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9 OPTI MEDICAL SYSTEMS, INC.

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 OPTI MEDICAL SYSTEMS, INC. a corporation,

13 Plaintiff,

14 v.

15 OPTIMEDICAL INC., a corporation,
16 and MICHAEL TODD, an individual,

17 Defendants.

Case No. **'12CV1452 DMS JMA**

COMPLAINT FOR:

1. Federal Trademark Infringement in Violation of 15 U.S.C. § 1114(1)
2. Federal Trademark Infringement, Unfair Competition, and False Designation of Origin in Violation of 15 U.S.C. § 1125(a)
3. Cybersquatting in Violation of 15 U.S.C. § 1125(d)
4. Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.*
5. Trademark Infringement in Violation of California's Common Law
6. Unfair Competition in Violation of California's Common Law
7. Unjust Enrichment

JURY TRIAL DEMANDED

1 For its Complaint against defendants OptiMedical Inc. and Michael Todd (each a
2 “Defendant” and together, “Defendants”), plaintiff OPTI Medical Systems, Inc.
3 (hereafter, “Plaintiff” or “OPTI Medical”) hereby states and alleges as follows:

4 **THE PARTIES**

5 1. Plaintiff OPTI Medical is a Delaware corporation having a place of
6 business at 235 Hembree Park Drive, Roswell, Georgia 30076.

7 2. Upon information and belief, Defendant OptiMedical is a California
8 corporation having a place of business at 161 Laurel Ridge Drive, Simi Valley, California
9 93065.

10 3. Upon information and belief, Defendant Michael Todd is an individual
11 and citizen of the United States residing in the state of California at 690A East Los
12 Angeles Avenue #185, Simi Valley, CA 93065.

13 **NATURE OF THE ACTION**

14 4. This action by Plaintiff OPTI Medical against Defendant OptiMedical and
15 Defendant Michael Todd seeks permanent injunctive relief and damages under Sections
16 32(1) and 43(a) of the Lanham Act of 1946, as amended (“Lanham Act”), 15 U.S.C.
17 §§ 1114(1) and 1125(a), the transfer of the <optimedicalcorp.com> domain name under
18 Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(d), and permanent injunctive relief
19 and damages under the statutory and common laws of the State of California.

20 5. For over 17 years, OPTI Medical has manufactured, marketed, and sold
21 medical diagnostic equipment under the trade name OPTI Medical and the trademarks
22 OPTI MEDICAL, OPTI, and OPTIMEDICAL & design, among others (collectively, the
23 “OPTI MEDICAL Marks”). As a result of OPTI Medical’s long and continuous use of
24 the distinctive OPTI MEDICAL Marks and trade name, and its extensive promotion of
25 the OPTI MEDICAL brand and products, the OPTI MEDICAL Marks and trade name
26 have attained widespread public recognition and renown throughout the United States
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1 and the world as identifiers of OPTI Medical's high-quality medical diagnostic
2 equipment.

3 6. Long after Plaintiff OPTI Medical acquired rights to the OPTI MEDICAL
4 Marks and trade name, Defendants began using the mark and trade name
5 OPTIMEDICAL in connection with their medical equipment and associated
6 distributorship services.

7 7. Not only are Defendants' OPTIMEDICAL mark and trade name identical
8 and confusingly similar to OPTI Medical's OPTI MEDICAL Marks and trade name,
9 Defendants also use the OPTIMEDICAL mark and trade name in connection with
10 medical equipment and associated distributorship services that are highly related to the
11 sale of OPTI Medical's medical equipment. In addition, Defendants registered and began
12 using the <*optimedicalcorp.com*> domain name in connection with their medical
13 equipment and associated distributorship services long after OPTI Medical registered and
14 began using the <*optimedical.com*> domain name.

15 8. Immediately upon learning of Defendants' use of the OPTIMEDICAL
16 mark and trade name and the <*optimedicalcorp.com*> domain name, OPTI Medical
17 promptly demanded that Defendants cease all use of the OPTIMEDICAL mark and trade
18 name, and transfer the domain name <*optimedicalcorp.com*> to OPTI Medical.

