 operated through a user interface device that communicates wirelessly with the muscle
23 stimulation device.

24 56. ST applied for FDA approval for the POWERDOT Product on August 31,
25 2015. In its Section 510(k) premarket notification of intent to market the POWERDOT
26 Product, ST asserted that the POWERDOT Product was substantially equivalent to the
27 COMPEX Sport Plus. On September 30, 2015, the FDA approved ST's marketing and
28

1 sale of the POWERDOT Product within the United States.

2 **F. DJO's Negotiations with ST**

3 57. DJO learned of the FDA's approval for the POWERDOT Product on
4 November 27, 2015. Glader considered it a threat to DJO's COMPEX business. Glader's
5 fears focused specifically on the ability to control the POWERDOT Product using a
6 smartphone application.

7 58. On November 27, 2015, less than three hours after Glader learned that the
8 POWERDOT Product had been approved for marketing by the FDA, Glader contacted
9 ST, expressing an interest in a business relationship between ST and DJO. DJO and ST
10 began negotiating between late November and early December 2015. In so doing, DJO
11 sought to become a distributor for the POWERDOT Product in a territory to be
12 negotiated between the parties. During these negotiations, Glader created a three-year
13 marketing strategy for the POWERDOT Product for DJO, based on the assumption that
14 DJO would acquire distribution or ownership rights for that product.

15 59. ST and DJO did not arrive at a distribution agreement, or any other business
16 relationship. On February 16, 2015, DJO formally notified ST that it had decided to end
17 the negotiations.

18 **G. Glader and Marvin Breach Their Obligations to DJO, Redirect Their Efforts**
19 **to Powerdot, and Conspire to Actively Divert Sponsorship Opportunities.**

20 60. Despite the negotiations, Glader foresaw that DJO would not enter into a
21 distribution agreement with ST. In January 2016, Glader began to formulate an exit
22 strategy through which he would direct his best efforts to develop business for DJO's
23 competitors—ST and Powerdot. Plaintiff is informed and verily believes that Glader
24 developed a three-year marketing plan for the POWERDOT Product while he was
25 employed by DJO, and has now enacted that plan to improve the market position and
26 sales of the POWERDOT Product, for the benefit of Glader, Powerdot, and ST, not DJO.

1 61. On January 25, 2016, Glader emailed ST's CEO, Pisarev to arrange a
2 conference via Skype. On information and belief, Pisarev and Glader spoke via Skype on
3 or around January 25, 2016 to discuss Glader working for ST to market the POWERDOT
4 Product in the United States.

5 62. That very same day, January 25, 2016, Glader sent three emails from his
6 DJO email account to his personal email account. The emails contained confidential and
7 proprietary trade secret information of DJO, reflecting DJO's business and marketing
8 plans and strategies, including known sponsorship opportunities for the COMPEX brand.
9 One of the documents Glader sent to his personal email that day was entitled "Athletes
10 Seeking Compex Product/Sponsorship."

11 63. On January 30, 2016, Glader sent another email from his DJO account to his
12 personal email account, this time attaching a Powerpoint presentation entitled "Social."
13 The presentation included ten pictures of social media posts by celebrities praising a
14 COMPEX product. The slide also identified how many followers and likes each celebrity
15 had received on certain social media sites. Among the celebrities listed were Celebrity
16 Athlete A, Celebrity Athlete B and a third celebrity athlete, each of whom were, or had
17 been, COMPEX sponsors. Over the next twenty days, Glader sent several more emails to
18 his personal address with contact information for DJO's vendors, consultants and/or
19 agents for potential athlete sponsors.

20 64. In early February 2016, Glader conspired with DJO personnel Marvin and
21 Castaneda, while they were all still employed by DJO (or consulted for DJO), to redirect
22 their efforts towards marketing and distribution efforts for the POWERDOT Device. In
23 an email dated February 3, 2016, Glader told Marvin that he would be in late because of
24 a "meeting," to which Marvin responded by asking "... are we taking her on for power
25 dot?" Glader and DJO ended their employment relationship in the middle of February
26 2016, as reflected in the Glader Separation Agreement, executed on February 19, 2016.

65. On information and belief, after leaving DJO, Glader was involved in the corporate formation of Powerdot in the State of Delaware on March 15, 2016. On May 3, 2016, Glader caused papers to be filed with the State of California to register and enable Powerdot to carry out business in this State. Glader listed himself as the registered agent of Powerdot and, on information and belief, listed the entity's address as his home address in Encinitas.

66. On February 12, 2016, Celebrity Athlete B emailed DJO consultant Marvin, at her DJO email address, stating that one of his Instagram followers had asked for a discount code for COMPEX products, and asking if DJO intended to run "any discount codes anytime soon." Marvin responded a few hours later, from her DJO email address, stating "Not right now. We are in transition with something so I would just sit tight on promoting anything right now."

67. On February 26, 2016, Marvin received an email from an athletic trainer affiliated with the Network ("Trainer A") who had previously promoted COMPEX-brand product. Trainer A told Marvin she had an opportunity coming in April and asked whether that would be "too soon," to which Marvin responded "We should be ready to go by then." She later told Trainer A "Let me talk to Eric [Glader] and see how he wants to handle it." Marvin used her DJO email address for this correspondence.

68. Also on February 26, 2016, Marvin sent an email to a party outside of DJO stating that there had been some recent changes to the COMPEX brand strategy:

Eric Glader has left as the Director of Business Development and our new director just reported Monday. In the interim, ***I have had to contact all of our [Network-affiliated] agents and athletes and let them know to stop posting/promoting Compex ASAP*** (emphasis added).

Marvin sent this message from her DJO email account while under contract with DJO.

69. Contrary to Marvin's implication, DJO had no objections whatsoever to any Network-affiliated agents and athletes posting or promoting the COMPEX-brand

1 products. Marvin had no instructions from DJO to contact Network-affiliated agents and
2 athletes to tell them to stop promoting COMPEX-brand products. Instead, Plaintiff is
3 informed and verily believes that Marvin decided, in concert with Glader, to actively
4 sabotage the numerous endorsement relationships that existed between DJO and the
5 agents, trainers, and athletes in the Network who had been promoting the COMPEX
6 brand.

7 70. The above emails from Marvin are merely a few of many examples of
8 Defendants' campaign of misinformation that Marvin and Glader waged in an attempt to
9 drive a wedge between DJO and the Network. As another example, Glader's
10 replacement, Brandon Hearn ("Hearn"), met with Glader on or around February 25,
11 2016, to receive information from Glader about COMPEX products and any loose ends
12 associated with marketing those products. In that meeting, Glader was adamant that DJO
13 should stay away from any marketing activities associated with the events, athletes
14 and/or trainers associated with the Network. Glader told Hearn that DJO's affiliation
15 with an organization that Glader alleged had an agenda in conflict with the interests of
16 the Network would cause major problems for the COMPEX brand. Specifically, Glader
17 told Hearn that the COMPEX business would be ridiculed and that the Network could
18 mobilize to return COMPEX products and provide poor product reviews on Amazon.com
19 and other Internet sites.

20 71. As yet another example of the campaign of misinformation, Celebrity
21 Athlete C fully and finally refused to renew her endorsement contract with DJO in May
22 2016. On May 3, 2016, Celebrity Athlete C told Hearn that she understood there have
23 been "some issues lately" between COMPEX and the Network and she is "going to steer
24 clear for a little bit." In reality, any such "issues" had been cleared up, because in June
25 2016, DJO and its COMPEX-brand products served as an official sponsor of one of the
26 largest Network-affiliated events, and Hearn was already finalizing the agreement for that
27 sponsorship. Hearn apologized to Celebrity Athlete C and informed her that she "got
28

1 false information.” To this day, COMPEX remains a sponsor of Network-affiliated
2 events and of some of the athletes associated with the Network.

3 72. On February 16, 2016, Marvin received an email from the owner of Gym A,
4 another affiliate of the Network, stating that he would

5 love to set up a call if possible, and ideally have Compex on board for 2016
6 as a Partner Sponsor. We have some big name athletes interested in
7 attending, and now have [a major shoe brand] and some other big companies
8 supporting us. . . . Let me know if you have time to chat this week. I’ve also
9 made a discount code for 10% off of [event] registration for Compex
10 customers: COMPEX10 (to be used at checkout on our website).

11 Marvin responded soon after, asking only “Can you call me when you have a second?”

12 73. On February 29, 2016, Marvin received another email, at her DJO email
13 address, from the owner of Gym A stating he was following up on their conversation “to
14 give you first dibs at being our sponsor for [our event] *in lieu of Compex*” (emphasis
15 added). In an apparent mistake, Marvin forwarded the email to Glader’s prior DJO email
16 address, instead of his personal email address. Plaintiff is informed and verily believes
17 that Powerdot was a sponsor for Gym A’s event.