19 9. Although OPTI Medical has attempted several times to negotiate with
20 Defendants in good faith, Defendants have refused to cease their use of OPTIMEDICAL
21 as a mark and trade name for their medical equipment and associated distributorship
22 services and to transfer the <*optimedicalcorp.com*> domain name to OPTI Medical,
23 which has left OPTI Medical with no alternative but to file this action.

24 10. Unless Defendants are enjoined from their continued use of the
25 OPTIMEDICAL mark and trade name, and are required to transfer the
26 <*optimedicalcorp.com*> domain name to OPTI Medical, the OPTI MEDICAL Marks and
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1 trade name will continue to be infringed, to the detriment of OPTI Medical and the
2 public.

3 **JURISDICTION AND VENUE**

4 11. This Court has subject matter jurisdiction over this action under Sections
5 1331 (federal question jurisdiction), 1338(a) (trademark infringement and unfair
6 competition), and 1338(b) and 1367(a) (supplemental jurisdiction over claims arising
7 under California's statutory and common laws) of the United States Code, 28 U.S.C.
8 §§ 1331, 1338(a), 1338(b), and 1367(a), and under Section 39(a) of the Lanham Act, 15
9 U.S.C. § 1121(a).

10 12. Upon information and belief, this Court has personal jurisdiction over
11 Defendants because Defendants reside and conduct business in the State of California. In
12 addition, the claims alleged herein arise from Defendants' acts in the State of California,
13 and Defendants' acts have damaged OPTI Medical in the State of California.

14 13. Upon information and belief, venue is proper in this judicial district under
15 Section 1391(b)(2) of the United States Code, 28 U.S.C. §§1391(b)(2), because
16 Defendants transact business in this judicial district and because a substantial part of the
17 events giving rise to the claims alleged herein occurred in this district.

18 **BACKGROUND**

19 **OPTI Medical and Its Valuable Trademark Rights**

20 14. OPTI Medical is a global leader in the medical diagnostic equipment
21 industry. OPTI Medical's commitment to manufacturing and marketing the highest-
22 quality medical diagnostic equipment has led the company to achieve enormous success
23 since it first began selling medical equipment over 17 years ago. OPTI Medical is well-
24 recognized today by consumers as a trusted and valued source of medical diagnostic
25 equipment.

26 15. As early as May 19, 1995, OPTI Medical adopted and began to use the
27 OPTI MEDICAL Marks and trade name in commerce in the United States in connection
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with its medical diagnostic equipment. Since then, OPTI Medical has used the OPTI MEDICAL Marks and trade name continuously in commerce in the United States and throughout the world in connection with the sales of its medical diagnostic equipment.

16. On an annual basis, OPTI Medical ships approximately 6 million items, all labeled with the OPTI trademark, to over 12,000 customers worldwide.

17. OPTI Medical advertises, offers, and sells its medical diagnostic equipment under and in connection with the OPTI MEDICAL Marks and trade name to consumers throughout the United States, including in San Diego and Los Angeles, California.

18. The OPTI MEDICAL Marks and trade name are always prominently featured in OPTI Medical's advertising and promotional materials. As an example, a snapshot of OPTI Medical's website displaying the OPTI MEDICAL Marks and trade name is depicted below:



True and correct copies of printouts from OPTI Medical's website are annexed hereto as **Exhibit 1**.

19. OPTI Medical registered and has used the <optimedical.com> domain name since December 18, 2006 in connection with the advertising, offering, and selling of its medical diagnostic equipment under and in connection with the OPTI MEDICAL Marks and trade name. The WHOIS records for the foregoing domain name are annexed hereto as **Exhibit 2**. OPTI Medical uses the <optimedical.com> domain name as the primary domain name for its company, and the above snapshot of its website is accessible through the <optimedical.com> domain name.

20. Because of OPTI Medical's long use and extensive advertising and promotion of the OPTI MEDICAL Marks and trade name, it has come to be and is now recognized and relied upon by the trade and the public as identifying OPTI Medical's diagnostic equipment and distinguishing it from others.