18 74. On March 16, 2016, Marvin received an inquiry email from an individual on
19 behalf of the Podcast:

20 I would like to touch base and see what Compex’s plan is with the [Podcast]
21 for 2016. We are in the process of signing some new sponsors and need a
22 firm response as soon as possible. We would like to continue our
23 relationship. Please let me know if you have any questions.

24 Without advising DJO of the email, Marvin forwarded it to Glader’s personal email
25 address without comment. Glader responded “Call him. Fill him in. Tell him we have
26 something groundbreaking coming out in April and to hold off.” At no time did Marvin
27 discuss that email with, nor did she forward it to, anyone else at DJO.
28

1 75. On March 21, 2016, Castaneda received an email from a DJO employee
2 forwarding a private message that the COMPEX Twitter account had received from Gym
3 B, a Network-affiliated gym in San Diego. The email requested a demonstration of some
4 COMPEX-brand products for Gym B's members and athletes. Castaneda forwarded the
5 email to Marvin, asking: "Is the team staying, leaving, or are they still in limbo?" Marvin
6 responded "I think most of them are coming over, but in [sic] still not sure." Instead of
7 having a demonstration with COMPEX-brand products, Gym B held an event sponsored
8 by Powerdot on July 23, 2016. At no time since March 21, 2016, has Plaintiff sponsored
9 any event held by Gym B.

10 76. Marvin stopped working at DJO in March 2016. Each of Castaneda,
11 Williams and Zinn likewise ended their employment relationships with DJO by the end
12 of May 2016. On information and belief, Castaneda now works as an employee or
13 consultant of Powerdot. On information and belief, Marvin now works as an employee
14 or consultant for Powerdot. On information and belief, Williams and Zinn each provide
15 consulting services to Powerdot.

16 **J. Glader and Marvin Continue Diverting COMPEX Sponsors.**

17 77. Hearn was hired to replace Glader as Senior Director of Business
18 Development for the COMPEX brand. Hearn worked to salvage relationships with
19 COMPEX sponsors while, unknown to Hearn, Glader, Marvin and others actively
20 sabotaged those relationships.

21 78. On March 29, 2016, Hearn emailed Bost stating that he "was able to resign
22 [i.e., renew the contract of] [Celebrity Athlete C] for 2016 just now, she loves the brand."
23 Hearn offered to double Celebrity Athlete C's 2015 monthly base pay to secure Celebrity
24 Athlete C's renewed sponsorship.

25 79. On March 30, 2016, shortly before 10 AM, Hearn emailed Celebrity Athlete
26 C, confirming their conversation of earlier that morning and attaching an updated
27 contract which included the doubled monthly base pay. Hearn also provided a discount
28

1 code for Celebrity Athlete C to post on social media. Shortly before 11:30 AM, Celebrity
2 Athlete C responded “I will get that [contract] back to you ASAP! I will make a post in
3 the next hour!”

4 80. About an hour later, at nearly 12:45 PM, Celebrity Athlete C emailed Hearn,
5 stating that she talked to her agent, and that “April is a weird sponsorship month for me
6 because so much is changing with my sponsors. We kind of want to see how the dust
7 settles this month before I sign anything. . . . What do you think about waiting to confirm
8 and sign until May?”

9 81. Though unknown to DJO, also on March 30, Castaneda sent an email to
10 Celebrity Athlete C stating “Anneke [Marvin] called me earlier. When you get a few
11 moments, could you call me on my cell,” before providing his cell phone number. A few
12 hours later, Celebrity Athlete C responded “I just talked to her too.” Shortly thereafter,
13 Castaneda responded, writing “If you resign [*i.e.*, renew your contract] **or not**, please do
14 not hesitate to reach out to me for anything you need” (emphasis added).

15 82. On information and belief, during April 2016 or May 2016, Powerdot,
16 through Glader and/or Marvin, signed Celebrity Athlete C to an exclusive sponsorship
17 deal for promoting the POWERDOT Product. In or around mid-May 2016—shortly after
18 declining to renew her endorsement deal with COMPEX due to the purported existence
19 of “some issues lately” between COMPEX and the Network—Celebrity Athlete C posted
20 a picture to Instagram showing the POWERDOT Product in use. Since that time,
21 Celebrity Athlete C has posted at least seven additional pictures featuring the
22 POWERDOT Product to Instagram, along with other pictures showing a Powerdot t-
23 shirt, or using the hashtag #powerdot.

24 83. On information and belief, during April 2016 or early May 2016, Powerdot,
25 through Glader and/or Marvin, signed Celebrity Athlete A to an exclusive sponsorship
26 deal for promoting Powerdot’s NMES product. In or around mid-May, Celebrity Athlete
27 A posted a picture to Instagram showing the POWERDOT Product in use. Since that
28

1 time, Celebrity Athlete A has posted at least three other pictures to Instagram featuring
2 promotions for the POWERDOT Product.

3 84. On information and belief, during April 2016 or early May 2016, Powerdot,
4 through Glader and/or Marvin, signed Celebrity Athlete B to an exclusive sponsorship
5 deal for promoting the POWERDOT Product. In or around mid-May 2016, Celebrity
6 Athlete B posted a picture to Instagram showing the POWERDOT Product in use. Since
7 that time, Celebrity Athlete B has posted at least four other pictures to Instagram
8 featuring promotions for the POWERDOT Product.

9 85. On information and belief, in or around June 2016, Powerdot, through
10 Glader and/or Marvin, signed Celebrity Athlete D to promote the POWERDOT Product.
11 In or around mid-June 2016, Powerdot's Instagram account posted a picture of Celebrity
12 Athlete D with the text "We are proud to announce that [Celebrity Athlete D] has joined
13 team @mypowerdot." In or around the same timeframe, Celebrity Athlete D posted a
14 picture of the POWERDOT Product in its storage case to Instagram along with a discount
15 code. Since that time, Celebrity Athlete D posted a picture to Instagram showing the
16 POWERDOT Product in use, and has posted at least one other picture to Instagram
17 featuring promotions for the POWERDOT Product.

18 86. DJO's proprietary strategy of forging ties between COMPEX and the
19 Network also included building relationships with Network-affiliated athletic trainers and
20 giving them discounts on COMPEX products for their clients. On information and belief,
21 Marvin—a Network-affiliated trainer herself—recruited several other Network-affiliated
22 coaches to promote COMPEX products with their trainees, including Trainer B, Trainer
23 C, Trainer D, Trainer E and Trainer F, notably while she served as a consultant to DJO.
24 During the first quarter of 2016, each of Trainer B, Trainer C, Trainer D, Trainer E and
25 Trainer F were paid commissions by DJO based on their sales of COMPEX products via
26 personalized promotional codes.

87. On information and belief, each of Trainer B, Trainer C, Trainer D, Trainer E and Trainer F now work for Powerdot, either as an employee or as an independent sales representative, towards marketing and selling the POWERDOT Product.

K. ST's and Powerdot's Infringement on DJO's Intellectual Property Rights

1. DJO's Patent Rights

88. As noted above, the COMPEX Wireless product uses special wireless devices connected to each electrode, whereby (1) each electrode directly interfaces, both mechanically and electrically, with its own battery-powered muscle stimulation device, and (2) each muscle stimulation device is operated through a user interface device that communicates wirelessly with the muscle stimulation device.

89. As a result of its leading research and development in this field, DJO owns numerous U.S. patents, including U.S. Pat. Nos. 8,977,366 (the "'366 patent", attached as Exhibit E), 8,452,409 (the "'409 patent", attached as Exhibit F), 9,220,896 (the "'896 patent", attached as Exhibit G) and 9,242,091 (the "'091 patent", attached as Exhibit H) (collectively, the "Asserted Patents").

90. The '366 patent and the '896 patent each discloses and claims a system for delivering therapeutic electrical stimulation, in which a controller includes a power source, an electrical signal generator, and a receptacle having a conductor and a detent, wherein the receptacle is configured to receive a portion of a patch, with the detent being configured to retain the portion of the patch within the receptacle.

91. POWERDOT Model No. PD-01 (the "Accused Product") includes an electrode that directly interfaces, both mechanically and electrically, with a wireless, battery-powered muscle stimulation device. The Accused Product includes a controller having a power source, an electrical signal generator, and a receptacle. The receptacle within the Accused Product has a detent, and is configured to receive a portion of an electrode patch, with the detent being capable of retaining the electrode patch. The Accused Product meets all of the limitations of, and thereby infringes, at least one claim

1 of each of the '366 patent and the '896 patent, including at least claim 1 of the '366
2 patent and claim 7 of the '896 patent.