21. In addition to its longstanding common law rights in the OPTI MEDICAL Marks and trade name, OPTI Medical is the exclusive owner of the following federal trademark registrations:

- U.S. Reg. No. 2,178,782 for the trademark OPTI for "medical apparatus, namely medical instruments comprising blood, gas, electrolyte metabolite, and co-oximetry analyzers for analysis of blood and body fluids," which issued on August 4, 1998 and has achieved incontestable status; and
- U.S. Reg. No. 3,432,242 for the trademark OPTIMEDICAL & design (depicted below) for "blood gas analyzers for veterinary and medical use," which issued on May 20, 2008.

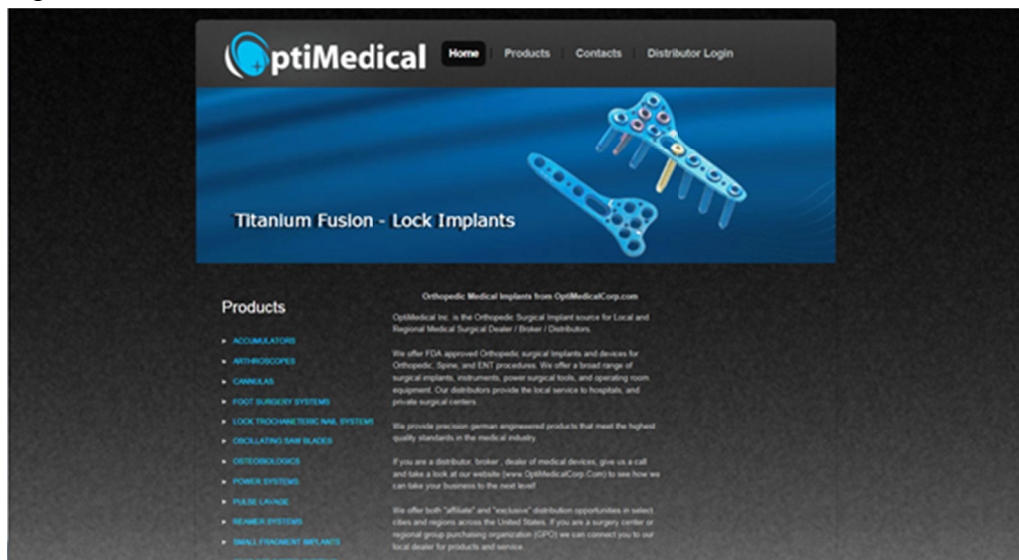


Annexed hereto as **Exhibit 3** are true and correct copies of the foregoing Certificates of Registration.

22. The OPTI MEDICAL Marks and trade name are distinctive and represent the valuable goodwill and reputation belonging exclusively to OPTI Medical.

Defendants' Wrongful Conduct

23. Upon information and belief, Defendants registered the <optimedicalcorp.com> domain name through their website developer, Certified Networks, Inc. of Thousand Oaks, California, on April 28, 2011, and have used the <optimedicalcorp.com> domain name in connection with their main website for advertising, offering, and selling their medical equipment and rendering their distributorship services under and in connection with the OPTIMEDICAL mark and trade name. A snapshot of Defendants' website displaying the OPTIMEDICAL mark and trade name and describing the goods and services they offer and purport to sell and render under and in connection with the OPTIMEDICAL mark and trade name is depicted below:



Annexed hereto as **Exhibit 4** is a true and correct copy of the WHOIS record for the <optimedicalcorp.com> domain name showing the date on which Certified Networks, Inc. registered it. True and correct copies of printouts from Defendants' website located at <optimedicalcorp.com> are annexed hereto as **Exhibit 5**.

1 24. Upon information and belief, Defendants advertise, offer, and sell their
2 medical equipment and render their distributorship services to consumers throughout the
3 United States, including in San Diego and Los Angeles, California.

4 25. OPTI Medical first learned of Defendants' use of the OPTIMEDICAL
5 mark and trade name and the <*optimedicalcorp.com*> domain name in connection with
6 their medical equipment and associated distributorship services in or around February
7 2012. That discovery promptly led OPTI Medical to demand that Defendants cease all
8 use of the OPTIMEDICAL mark and trade name. A true and correct copy of OPTI
9 Medical's letter to Defendants dated March 30, 2012 is annexed hereto as **Exhibit 6**.

10 26. OPTI Medical's attorney telephoned Defendants on May 16, 2012 at the
11 telephone number listed on their website at <*optimedicalcorp.com*>, and spoke with
12 Defendant Todd regarding OPTI Medical's concerns about Defendants' use of the
13 OPTIMEDICAL mark and trade name.

14 27. OPTI Medical's attorney and Defendant Todd have engaged in numerous
15 discussions since the initial telephone conversation on May 16, 2012. To date,
16 Defendants are unwilling to discontinue their use of the OPTIMEDICAL mark and trade
17 name, which has left OPTI Medical with no alternative but to file this action.

18 28. Defendants' use of the OPTIMEDICAL mark and trade name is likely to
19 cause confusion as to whether Defendants' goods and services originate from or are
20 somehow sponsored or endorsed by, or affiliated with OPTI Medical.

21 29. OPTI Medical never consented to or authorized Defendants' use of the
22 OPTIMEDICAL mark and trade name. In fact, OPTI Medical expressly objected to such
23 use, as alleged herein.

24 30. Upon information and belief, Defendants' goods and services advertised,
25 offered, sold, and rendered under the OPTIMEDICAL mark and trade name are directed
26 to the same or similar consumers of OPTI Medical's medical equipment, and through the
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1 same or similar channels of trade as are used by OPTI Medical to advertise, offer, and
2 sell its medical equipment under the OPTI MEDICAL Marks and trade name.

3 31. Defendants' use of the OPTIMEDICAL mark and trade name is with
4 disregard to OPTI Medical's rights.

5 32. Defendants' conduct constitutes an ongoing threat to OPTI Medical and
6 the public. OPTI Medical has suffered and will continue to suffer irreparable injury as a
7 result of Defendants' conduct, which injury is not compensable by monetary damages.
8 Unless Defendants are restrained and enjoined from engaging in their infringing conduct,
9 OPTI Medical will continue to suffer irreparable injury.

10 **FIRST CAUSE OF ACTION**

11 ***(Trademark Infringement in Violation of 15 U.S.C. § 1114(1))***

12 33. OPTI Medical incorporates herein by reference each and every allegation
13 in the preceding paragraphs.

14 34. Long before Defendants adopted and used the OPTIMEDICAL mark and
15 trade name, Defendants had either actual notice and knowledge or constructive notice
16 (pursuant to 15 U.S.C. § 1072) of OPTI Medical's ownership of the OPTI MEDICAL
17 Marks and trade name, registration of the OPTI and OPTIMEDICAL & design
18 trademarks (among others), and registration of the <optimedical.com> domain name.

19 35. Upon information and belief, Defendants' advertising, offering, and
20 selling of medical equipment and rendering of associated distributorship services under
21 the OPTIMEDICAL mark and trade name is an attempt to trade off of the goodwill,
22 reputation, and selling power established by OPTI Medical under the OPTI MEDICAL
23 Marks and trade name, and is an attempt to create a false impression of association with
24 OPTI Medical.

25 36. Upon information and belief, Defendants' continued advertising, offering,
26 and selling of medical equipment and rendering of associated distributorship services
27 under the OPTIMEDICAL mark and trade name and the <optimedicalcorp.com> domain
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1 name after OPTI Medical demanded that Defendants cease all use of the OPTIMEDICAL
2 mark and trade name and <optimedicalcorp.com> domain name, is a deliberate and
3 willful attempt to trade off of the goodwill, reputation, and selling power established by
4 OPTI Medical under the OPTI MEDICAL Marks and trade name, and is a deliberate and
5 willful attempt to create a false impression of association with OPTI Medical.

6 37. Upon information and belief, Defendants' goods and services advertised,
7 offered, sold, and rendered under the OPTIMEDICAL mark and trade name move
8 through the same or similar channels of trade, and are offered, sold, and/or rendered
9 through the same or similar channels of distribution and to the same or similar consumer
10 groups as the goods that are offered and sold by OPTI Medical under the OPTI
11 MEDICAL Marks and trade name.