3 92. The '409 patent and the '091 patent each discloses and claims a system for
4 delivering therapeutic electrical stimulation, in which the system has a patient interface
5 component, a controller component and an intermediate component positioned between
6 the other two components, wherein the patient interface component has a useful life that
7 is shorter than the intermediate component, and the intermediate component has a useful
8 life that is shorter than the controller component.

9 93. The Accused Product, POWERDOT Model No. PD-01, includes a patient
10 interface component (*e.g.*, an electrode), a controller component (*e.g.* the POWERDOT
11 device), and an intermediate component (*e.g.* the lead cable that connects the
12 POWERDOT device to a pair of electrode pads). On information and belief, the
13 POWERDOT device has a longer useful life than the lead cable, and the lead cable has a
14 longer useful life than the electrode pads.

15 94. ST prepared and published an instruction manual for the POWERDOT
16 Product (the "POWERDOT Instruction Manual"). In the section on troubleshooting, the
17 POWERDOT Instruction Manual offers the following possible solutions if the electrical
18 stimulation is very weak:

19 Replace your electrode pads. Most probably they're worn out. If this doesn't
20 work, check your lead cable for physical damage. If there is any damage,
21 replace the lead cable.

22 POWERDOT Instruction Manual, at 31. Likewise, the warranty for the POWERDOT
23 Product expressly covers the POWERDOT device "and does not cover the lead cables."
24 POWERDOT Warranty Card.

25 95. The Accused Product, POWERDOT Model No. PD-01, meets all of the
26 limitations of, and thereby infringes, at least one claim of each of the '409 patent and the
27 '091 patent, including at least claim 1 of the '409 patent and claim 1 of the '091 patent.
28

2. DJO's Copyrights

96. On information and belief, ST was aware of the COMPEX products when it began developing the POWERDOT Product, and ST is believed to have had in its possession one or more COMPEX products, as well as the associated user manuals that accompany the COMPEX-brand products (and are available online). Furthermore, ST relied on the COMPEX Sport Plus product as a "predicate device" when it filed its Section 510(k) premarket notification of intent to seek approval to market the POWERDOT Product with the FDA.

97. On information and belief, ST had access to and knowledge of DJO's earlier, original United States user manual for the COMPEX Wireless device (the "COMPEX Wireless USA User Manual"). The U.S. Copyright Office has issued U.S. Copyright Reg. No. TX 8-228-319 (Certificate of Registration attached as Exhibit I), covering the original, creative work reflected in the COMPEX Wireless USA User Manual.

98. On information and belief, ST had access to and knowledge of DJO's earlier, original European Union user manual for the COMPEX Wireless device (the "COMPEX Wireless EU User Manual"). The U.S. Copyright Office has issued U.S. Copyright Reg. No. TX 8-228-310 (Certificate of Registration attached as Exhibit J), covering the original, creative work reflected in the COMPEX Wireless EU User Manual.

99. On information and belief, ST had access to and knowledge of DJO's earlier, original user manual for the COMPEX Performance device (the "COMPEX Performance EU User Manual"). The U.S. Copyright Office has issued U.S. Copyright Reg. No. TX 8-228-316 (Certificate of Registration attached as Exhibit K), covering the original, creative work reflected in the COMPEX Performance EU User Manual.

100. On information and belief, with access to and knowledge of the COMPEX Wireless USA User Manual, the COMPEX Wireless EU User Manual, and/or the

COMPEX Performance EU User Manual, ST prepared and published the POWERDOT Instruction Manual. Substantial portions of text of the POWERDOT Instruction Manual have been materially copied and derived—in many cases, verbatim—from the COMPEX Wireless USA User Manual. On information and belief, the POWERDOT Instruction Manual has been made available on the website(s) of ST (www.getpowerdot.com) and/or Powerdot (www.mypowerdot.com).

101. The comparisons in Exhibit L illustrate examples of the substantial portions of text that were lifted and copied from the COMPEX Wireless USA User Manual into the POWERDOT Instruction Manual.

FIRST CAUSE OF ACTION

(Infringement of the '366 Patent)

(Asserted Against Powerdot and ST)

102. Plaintiff re-alleges and incorporates the allegations in each of the preceding paragraphs as if fully set forth herein.

103. DJO is the owner of U.S. Patent No. 8,977,366, which was duly and legally issued by the United States Patent & Trademark Office on March 10, 2015, and is presumed to be valid and enforceable pursuant to 35 U.S.C. § 282.

104. Powerdot and ST have infringed and continue to infringe one or more claims of the '366 patent, including at least claim 1, by knowingly and actively making, having made, importing, using, offering to sell, or selling products that infringe one or more claims of the '366 patent, including, but not limited to, POWERDOT Model No. PD-01, or components thereof.

105. Powerdot's and ST's infringing conduct will continue unless enjoined by this Court.

106. As a direct and proximate result of Powerdot's and ST's infringing activities, DJO has suffered, and will continue to suffer, irreparable injury.

1 107. On information and belief, despite an objectively high likelihood that their
2 actions constituted infringement of the '366 patent, Powerdot and ST have infringed and
3 continue to infringe the '366 patent.

4 **SECOND CAUSE OF ACTION**

5 (Infringement of the '896 Patent)

6 (Asserted Against Powerdot and ST)

7 108. Plaintiff re-alleges and incorporates the allegations in each of the preceding
8 paragraphs as if fully set forth herein.

9 109. DJO is the owner of U.S. Patent No. 9,220,896, which was duly and legally
10 issued by the United States Patent & Trademark Office on December 29, 2015, and is
11 presumed to be valid and enforceable pursuant to 35 U.S.C. § 282.

12 110. Upon information and belief, Powerdot and ST have infringed and continue
13 to infringe one or more claims of the '896 patent, including at least claim 7, by
14 knowingly and actively making, having made, importing, using, offering to sell, or
15 selling products that infringe one or more claims of the '896 patent, including, but not
16 limited to, POWERDOT Model No. PD-01, or components thereof

17 111. Powerdot's and ST's infringing conduct will continue unless enjoined by
18 this Court.

19 112. As a direct and proximate result of Powerdot's and ST's infringing
20 activities, DJO has suffered, and will continue to suffer, irreparable injury.

21 113. On information and belief, despite an objectively high likelihood that their
22 actions constituted infringement of the '896 patent, Powerdot and ST have infringed and
23 continue to infringe the '896 patent.

THIRD CAUSE OF ACTION

(Infringement of the '409 Patent)

(Asserted Against Powerdot and ST)

114. Plaintiff re-alleges and incorporates the allegations in each of the preceding paragraphs as if fully set forth herein.

115. DJO is the owner of the U.S. Patent No. 8,452,409, which was duly and legally issued by the United States Patent & Trademark Office on May 28, 2013, and is presumed to be valid and enforceable pursuant to 35 U.S.C. § 282.

116. Powerdot and ST have infringed and continue to infringe one or more claims of the '409 patent, including at least claim 1, by knowingly and actively making, having made, importing, using, offering to sell, or selling products that infringe one or more claims of the '409 patent, including, but not limited to, POWERDOT Model No. PD-01, or components thereof.

117. Powerdot's and ST's infringing conduct will continue unless enjoined by this Court.

118. As a direct and proximate result of Powerdot's and ST's infringing activities, DJO has suffered, and will continue to suffer, irreparable injury.

119. On information and belief, despite an objectively high likelihood that their actions constituted infringement of the '409 patent, Powerdot and ST have infringed and continue to infringe the '409 patent.

FOURTH CAUSE OF ACTION

(Infringement of the '091 Patent)

(Asserted Against Powerdot and ST)

120. Plaintiff re-alleges and incorporates the allegations in each of the preceding paragraphs as if fully set forth herein.

121. DJO is the owner of U.S. Patent No. 9,242,091, which was duly and legally issued by the United States Patent & Trademark Office on January 26, 2016, and is presumed to be valid and enforceable pursuant to 35 U.S.C. § 282.

122. Powerdot and ST have infringed and continue to infringe one or more claims of the '091 patent, including at least claim 1, by knowingly and actively making, having made, importing, using, offering to sell, or selling products that infringe one or more claims of the '091 patent, including, but not limited to, POWERDOT Model No. PD-01 or components thereof.

123. Powerdot's and ST's infringing conduct will continue unless enjoined by this Court.

124. As a direct and proximate result of Powerdot's and ST's infringing activities, DJO has suffered, and will continue to suffer, irreparable injury.

125. On information and belief, despite an objectively high likelihood that their actions constituted infringement of the '091 patent, Powerdot and ST have infringed and continue to infringe the '091 patent.

FIFTH CAUSE OF ACTION

(Copyright Infringement)

(Asserted Against Powerdot and ST)

126. Plaintiff re-alleges and incorporates the allegations in each of the preceding paragraphs as if fully set forth herein.

127. DJO is the owner of U.S. Copyright Reg. Nos. TX 8-228-310, TX 8-228-316, and TX 8-228-319, which were duly and legally issued by the United States Copyright Office effective August 16, 2016, and which are presumed to be valid pursuant to 17 U.S.C. § 410(c).

128. ST and Powerdot have had access to the COMPEX Wireless USA User Manual, the COMPEX Wireless EU User Manual, and the COMPEX Performance EU User Manual.

129. ST and Powerdot have directly copied and/or materially derived substantial textual elements from the COMPEX Wireless USA User Manual, the COMPEX Wireless EU User Manual, and the COMPEX Performance EU User Manual, and have incorporated them into the POWERDOT Instruction Manual.

130. In copying DJO's user manual, ST and Powerdot have violated the copyright laws of the United States, under 17 U.S.C. § 101, et seq.

131. ST and Powerdot have knowingly and willfully infringed upon DJO's rights in and to its user manual. By reason and as a direct result of these acts of copyright infringement by DJO has suffered, and will continue to suffer, irreparable damage.

SIXTH CAUSE OF ACTION

(Violation of Defend Trade Secrets Act)

(Asserted Against Glader, Marvin, and Powerdot)

132. Plaintiff re-alleges and incorporates the allegations in each of the preceding paragraphs as if fully set forth herein.

133. Defendants' conduct, set forth in the paragraphs above, constitutes one or more acts of actual or threatened misappropriation of trade secrets within the meaning of the Defend Trade Secrets Act, 18 U.S.C. 1836(b) *et seq.*

134. DJO's confidential, proprietary, and competitively sensitive information, taken and/or acquired by Defendants, constitute trade secrets under 18 U.S.C. § 1839(3). This information qualifies as a trade secret because DJO derives independent economic value from its not being generally known to the public or to other persons who can obtain economic value from its disclosure or use. Further, the information acquired by Defendants is a trade secret because DJO treats it, and has taken reasonable efforts to keep it, as such.

135. Without DJO's consent, Glader, Marvin, and Powerdot have knowingly acquired, disclosed, used, and continue to use DJO's trade secrets, or have threatened to acquire, disclose, and/or use DJO's trade secrets. These trade secrets include, but are not limited to, (1) the amount of revenue generated by each COMPEX product; (2) the names

1 and personal contact information of athlete endorsers for the COMPEX products; (3) the
 2 names and personal contact information of potential athlete endorsers for the COMPEX
 3 products; (4) the terms of any executed and/or standard endorsement agreements between
 4 DJO and any athlete endorsers; (5) the amount of revenue each athlete endorser,
 5 including Celebrities A, B, C and D, generated for DJO; (6) the amount of compensation
 6 paid to each athlete endorser, including Celebrities A, B, C and D; (7) the value of DJO's
 7 return on investment for each athlete endorser, including each of Celebrities A, B, C and
 8 D; (8) the types of activities that each athlete endorser is expected to perform on behalf of
 9 DJO; (9) the nature and extent of DJO's use of additional athletes as outside sales
 10 consultants or representatives for COMPEX products; (10) the amount of revenue
 11 generated by such outside athlete sales consultants or representatives; (11) the marketing
 12 strategy, marketing budget, and budget allocations for DJO's radio, podcast, television,
 13 Internet and print advertisements; and (12) the return on investment for DJO's media
 14 advertising efforts; amongst other information. Glader, Marvin, and Powerdot
 15 misappropriated DJO's trade secrets through improper means.

16 136. The improper means used by Glader, Marvin, and Powerdot to
 17 misappropriate DJO's trade secrets include Glader's breaching specific provisions of the
 18 Glader Employment Agreement and the Glader Separation Agreement and Glader's
 19 sending DJO documents embodying or describing trade secrets to Glader's personal
 20 email and private computers for use by, and for the benefit of, DJO's competitors,
 21 Powerdot and ST. Likewise, Marvin's interception, withholding, and diversion of highly
 22 confidential communications with DJO's endorsers, Marvin's use of DJO's trade secret
 23 information to convert those marketing opportunities to Powerdot, and Marvin's
 24 unauthorized business instructions to those endorsers constituted the misappropriation
 25 and misuse of DJO's trade secrets.

26 137. Glader and Marvin have misappropriated these trade secrets by disclosing
 27 them to DJO's competitors, Powerdot and ST, economic adversaries of DJO, who have
 28

1 already used those trade secrets to displace DJO's hard-earned economic advantage.
2 Glader and Marvin abandoned DJO for positions at Powerdot, a company that seeks to
3 establish itself as DJO's major competitor. Glader and Marvin have disclosed or used
4 DJO's trade secrets in their new positions at, and for the benefit of, Powerdot. Glader's
5 and Marvin's disclosure and/or use has already caused, and is likely to continue causing,
6 economic injury to DJO, as Powerdot and ST will then have access to trade secrets that
7 otherwise provide DJO with a distinct competitive advantage over Powerdot and ST.

8 138. DJO has suffered, and will continue to suffer, damages as a result of
9 Glader's, Marvin's and Powerdot's misappropriation of its trade secrets including, but
10 not limited to, loss of revenue and loss of profits, in an amount to be fully determined at
11 trial. DJO is entitled to recover any and all such damages for its actual losses caused by
12 the misappropriation of its trade secrets.

13 139. DJO is also entitled to recover monetary relief measured by the unjust
14 enrichment caused by the misappropriation of its trade secrets, resulting from the conduct
15 described herein. In the alternative, DJO is entitled to reasonable royalties for the
16 unlawful theft and use of its trade secret information.

17 140. Glader's and Marvin's misappropriation of DJO's trade secrets was
18 intentional, fraudulent, and malicious, and was made in conscious disregard of DJO's
19 rights—and of Glader's and Marvin's contractual obligations to DJO. Accordingly, DJO
20 is further entitled to an award of exemplary damages in an amount to be proven at trial,
21 but equal to twice the amount of actual damages, unjust enrichment, or reasonable
22 royalty payment awarded to DJO. DJO is further entitled to an award of its attorney's
23 fees and costs incurred in prosecuting this cause of action.

24 141. In addition to an award of appropriate monetary damages, DJO is entitled to
25 an injunction requiring Defendants to return all its trade secrets, and preventing
26 Defendants from any actual, further, and/or threatened misappropriation in the future.
27
28

SEVENTH CAUSE OF ACTION

(Violation of California Uniform Trade Secrets Act)

(Asserted Against Glader, Marvin, and Powerdot)

142. Plaintiff re-alleges and incorporates the allegations in each of the preceding paragraphs as if fully set forth herein.

143. Defendants' conduct, set forth in the paragraphs above, constitutes one or more acts of actual or threatened misappropriation of trade secrets within the meaning of the Uniform Trade Secrets Act, Cal. Civ. Code § 3426 *et seq.*

144. DJO's confidential, proprietary, and competitively sensitive information taken and/or acquired by Defendants constitute trade secrets under Cal. Civ. Code § 3426.1 This information qualifies as a trade secret because DJO derives independent economic value from its not being generally known to the public or to other persons who can obtain economic value from its disclosure or use. Further, the information acquired by Defendants is a trade secret because DJO treats it, and has taken reasonable efforts to keep it, as such.

145. The improper means used by Glader, Marvin, and Powerdot to misappropriate DJO's trade secrets include: Glader's breaching specific provisions of the Glader Employment Agreement and the Glader Separation Agreement; Glader's sending DJO documents embodying or describing trade secrets to Glader's personal email and private computers for use by, and for the benefit of, DJO's competitors, Powerdot and ST. Likewise, Marvin's interception, withholding, and diversion of highly confidential communications with DJO's endorsers, Marvin's use of DJO's trade secret information to convert those marketing opportunities to Powerdot, and Marvin's unauthorized business instructions to those endorsers constituted the misappropriation and misuse of DJO's trade secrets.

146. Glader, Marvin, and Powerdot have misappropriated these trade secrets by disclosing them to DJO's competitors, Powerdot and ST, economic adversaries of DJO,

1 who have already, or soon will, use those trade secrets to displace DJO's hard-earned
2 economic advantage. Glader and Marvin abandoned DJO for positions at Powerdot,
3 which seeks to establish itself as DJO's major competitor. Glader and Marvin have
4 disclosed or used DJO's trade secrets in their new positions at, and for the benefit of,
5 Powerdot. Glader's and Marvin's disclosure and/or use has already caused, and is likely
6 to continue causing, economic injury to DJO, as Powerdot and ST will then have access
7 to trade secrets that otherwise provide DJO with a distinct competitive advantage over
8 Powerdot and ST.