12 38. Defendants' continued unauthorized use of the OPTIMEDICAL mark and
13 trade name is also likely to cause consumers to be confused as to the source, nature, and
14 quality of the goods and services that Defendants offer and render in connection with the
15 OPTIMEDICAL mark and trade name.

16 39. Defendants' continued unauthorized use of the OPTIMEDICAL trade
17 name and mark will falsely indicate to consumers that their goods and services originate
18 from or are in some manner connected with, sponsored by, affiliated with, or related to
19 OPTI Medical, and/or the goods offered and sold by OPTI Medical.

20 40. Defendants' continued unauthorized use of the OPTIMEDICAL trade
21 name and mark facilitates the acceptance of Defendants' goods and services throughout
22 the marketplace, not based on the quality of the goods and services provided by
23 Defendants, but on the association that the public is likely to make with OPTI Medical
24 and the reputation and goodwill associated with OPTI Medical's medical equipment.

25 41. Defendants' unauthorized use of the OPTIMEDICAL trade name and
26 mark deprives OPTI Medical of the ability to control the quality of the goods and
27 services marketed under the trade name and mark, and instead places OPTI Medical's
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1 valuable reputation and goodwill into the hands of Defendants, over whom OPTI Medical
2 has no control.

3 42. The conduct of Defendants alleged herein is likely to cause confusion or
4 mistake or to deceive consumers or potential consumers wishing to purchase and use
5 Defendants' goods and services, and is also likely to confuse consumers as to an
6 affiliation between OPTI Medical and Defendants.

7 43. Defendants' conduct alleged herein constitutes federal trademark
8 infringement in violation of Section 1114(1) of the Lanham Act, 15 U.S.C. § 1114.

9 44. OPTI Medical has been, is now, and will be harmed irreparably by
10 Defendants' conduct alleged herein, and unless enjoined by the Court, Defendants will
11 continue to infringe upon the OPTI MEDICAL Marks and trade name. There is no
12 adequate remedy at law for the harm caused by the acts of infringement alleged herein.

13 45. As a direct and proximate result of Defendants' infringing conduct, OPTI
14 Medical has suffered and will continue to suffer irreparable injury to its business
15 reputation and goodwill for which no adequate remedy exists at law.

16 46. Defendants' conduct alleged herein is knowing, willful, and deliberate,
17 entitling OPTI Medical to an accounting of any of Defendants' profits, increased
18 damages, and an award of its attorneys' fees and costs incurred in prosecuting this action
19 under Section 1117 of the Lanham Act, 15 U.S.C. § 1117.

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21 **SECOND CAUSE OF ACTION**

22 ***(Trademark Infringement, Unfair Competition, and False
Designation of Origin in Violation of 15 U.S.C. § 1125(a))***

23 47. OPTI Medical incorporates herein by reference each and every allegation
24 in the preceding paragraphs.

25 48. OPTI Medical is informed and believes that Defendants chose the trade
26 name and mark OPTIMEDICAL, and took the other actions alleged herein, to cause
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1 confusion or mistake, or to deceive the public as to the origin, sponsorship, association or
 2 approval of its goods and services, deliberately to pass off their goods and services as
 3 those of OPTI Medical, and/or to falsely imply an association with OPTI Medical.

4 49. Defendants' conduct alleged herein constitutes, among other things, false
 5 designation of origin, which is likely to cause confusion or mistake, or to deceive the
 6 public as to the origin, sponsorship, association, or approval of the goods and services by
 7 OPTI Medical.

8 50. Defendants' conduct constitutes trademark infringement and unfair
 9 competition in violation of Section 1125(a) of the Lanham Act, 15 U.S.C. § 1125(a).

10 51. Unless enjoined, Defendants will continue their infringing conduct.

11 52. As a direct and proximate result of Defendants' infringing conduct, OPTI
 12 Medical will suffer irreparable injury to its business reputation and goodwill for which no
 13 adequate remedy exists at law.

14 53. Defendants' complained-of conduct is knowing, willful, and deliberate,
 15 entitling OPTI Medical to an accounting of Defendants' profits, increased damages, and
 16 an award of its attorneys' fees and costs incurred in prosecuting this action under 15
 17 U.S.C. § 1117.