9 147. DJO has suffered, and will continue to suffer, damages as a result of
10 Glader's, Marvin's, and Powerdot's actual and/or threatened misappropriation of its trade
11 secrets including, but not limited to, loss of revenue and loss of profits, in an amount to
12 be fully determined at trial. DJO is entitled to recover any and all such damages for its
13 actual losses caused by the misappropriation of its trade secrets.

14 148. DJO is also entitled to recover monetary relief measured by the unjust
15 enrichment caused by the misappropriation of its trade secrets, resulting from the conduct
16 described herein. In the alternative, DJO is entitled to reasonable royalties for the
17 unlawful theft and use of its trade secret information.

18 149. Glader's and Marvin's misappropriation of DJO's trade secrets was
19 intentional, fraudulent, and malicious, and was made in conscious disregard of DJO's
20 rights—and of Glader's and Marvin's contractual obligations to DJO. Accordingly, DJO
21 is further entitled to an award of exemplary damages in an amount to be proven at trial,
22 but equal to twice the amount of actual damages, unjust enrichment, or reasonable
23 royalty payment awarded to DJO, pursuant to , Cal. Civ. Code § 3426.3. DJO is further
24 entitled to an award of its attorney's fees and costs incurred in prosecuting this cause of
25 action.

150. In addition to an award of appropriate monetary damages, DJO is entitled to an injunction requiring Defendants to return all its trade secrets, and preventing Defendants from any actual, further, and/or threatened misappropriation in the future.

EIGHTH CAUSE OF ACTION

(Breach of Contract – The Glader Employment Agreement)

(Asserted Against Glader)

151. Plaintiff re-alleges and incorporates the allegations in each of the preceding paragraphs as if fully set forth herein.

152. On July 25, 2014, Glader executed the Glader Employment Agreement.

153. In the Glader Employment Agreement, relative to Glader's best efforts and loyalty, Glader agreed (1) not to engage in any activity or outside interest that might deprive DJO of Glader's loyalty; (2) to dedicate all of his working time to DJO and use his best efforts to remain loyal and avoid conflicts of interest; (3) that it would be a conflict of interest for him to pursue business activities that compete with DJO while employed with DJO; and (4) to promptly inform DJO of any business opportunities related to DJO's line of business. (Ex. A, at ¶ 3.1.)

154. Glader breached Paragraph 3.1 of the Glader Employment Agreement by working for the benefit of Powerdot, and by beginning preparations to create sponsorship opportunities for the POWERDOT Product while still employed by DJO. Specifically, Glader engaged in the following actions: (1) contacting ST's CEO, Pisarev, to arrange a conference via Skype, during which, on information and belief, Glader and Pisarev discussed Glader's future work for ST and Powerdot towards marketing the POWERDOT Product in the United States; (2) sending emails from his DJO email account to his personal email account, which emails included confidential information, marketing plans and strategies, including known sponsorship opportunities for the COMPEX brand, and contact information for DJO's vendors, consultants, and/or agents for potential athlete sponsors; and (3) conspiring with Marvin and Castaneda, while they were all still employed by DJO, to redirect their efforts towards marketing and

1 distribution efforts for the POWERDOT Device, as evidenced by Marvin’s February 3,
2 2016 in which she asked “. . . are we taking her on for power dot?”

3 155. In the Glader Employment Agreement, Glader agreed, for a period of one
4 year following his termination, not to knowingly interfere with DJO’s relationship with
5 an employee or sales representative that Glader “worked with or received Confidential
6 Information about by soliciting, inducing or encouraging such an employee or sales
7 representative (independent contractor)” of DJO to leave DJO. (*Id.* at ¶ 3.3.)

8 156. Plaintiff is informed and verily believes that Glader breached Paragraph 3.1
9 of the Glader Employment Agreement by soliciting, directly or indirectly, his DJO co-
10 workers, including at least Marvin, Castaneda, Williams and Zinn, and inducing or
11 encouraging those individuals to leave DJO. In addition, Plaintiff is informed and verily
12 believes that Glader breached Paragraph 3.1 by soliciting, directly or indirectly, various
13 Network-affiliated athletic trainers who had served as sales representatives promoting
14 COMPEX products, namely, Trainers A, B, C, D, and E, and by inducing or encouraging
15 those sales representatives to leave DJO and begin working for the benefit of Powerdot.
16 Plaintiff is informed and verily believes that Glader accomplished these actions, at least
17 in part, via the campaign of misinformation about purported issues of contention between
18 COMPEX and the Network.

19 157. In the Glader Employment Agreement, Glader agreed to notify DJO in
20 writing of the identity of his new employer and his job title and responsibilities at least
21 ten days before he began work, to enable DJO to monitor Glader’s compliance with the
22 agreement. (*Id.* at ¶ 3.5.)

23 158. Glader breached Paragraph 3.5 of the Glader Employment Agreement by
24 failing to provide **any** notice that he would be working for Powerdot—DJO’s direct
25 competitor—much less that he would be involved in the corporate formation of
26 Powerdot, or serve as Powerdot’s registered agent, on behalf of ST.

1 159. In the Glader Employment Agreement Glader also agreed not to “disclose,
2 use, disseminate . . . or publish Confidential Information,” and acknowledged that this
3 obligation “shall continue after the termination of [his] employment for any reason.” (*Id.*
4 at ¶ 5.1.)

5 160. Glader breached Paragraph 5.1 of the Glader Employment Agreement by
6 disclosing to Powerdot and/or ST, and/or by using or disseminating for the benefit of
7 Powerdot and/or ST, DJO’s confidential information, including the information detailed
8 above in Paragraph 135.

9 161. In the Glader Employment Agreement, Glader also agreed to immediately
10 return to DJO any and all confidential information “and any and all information and
11 materials relating to Company’s business, products, personnel, suppliers or customers,
12 whether or not such material is deemed to be confidential or proprietary.” (*Id.* at ¶ 5.2.)
13 Glader also agreed to return to DJO “any and all property in my possession which
14 belongs to Company, including the following: . . . all customer files, account files, price
15 lists, product information, training manuals, promotional materials and handbooks, and
16 all other documents relating to Company’s business, products, personnel, suppliers and
17 customers.” (*Id.* at ¶ 5.3.)

18 162. Glader breached Paragraphs 5.2 and 5.3 of the Glader Employment
19 Agreement by sending emails from his DJO email account to his personal email account,
20 which emails included confidential information, marketing plans and strategies, including
21 known sponsorship opportunities for the COMPEX brand, and by retaining those
22 documents in his personal email and/or on his personal computer.

23 163. In the Glader Employment Agreement, relative to Glader’s obligation to use
24 DJO’s computers only for authorized company business, Glader agreed not to knowingly
25 use DJO’s computers or e-mail “to pursue or prepare to pursue competing business
26 interests or to undertake other activities that would be harmful to [DJO’s] legitimate
27 business interests.” (Ex. A, at ¶ 5.4.)
28

164. Glader breached Paragraph 5.4 of the Glader Employment Agreement by sending emails from his DJO email account to his personal email account, which emails included confidential information, marketing plans and strategies that Glader intended to use to pursue Powerdot's business interests. Powerdot is a competitor of DJO, and Glader's activities have been, and continue to be, harmful to DJO's legitimate business interests.

165. As a result of Glader's breaches detailed above, DJO has suffered, and will continue to suffer, irreparable harm. Indeed, in a section entitled "Special Remedies," Glader expressly recognized that any breach of Sections 3, 4 or 5 of the Glader Employment Agreement—*i.e.*, the breaches detailed above—"will cause [DJO] irreparable harm that cannot be compensated adequately by an award of monetary damages," and agreed that DJO may "seek and obtain injunctive relief in addition to damages." (*Id.* at ¶ 7.1.) As another result of Glader's breaches, DJO has suffered monetary harm in an amount to be proven at trial.

166. As a result of the harm suffered as alleged herein, Plaintiff is entitled to all of the remedies available under the laws of the State of California, including equitable remedies and damages in an amount to be determined at trial.

NINTH CAUSE OF ACTION

(Breach of Contract – The Glader Separation Agreement)

(Asserted Against Glader)

167. Plaintiff re-alleges and incorporates the allegations in each of the preceding paragraphs as if fully set forth herein.