18 **THIRD CAUSE OF ACTION**

19 ***(Cybersquatting in Violation of 15 U.S.C. § 1125(d))***

20 54. OPTI Medical incorporates herein by reference each and every allegation
 21 in the preceding paragraphs.

22 55. Defendants' <optimedicalcorp.com> domain name is confusingly similar
 23 to OPTI Medical's OPTI MEDICAL Marks and trade name and, except for the mere
 24 addition of the generic term "corp," is identical to OPTI Medical's <optimedical.com>
 25 domain name, which OPTI Medical registered and used long before Defendants
 26 registered or used the <optimedicalcorp.com> domain name.
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1 56. Defendants have registered, trafficked in, used, and/or are using the
2 <optimedicalcorp.com> domain name with the bad faith intent to profit from OPTI
3 Medical's OPTI MEDICAL Marks and trade name. In particular, upon information and
4 belief, Defendants have registered and used the <optimedicalcorp.com> domain name in
5 order to divert consumers from OPTI Medical's website to a website accessible under the
6 <optimedicalcorp.com> domain name that could harm the goodwill represented by the
7 OPTI MEDICAL Marks and trade name for commercial gain, by creating a likelihood of
8 confusion as to the source, sponsorship, affiliation, or endorsement of the website. In
9 addition, Defendants are using a domain name that is virtually identical to OPTI
10 Medical's domain name, and confusingly similar to OPTI Medical's Marks and trade
11 name, to operate a website that advertises, offers, and purports to sell medical equipment
12 and render distributorship services that compete with OPTI Medical's sale of its own
13 medical equipment.

14 57. Defendants' actions constitute a violation of Section 43(d) of the Lanham
15 Act, 15 U.S.C. § 1125(d). OPTI Medical has been, is now, and will be harmed
16 irreparably by Defendants' conduct alleged herein, and, unless enjoined by the Court,
17 Defendants' unauthorized use of the <optimedicalcorp.com> domain name will continue,
18 and there is no adequate remedy at law for the harm caused by the acts alleged herein.

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20 **FOURTH CAUSE OF ACTION**

21 ***(Unfair Unlawful and Deceptive Business Practices***
22 ***in Violation of Cal. Bus. & Prof. Code § 17200 et seq.)***

23 58. OPTI Medical incorporates herein by reference each and every allegation
24 in the preceding paragraphs.

25 59. Defendants' business practices alleged herein are unfair and offend public
26 policy as they are unlawful, unfair, unscrupulous, and substantially injurious to OPTI
27 Medical and consumers.
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1 goods and services as those of OPTI Medical, or as somehow related or associated with,
2 or sponsored or endorsed by, OPTI Medical.

3 67. By reason of Defendants' complained-of conduct, OPTI Medical has
4 suffered and is suffering actual, permanent, and irreparable injury, the extent of which is
5 presently not known, and OPTI Medical will continue to suffer damage and irreparable
6 injury unless Defendants are enjoined permanently from the use of the OPTIMEDICAL
7 mark and trade name.

8 68. As alleged herein, Defendants' continued, unauthorized use of the
9 OPTIMEDICAL mark and trade name is willful, with knowledge of the likelihood of
10 confusion between OptiMedical and OPTI Medical's OPTI MEDICAL Marks and trade
11 name. Therefore, OPTI Medical is entitled to recover punitive damages under Section
12 3294 of California's Civil Code.

13 **SEVENTH CAUSE OF ACTION**

14 ***(Unjust Enrichment)***

15 69. OPTI Medical incorporates herein by reference each and every allegation
16 in the preceding paragraphs.

17 70. Defendants have received the benefits of the OPTI MEDICAL Marks and
18 trade name, without compensating OPTI Medical for such benefits.

19 71. Defendants have received such benefits unfairly.