168. On February 29, 2016, Glader executed the Glader Separation Agreement.

169. In the Glader Separation Agreement, [REDACTED]

[REDACTED]

[REDACTED]

1 170. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 171. In the Glader Separation Agreement, [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 172. [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 173. In the Glader Separation Agreement, [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 174. In addition, the Glader Separation Agreement provides [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 175. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 176. [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 177. The Glader Separation Agreement provides [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28

1 [REDACTED]
2 [REDACTED]
3 178. As a result of Glader's breaches detailed above, DJO has suffered, and will
4 continue to suffer, irreparable harm. As another result of Glader's breaches, DJO has
5 suffered monetary harm in an amount to be proven at trial.

6 179. As a result of the harm suffered as alleged herein, Plaintiff is entitled to all
7 of the remedies available under the laws of the State of California, including equitable
8 remedies and damages in an amount to be determined at trial.

9 **TENTH CAUSE OF ACTION**

10 (Breach of Fiduciary Duty)

11 (Asserted Against Glader)

12 180. Plaintiff re-alleges and incorporates the allegations in each of the preceding
13 paragraphs as if fully set forth herein.

14 181. By virtue of his senior position within the DJO organization, serving as
15 Senior Director of Business Development for the COMPEX products, Glader owed DJO
16 a fiduciary duty. That fiduciary duty required Glader to act in the best interests of DJO,
17 and not in his own best interests, or for the best interests of Powerdot.

18 182. Glader breached his fiduciary duty to DJO. While still employed by DJO,
19 Glader actively took steps to prepare for his eventual formation of Powerdot and his
20 marketing of the POWERDOT Product. These steps include (1) contacting ST's CEO,
21 Pisarev, to arrange a conference via Skype, during which, on information and belief,
22 Glader and Pisarev discussed Glader's future work for ST and Powerdot towards
23 marketing the POWERDOT Product in the United States; (2) sending emails from his
24 DJO email account to his personal email account, which emails included confidential
25 information, marketing plans and strategies, including known sponsorship opportunities
26 for the COMPEX brand, and contact information for DJO's vendors, consultants and/or
27 agents for potential athlete sponsors; and (3) conspiring with Marvin and Castaneda,
28

1 while they were all still employed by DJO, to redirect their efforts towards marketing and
2 distribution efforts for the POWERDOT Device, as evidenced by Marvin's February 3,
3 2016 in which she asked " . . . are we taking her on for power dot?"

4 183. As a result of Glader's breaches detailed above, amongst others, DJO has
5 suffered, and will continue to suffer, irreparable harm. As another result of Glader's
6 breaches, DJO has suffered monetary harm in an amount to be proven at trial.

7 184. As a result of the harm suffered as alleged herein, Plaintiff is entitled to all
8 of the remedies available under the laws of the State of California, including equitable
9 remedies and damages in an amount to be determined at trial.

10 **ELEVENTH CAUSE OF ACTION**

11 (Breach of Duty of Loyalty)

12 (Asserted Against Glader)

13 185. Plaintiff re-alleges and incorporates the allegations in each of the preceding
14 paragraphs as if fully set forth herein.

15 186. By virtue of employment at DJO, Glader owed DJO a duty of loyalty. That
16 duty of loyalty required Glader to take advantage of opportunities in the field of DJO's
17 business for the benefit of DJO—and not to divert such opportunities for the benefit of
18 himself or Powerdot.

19 187. While still employed by DJO, Glader breached his duty of loyalty by
20 actively taking steps to prepare for his eventual formation of Powerdot and his marketing
21 of the POWERDOT Product. These steps include (1) contacting ST's CEO, Pisarev, to
22 arrange a conference via Skype, during which, on information and belief, Glader and
23 Pisarev discussed Glader's future work for ST and Powerdot towards marketing the
24 POWERDOT Product in the United States; (2) sending emails from his DJO email
25 account to his personal email account, which emails included confidential information,
26 marketing plans and strategies, including known sponsorship opportunities for the
27 COMPEX brand, and contact information for DJO's vendors, consultants and/or agents
28

1 for potential athlete sponsors; and (3) conspiring with Marvin and Castaneda, while they
 2 were all still employed by DJO, to redirect their efforts towards marketing and
 3 distribution efforts for the POWERDOT Device, as evidenced by Marvin's February 3,
 4 2016 in which she asked "...are we taking her on for power dot?"

5 188. As a result of Glader's breaches detailed above, DJO has suffered, and will
 6 continue to suffer, irreparable harm. As another result of Glader's breaches, DJO has
 7 suffered monetary harm in an amount to be proven at trial.

8 189. As a result of the harm suffered as alleged herein, Plaintiff is entitled to all
 9 of the remedies available under the laws of the State of California, including equitable
 10 remedies and damages in an amount to be determined at trial.

11 **TWELFTH CAUSE OF ACTION**

12 (Breach of Contract – The Marvin Consultant Agreement)

13 (Asserted Against Marvin)

14 190. Plaintiff re-alleges and incorporates the allegations in each of the preceding
 15 paragraphs as if fully set forth herein.

16 191. On November 6, 2014, Marvin executed the Marvin Consultant Agreement.

17 192. In the Marvin Consultant Agreement, Marvin agreed not to "divert or
 18 attempt to divert or take advantage of or attempt to take advantage of any actual or
 19 potential business or opportunities of DJO" that Marvin became aware of as the result of
 20 her consulting relationship with DJO. (Ex. B, at ¶ 11(b).)

21 193. Marvin breached Paragraph 11(b) of the Marvin Consulting Agreement in
 22 numerous ways. First, on February 12, 2016, Marvin received an email from Celebrity
 23 Athlete B who asked (on behalf of one of his Instagram followers) if he could run a
 24 discount code for COMPLEX products. Celebrity Athlete B's request represented an actual
 25 business opportunity for the sale of COMPLEX products. However, instead of notifying
 26 anyone else at DJO about Celebrity Athlete B's request, or providing Celebrity Athlete B
 27 with a discount code herself, Marvin responded: "Not right now. We are in transition
 28

1 with something so I would just sit tight on promoting anything right now.” Celebrity
2 Athlete B later began promoting the POWERDOT Product.

3 194. Second, on February 26, 2016, Marvin received an email from Trainer A, a
4 previous COMPEX promoter, who told Marvin she had an opportunity coming in April
5 and asked whether that would be “too soon.” Marvin responded “We should be ready to
6 go by then,” and she later told Trainer A “Let me talk to Eric [Glader] and see how he
7 wants to handle it.” Trainer A’s email reflected an actual or potential business
8 opportunity for the COMPEX products, and Marvin diverted that opportunity for the
9 benefit of Powerdot.

10 195. Third, and also on February 26, 2016, Marvin wrote in an email that she had
11 been contacting “all of our [Network-affiliated] agents and athletes [to] let them know to
12 stop posting/promoting Compex ASAP.” Plaintiff is informed and verily believes that
13 Marvin actively and intentionally sabotaged numerous business relationships between
14 DJO and various COMPEX promoters and social media posters, and actively and
15 intentionally prevented those Network-affiliated promoters from continuing to provide
16 actual and potential business opportunities for the COMPEX products. Plaintiff is
17 informed and verily believes that Marvin accomplished these actions, at least in part, via
18 the campaign of misinformation about purported issues of contention between COMPEX
19 and the Network, together with the withholding and diversion of crucial communications
20 and other information originally intended for DJO.

21 196. Fourth, on February 29, 2016, Marvin diverted a sponsorship opportunity
22 relative to Gym A’s event, who offered to give Marvin “first dibs at being our sponsor
23 for [the event] in lieu of Compex.” Plaintiff is informed and verily believes that Powerdot
24 was the sponsor for the event.

25 197. Fifth, on March 16, 2016, Marvin received an email from an individual
26 writing on behalf of the Podcast, asking “what Compex’s plan is with the [Podcast] for
27 2016,” and stating that the Podcast “would like to continue our relationship.” Marvin did
28

1 not discuss this business opportunity with anyone at DJO. Instead, she forwarded the
2 email directly to Glader's personal email address, and Glader responded "Call him. Fill
3 him in. Tell him we have something groundbreaking coming out in April and to hold
4 off." On information and belief, Marvin called the individual to "fill him in" about the
5 expected April debut of the POWERDOT Product.

6 198. Sixth, on March 21, 2016, Castaneda received an email from a DJO
7 employee regarding a message received from Gym B, asking for a demo of COMPEX
8 products. Castaneda forwarded the email to Marvin, and the two discussed whether the
9 DJO team is "staying" or "coming over." Plaintiff is informed and verily believes that, on
10 July 23, 2016, Powerdot sponsored an event held by Gym B.

11 199. As a result of Marvin's breaches detailed above, DJO has suffered, and will
12 continue to suffer, irreparable harm. As another result of Marvin's breaches, DJO has
13 suffered monetary harm in an amount to be proven at trial.

14 200. As a result of the harm suffered as alleged herein, Plaintiff is entitled to all
15 of the remedies available under the laws of the State of California, including equitable
16 remedies and damages in an amount to be determined at trial.

17 **THIRTEENTH CAUSE OF ACTION**

18 (Tortious Interference with Contract)

19 (Asserted Against Glader, Marvin, and Powerdot)

20 201. Plaintiff re-alleges and incorporates the allegations in each of the preceding
21 paragraphs as if fully set forth herein.

22 202. DJO's relationships with its employees and athletic sponsors are an
23 important asset of DJO. DJO has a legitimate interest in maintaining a stable work force
24 and protecting its relationships against solicitation and/or interference.

25 203. Each of Castaneda, Williams, Zinn, and Marvin had entered into valid
26 employment or independent consultant contracts with DJO, and Glader was aware of
27 those contracts.

28 204. Powerdot, Glader and Marvin intentionally engaged in acts designed to

1 interfere with DJO's relationships with Castaneda, Williams, and Zinn, by encouraging
2 each of them to breach their contracts and/or disrupt their contractual relationships with
3 DJO. In turn, each of Castaneda, Williams, and Zinn have terminated their contractual
4 relationships with DJO.

5 205. Celebrity Athlete D entered into a valid agreement with DJO, namely, the
6 Celebrity Athlete D Endorsement Agreement. Glader, and Powerdot by extension, were
7 aware of the Celebrity Athlete D Endorsement Agreement, which Glader executed on
8 behalf of DJO. Glader was also aware that the Celebrity Athlete D Endorsement
9 Agreement lasted until November 30, 2016.

10 206. Glader left DJO in February 2016. Marvin left DJO in March 2016.
11 Castaneda, Williams, and Zinn had all left DJO by May 2016. Plaintiff is informed and
12 verily believes that Marvin, Castaneda, Williams, and Zinn now perform work for
13 Powerdot, either as employees or independent contractors. In or around mid-June 2016,
14 Powerdot announced Celebrity Athlete D's endorsement of Powerdot on Instagram, and
15 Celebrity Athlete D has since posted pictures of the POWERDOT Product on her own
16 Instagram account.

17 207. Powerdot, Glader and Marvin intentionally engaged in acts designed to
18 interfere with DJO's relationship with Celebrity Athlete D, and induced Celebrity Athlete
19 D to breach [REDACTED] the Celebrity Athlete D Endorsement Agreement, [REDACTED]

20 [REDACTED]
21 [REDACTED] As a result of Glader's and
22 Powerdot's inducement, Celebrity Athlete D breached the Celebrity Athlete D
23 Endorsement Agreement with DJO. Plaintiff is informed and verily believes that
24 Powerdot, Glader and Marvin accomplished these actions, at least in part, via the
25 campaign of misinformation about purported issues of contention between COMPEX and
26 the Network, as well as through the intentional withholding and diversion of
27 communications originally intended for DJO.

28 208. As a result of these breaches and disruptions in DJO's contractual

relationships, DJO has suffered, and will continue to suffer, irreparable harm. Likewise, DJO has suffered monetary harm in an amount to be proven at trial.

209. As a result of the harm suffered as alleged herein, Plaintiff is entitled to all of the remedies available under the laws of the State of California, including equitable remedies and damages in an amount to be determined at trial

FOURTEENTH CAUSE OF ACTION

(Tortious Interference with Prospective Economic Advantage)

(Asserted Against Glader, Marvin, and Powerdot)

210. Plaintiff re-alleges and incorporates the allegations in each of the preceding paragraphs as if fully set forth herein.

211. DJO's relationships with its athletic endorsers and with its independent sales representatives are important assets of DJO. DJO expended significant effort and resources to secure those relationships. DJO has a legitimate interest in maintaining ongoing relationships with athletic endorsers and independent sales representatives, who generate revenue for DJO.

212. Celebrities A, B, and C entered into endorsement agreements with DJO. DJO's agreements with Celebrities A and B ended as of December 31, 2015. Despite being "out of contract," Celebrity Athlete A posted a COMPEX endorsement to Instagram in January 2016. Further, Celebrity Athlete B emailed Marvin in February 2016, asking to run a discount code for COMPEX products. Both Celebrities A and B thereby expressed interest in continuing their endorsement relationships with DJO. In turn, DJO had every expectation of resigning Celebrities A and B to new endorsement deals.

213. Celebrity Athlete C's agreement ended as of March 1, 2016. Despite being "out of contract," Celebrity Athlete C continued to post endorsements for COMPEX products to Instagram in March 2016. Celebrity Athlete C posted a COMPEX endorsement on Instagram on March 30, 2016, including a discount code. Also on March 30, however, Celebrity Athlete C exchanged emails with Castaneda, and spoke with

1 Marvin (and possibly Castaneda) on the phone. Despite her post that day, Celebrity
2 Athlete C emailed DJO asking to hold off on any new sponsorship agreements until May.
3 Still, she agreed to make the post that same day, saying her “followers would love it.”
4 Celebrity Athlete C expressed interest in continuing her endorsement relationships with
5 DJO, and DJO had every expectation of resigning Celebrity Athlete C to a new
6 endorsement deal.

7 214. Powerdot, Glader and Marvin were aware of DJO’s business relationships
8 with Celebrities A, B, and C, and of DJO’s expectations and prospective economic
9 advantages to continue its relationships with those athlete endorsers. Further, Glader,
10 Powerdot and Marvin intentionally engaged in wrongful acts designed to disrupt DJO’s
11 relationships with those athlete endorsers, by encouraging them not to re-engage with
12 DJO. Further, Glader, Powerdot, and Marvin encouraged Celebrities A, B, and C to
13 instead become endorsers for the POWERDOT Product, thereby disrupting their
14 relationships with DJO. Plaintiff is informed and verily believes that Powerdot, Glader,
15 and Marvin accomplished these actions, at least in part, via the campaign of
16 misinformation about purported issues of contention between COMPEX and the
17 Network, as well as through the intentional withholding and diversion of communications
18 originally intended for DJO.

19 215. Each of Trainers A, B, C, D, and E served as independent sales
20 representatives for COMPEX products, and generated revenue for DJO by promoting
21 such products. Powerdot, Glader, and Marvin were aware of DJO’s business
22 relationships with Trainers A, B, C, D, and E, and of DJO’s expectations and prospective
23 economic advantages to continue its relationships with those independent sales
24 representatives. Further, Glader, Powerdot and Marvin intentionally engaged in wrongful
25 acts designed to disrupt DJO’s relationships with those independent sales representatives,
26 by encouraging them not to re-engage with DJO. Further, Glader, Powerdot and Marvin
27 encouraged independent sales representatives to instead become sales representatives for
28 the POWERDOT Product, thereby disrupting their relationships with DJO. Plaintiff is

1 informed and verily believes that Powerdot, Glader and Marvin accomplished these
2 actions, at least in part, via the campaign of misinformation about purported issues of
3 contention between COMPEX and the Network.

4 216. Powerdot, Glader, and Marvin also engaged in acts that are independently
5 wrongful, apart from the interference itself. These independently wrongful acts include
6 Glader's and Powerdot's misappropriation of DJO's trade secrets, including Glader's
7 emailing himself confidential information, Glader's and Powerdot's continued use of
8 DJO's marketing plans and strategies, and Glader's and Marvin's breaches of their
9 respective agreements with DJO, as well as through the intentional withholding and
10 diversion of communications originally intended for DJO.

11 217. As a result of these disruptions in DJO's contractual relationships, DJO has
12 suffered, and will continue to suffer, irreparable harm. Likewise, DJO has suffered
13 monetary harm in an amount to be proven at trial.

14 218. As a result of the harm suffered as alleged herein, Plaintiff is entitled to all
15 of the remedies available under the laws of the State of California, including equitable
16 remedies and damages in an amount to be determined at trial.

17 **FIFTEENTH CAUSE OF ACTION**

18 (Violation of California Unfair Competition Law)

19 (Asserted Against Glader, Marvin, and Powerdot)

20 219. Plaintiff re-alleges and incorporates the allegations in each of the preceding
21 paragraphs as if fully set forth herein.