20 72. By reason of the foregoing, Defendants unjustly were enriched, and
21 continue to be enriched unjustly, in an unknown amount, and OPTI Medical is entitled to
22 restitution.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, in consideration of the foregoing, OPTI Medical respectfully
25 requests that the Court enter an Order granting the following relief:

26 a) For judgment that the OPTI MEDICAL Marks and trade name have been
27 and will continue to be infringed by Defendants' use of the OPTIMEDICAL mark and
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1 trade name in violation of 15 U.S.C. §§ 1114(1) and 1125(a) and California's common
2 law;

3 b) For judgment that Defendants have competed unfairly with OPTI Medical
4 in violation of 15 U.S.C. § 1125(a);

5 c) For judgment that Defendants have committed cybersquatting in violation
6 of 15 U.S.C. § 1125(d);

7 d) For judgment that Defendants' acts offend public policy and are unlawful,
8 unfair, and unscrupulous and substantially injurious to OPTI Medical and its customers in
9 violation of §§ 17200 *et seq.* of California's Business and Professions Code;

10 e) For judgment that Defendants have competed unfairly with OPTI Medical
11 in violation of California's common law;

12 f) Permanently enjoining Defendants from using the OPTIMEDICAL mark
13 or trade name, or any other word, words, phrases, symbols, logos, or combination of
14 words or symbols that would create a likelihood of confusion, mistake and/or deception
15 with the OPTI MEDICAL Marks or trade name, in connection with medical goods and
16 services;

17 g) Permanently enjoining Defendants from otherwise infringing the OPTI
18 MEDICAL Marks and trade name and/or engaging in further such unlawful acts and
19 from reaping any additional commercial advantage from the misappropriation of the
20 rights of OPTI Medical in the OPTI MEDICAL Marks and trade name;

21 h) Ordering Defendants to recall all material containing the OPTIMEDICAL
22 mark and trade name, or any other word, words, phrases, symbols, logos, or combination
23 of words or symbols that would create a likelihood of confusion, mistake and/or
24 deception with the OPTI MEDICAL Marks and trade name, in connection with medical
25 goods and services;

26 i) Requiring Defendants to destroy, at their sole and exclusive cost, all
27 materials in their possession or under its control that bear the OPTIMEDICAL mark and
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1 trade name or any other word, words, phrases, symbols, logos, or combination of words
2 or symbols that would create a likelihood of confusion, mistake and/or deception with the
3 OPTI MEDICAL Marks or trade name, in connection with medical goods and services;

4 j) Declaring, adjudging, and decreeing that OPTI Medical is the sole legal
5 and equitable owner of the <optimedicalcorp.com> domain name and ordering
6 Defendants to transfer ownership of the <optimedicalcorp.com> domain name to OPTI
7 Medical;

8 k) For all actual damages sustained by OPTI Medical as the result of
9 Defendants' acts of infringement, together with prejudgment interest, according to proof,
10 under 15 U.S.C. § 1117;

11 l) For an accounting of Defendants' profits resulting from their acts of
12 infringement under 15 U.S.C. § 1117;

13 m) Such damages and profits to be trebled and awarded to OPTI Medical
14 under 15 U.S.C. § 1117 on the grounds that Defendants' continued acts of infringement
15 have been willful, deliberate, and in bad faith;

16 n) For an award of attorneys' fees under 15 U.S.C. § 1117 or as otherwise
17 permitted by law;

18 o) For OPTI Medical's costs of suit, including its reasonable litigation
19 expenses, under 15 U.S.C. § 1117;

20 p) Defendants be ordered to pay OPTI Medical damages for common law
21 trademark infringement, unjust enrichment, and unfair competition under California's
22 common law;

23 q) Defendants be ordered to pay OPTI Medical damages for unfair, unlawful,
24 and deceptive business practices in violation of §§ 17200 *et seq.* of California's Business
25 and Professions Code;

26 r) Defendants be directed to file with the Court and serve on OPTI Medical
27 within thirty (30) days after service of such injunction, a written report under 15 U.S.C.

1 § 1116 setting forth in detail the manner and form in which Defendants have complied
2 with the injunction; and

3 s) Granting OPTI Medical such additional, other, or further relief as the
4 Court deems just and proper.

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DEMAND FOR JURY TRIAL

OPTI Medical demands a trial by jury on all issues so triable.

DATED: June 14, 2012

Respectfully submitted,

FISH & RICHARDSON P.C.

By: /s/ Lisa M. Martens

Lisa M. Martens, Esq.

Attorneys for Plaintiff

OPTI MEDICAL SYSTEMS, INC.

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