22 220. Powerdot's, Glader's, and Marvin's business practices as alleged above in
23 the preceding causes of action violate California's Unfair Competition Law, Business &
24 Professions Code § 17200 *et seq.*, which prohibits any "unlawful business act or
25 practice." Defendants have engaged in numerous unlawful business acts and practices,
26 including (1) violating DJO's exclusive patent rights; (2) violating DJO's exclusive
27 copyright rights; (3) misappropriating DJO's confidential information and trade secrets;
28 (4) Glader's numerous breaches of his contracts with DJO; (5) Glader's breaches of his

1 fiduciary duty and duty of loyalty; (6) Marvin's numerous breaches of her contract with
 2 DJO; (7) Powerdot's, Glader's and Marvin's tortious interference with DJO's contractual
 3 relationships, and (8) Powerdot's, Glader's and Marvin's tortious interference with
 4 DJO's prospective economic advantage, among other things.

5 221. As a result of these violations of the Unfair Competition Law, DJO has
 6 suffered, and will continue to suffer, irreparable harm. Likewise, DJO has suffered
 7 monetary harm in an amount to be proven at trial.

8 222. As a result of the harm suffered as alleged herein, Plaintiff is entitled to all
 9 of the remedies available under the laws of the State of California, including equitable
 10 remedies and damages in an amount to be determined at trial.

11 **SIXTEENTH CAUSE OF ACTION**

12 (Civil Conspiracy)

13 (Asserted Against Glader, Marvin, and Powerdot)

14 223. Plaintiff re-alleges and incorporates the allegations in each of the preceding
 15 paragraphs as if fully set forth herein.

16 224. Before Powerdot was formed by Glader, Glader and Marvin conspired,
 17 while still employed by DJO, to steal DJO's trade secrets and other confidential
 18 information, and to tortiously interfere with DJO's contractual relationships and
 19 prospective economic advantage, by actively diverting endorsement, sponsorship and
 20 other marketing opportunities away from DJO. Glader and Marvin agreed to achieve
 21 these unlawful objectives by using their inside knowledge of DJO's endorsement,
 22 sponsorship and other marketing opportunities against DJO, for the eventual benefit of
 23 Powerdot.

24 225. In furtherance of this conspiracy, Glader and Marvin engaged in numerous
 25 overt acts, including: (1) misappropriating DJO's confidential information and trade
 26 secrets; (2) intentionally engaging in acts designed to tortiously interfere with DJO's
 27 contractual relationships with Castaneda, Williams, Zinn, and Celebrity Athlete D; (3)
 28 intentionally engaging in acts designed to tortiously interfere with DJO's prospective

1 economic advantage with Celebrities A, B, and C, and Trainers A, B, C, D, and E; and
2 intentionally withholding and diverting communications originally intended for DJO.

3 226. As a result of this conspiracy, DJO has suffered, and will continue to suffer,
4 irreparable harm. Likewise, DJO has suffered monetary harm in an amount to be proven
5 at trial.

6 227. As a result of the harm suffered as alleged herein, Plaintiff is entitled to all
7 of the remedies available under the laws of the State of California, including equitable
8 remedies and damages in an amount to be determined at trial.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiff respectfully prays that the Court grant the following
11 relief:

12 A. That this Court find that Powerdot and ST have infringed each of the
13 Asserted Patents;

14 B. That this Court find that Powerdot and ST have, without authorization,
15 infringed DJO's exclusive copyright rights in the COMPEX Performance EU User
16 Manual, the COMPEX Wireless USA User Manual, and the COMPEX Wireless EU User
17 Manual, and that Powerdot and ST did so willfully;

18 C. That this Court find that Glader, Marvin, and Powerdot have violated the
19 Defend Trade Secrets Act by misappropriating DJO's trade secrets, and that Glader,
20 Marvin, and Powerdot did so willfully;

21 D. That this Court find that Glader, Marvin, and Powerdot have violated the
22 California Uniform Trade Secrets Act by misappropriating DJO's trade secrets, and that
23 Glader, Marvin, and Powerdot did so willfully;

24 E. That this Court find that Glader breached the Glader Employment
25 Agreement, and that Glader did so willfully;

26 F. That this Court find that Glader breached the Glader Separation Agreement,
27 and that Glader did so willfully;

G. That this Court find that Glader breached his fiduciary duty and his duty of loyalty to DJO, and that Glader did so willfully;

H. That this Court find that Marvin breached the Marvin Consultant Agreement, and that Marvin did so willfully;

I. That this Court find that Glader, Marvin, and Powerdot tortiously interfered with DJO's contractual relationships with Castaneda, Williams, Zinn and Celebrity Athlete D, and that Glader, Marvin, and Powerdot did so willfully;

J. That this Court find that Glader, Marvin, and Powerdot tortiously interfered with DJO's prospective economic advantage with Celebrity Athletes A, B, and C, and that Glader, Marvin, and Powerdot did so willfully;

K. That this Court find that Glader, Marvin, and Powerdot violated California's Unfair Competition Law, Business & Professions Code § 17200 *et seq.*, and that Glader, Marvin, and Powerdot did so willfully;

L. That this Court find that Glader, Marvin, and Powerdot conspired to misappropriate DJO's trade secrets, and to tortiously interfere with DJO's contractual relationships, by diverting endorsement, sponsorship and other marketing opportunities away from DJO for the benefit of Powerdot, and that Glader, Marvin, and Powerdot did so willfully;

M. That Defendants, and their officers, agents, servants, employees, and all other persons in active concert and/or participation with them who receive notice, be preliminarily and permanently enjoined and restrained from:

- i. Infringement of the Asserted Patents;
- ii. Infringement of DJOs copyrights in the COMPEX User Manuals;
- iii. Misappropriating DJO's trade secrets;
- iv. Further breaching any of the Glader Employment Agreement, the Glader Separation Agreement and/or the Marvin Consultant Agreement;

- v. Tortiously interfering with DJO's contractual relationships, including DJO's ongoing contractual relationship with Celebrity Athlete D;
- vi. Tortiously interfering with DJO's prospective economic advantage, including DJO's ongoing contractual relationship with Celebrity Athlete D;
- vii. Diverting any endorsement, sponsorship or other marketing opportunities of which Defendants were aware while working for DJO, for the benefit of Powerdot;
- viii. Engaging in any unlawful business act or practice, pursuant to California's Unfair Competition Law, Business & Professions Code § 17200 *et seq.*;

N. That this Court award DJO any and all damages necessary to compensate DJO for Defendants' wrongful conduct, including at least the following:

- i. An award of damages adequate to compensate Plaintiffs for patent infringement, as well as prejudgment interest from the date the infringement began, but in no event less than a reasonable royalty as permitted by 35 U.S.C. § 284;
- ii. DJO's actual damages and any additional profits of ST and Powerdot for their copyright infringement of the COMPEX User Manuals, pursuant to 17 U.S.C. § 504;
- iii. DJO's damages for its actual losses, together with any unjust enrichment of Powerdot, ST and Glader, caused by the misappropriation of DJO's trade secrets, but in no event less than a reasonable royalty, pursuant to 18 U.S.C. § 1836(b)(3)(B) and pursuant to Cal. Civ. Code § 3426.3;
- iv. An award of double DJO's damages for the willful and malicious misappropriation of DJO's trade secrets, 18 U.S.C. § 1836(b)(3)(C) and Cal. Civ. Code § 3426.3(c);

v. DJO's damages resulting from (a) Glader's willful breach of the Glader Employment Agreement, (b) Glader's breach of the Glader Separation Agreement, and (c) Marvin's breach of the Marvin Consultant Agreement, including, at a minimum:

(1) Pursuant to Paragraph [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(2) Pursuant to Paragraph [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

vi. DJO's damages resulting from Glader's willful breach of his fiduciary duty and his duty of loyalty;

vii. DJO's damages resulting from Glader's, Marvin's, and Powerdot's tortious interference with DJO's contractual relationships with Castaneda, Williams, Zinn and Celebrity Athlete D;

viii. DJO's damages resulting from Glader's, Marvin's, and Powerdot's tortious interference with DJO's prospective economic advantage with Celebrities A, B and C;

ix. DJO's damages resulting from Glader's, Marvin's, and Powerdot's violation of California's Unfair Competition Law, Business & Professions Code § 17200 *et seq.*; and

x. DJO's damages resulting from the conspiracy amongst Glader, Martin, and Powerdot to misappropriate DJO's trade secrets, and to tortiously interfere with DJO's contractual relationships, by diverting

endorsement, sponsorship and other marketing opportunities away from DJO for the benefit of Powerdot;

O. That this Court find that Powerdot's and Glader's misappropriation of DJO's trade secrets was willful and malicious, and award costs and attorneys' fees incurred by Plaintiffs in prosecuting this action as provided by 18 U.S.C. § 1836(b)(2)(D) and Cal. Civ. Code § 3426.4;

P. That this Court award pre-judgment and post-judgment interest as provided by law; and

Q. For such other and further relief as this Court or a jury may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues triable by jury.

DATED: August 31, 2016

GREENBERG TRAURIG, LLP

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