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8 NEUROPTICS, INC.

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

FILED

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 NEUROPTICS, INC., a California corporation,
11 Plaintiff,
12 v.
13 NEUROPTIX CORPORATION, a Delaware
14 corporation,
15 Defendant.

Case No. **SACV 12 - 01253 AG (MLGx)**

COMPLAINT FOR:
TRADEMARK INFRINGEMENT; FALSE
DESIGNATION OF ORIGIN; COMMON
LAW UNFAIR COMPETITION;
STATUTORY UNFAIR COMPETITION;
FEDERAL TRADEMARK DILUTION

DEMAND FOR JURY TRIAL

17
18 Plaintiff NEUROPTICS, INC. ("NeurOptics") for its claims for relief against Defendant
19 NEUROPTIX CORPORATION ("Defendant") alleges as follows:

20 **I. NATURE OF ACTION AND RELIEF SOUGHT**

21 1. Plaintiff NeurOptics is a global leader in the design and manufacture of
22 pupillometers for ophthalmology, critical care, and research. In lay terms, the devices designed
23 and manufactured by NeurOptics collect and process information from the human eye for medical
24 testing and clinical research.

25 2. NeurOptics is the owner of the trademark "NEUROPTICS," as formally registered
26 with the United States Patent and Trademark Office ("USPTO") on September 23, 2003.

27 3. This action arises out of Defendant's marketing, advertising and possible sale of
28 goods in the optical medical device field using the confusingly similar term "NEUROPTIX." By

1 advertising and marketing itself as “NEUROPTIX,” Defendant has committed federal trademark
2 infringement, false designation of origin, federal trademark dilution and unfair competition.

3 4. Defendant was notified by the USPTO that its application for the mark
4 “NEUROPTIX” created a likelihood of confusion with NeurOptics’ registered mark.
5 Accordingly, the USPTO did not register the “NEUROPTIX” mark, and Defendant abandoned its
6 application. However, Defendant continued to employ the mark “NEUROPTIX” for marketing
7 and advertising purposes. As a result, Defendant’s use of “NEUROPTIX” constitutes willful
8 trademark infringement and/or willful dilution of NeurOptics’ mark.

9 5. Prior to filing this action, NeurOptics notified Defendant of NeurOptics’ ownership
10 of the “NEUROPTICS” trademark rights and requested Defendant cease uses of its phonetically
11 identical mark “NEUROPTIX,” but Defendant refused and to date continues to market and
12 advertise its business and products under the “NEUROPTIX” mark. As a result, Defendant’s use
13 of “NEUROPTIX” constitutes willful trademark infringement and/or willful dilution of
14 NeurOptics’ mark.

15 6. By filing this action, NeurOptics seeks provisional and permanent injunctive relief
16 enjoining Defendant from any further marketing of itself or its products bearing the confusingly
17 similar mark “NEUROPTIX,” and further seeks damages, including treble damages, resulting
18 from Defendant’s wrongful actions.

19 **II. JURISDICTION AND VENUE**

20 7. This Complaint arises under §§ 32, 43(a) and 43(c) of the Lanham Act, 15 U.S.C.
21 §§ 1114(1), 1125(a), and 1125(c), as amended, and the statutory and common laws of the State of
22 California.

23 8. This Court has original subject matter jurisdiction over this action pursuant to 15
24 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a). This Court has related claim jurisdiction over
25 the state law tort claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

26 9. This Court has specific jurisdiction over Defendant as its intentional acts
27 purposefully availed itself to this jurisdiction, the claims arise out of forum-related activities, and
28 the exercise of jurisdiction is reasonable. On information and belief, Defendant conducts business

1 within this forum to satisfy general jurisdiction.

2 10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a
3 substantial part of the events or omissions giving rise to the claims occurred in this district and a
4 substantial part of the property that is subject of the action is situated in this district.

5 **III. PARTIES**

6 11. NeurOptics is a corporation duly organized under the laws of the State of
7 California, having its principal place of business at 2082 Michelson Drive, Suite 450, Irvine,
8 California 92612.

9 12. NeurOptics is informed and believes, and on that basis alleges, that Defendant
10 Neuroptix Corporation is a corporation organized and existing under the law of the State of
11 Delaware, with its principal place of business at 20 Main St., Acton, MA, 07120. NeurOptics is
12 further informed and believes, and on that basis alleges, that Defendant is doing business,
13 marketing and advertising in the State of California, within this judicial district.

14 **IV. COMMON ALLEGATIONS FOR ALL CLAIMS**

15 13. NeurOptics is an internationally-known leader in the design and manufacture of
16 pupillometers, devices which collect and process information from the human eye for medical
17 testing and clinical research. NeurOptics advertises, markets and distributes products under the
18 federally-registered and trademarked name "NEUROPTICS." NeurOptics has spent significant
19 time and expense developing extensive goodwill in its trademark within the industry and its
20 clientele.

21 14. NeurOptics is the owner of an active federal trademark registration for the
22 "NEUROPTICS" mark, Registration Number 2,768,198, registration date September 23, 2003, as
23 well as nationwide common law trademark rights for the "NEUROPTICS" mark.

24 15. Prior to the wrongful acts of Defendant complained herein, NeurOptics has for
25 many years continuously marketed, advertised, and offered for sale, and sold, a variety of products
26 bearing the "NEUROPTICS" mark. NeurOptics also uses the "NEUROPTICS" mark to identify
27 the corporate website and attract internet visits through search engines. NeurOptics'
28 "NEUROPTICS" mark has played a significant role in the corporation's success.

1 16. NeurOptics markets and advertises its services and products in print, online and
2 through other media. In its marketing and advertising, NeurOptics uses its trademark
3 “NEUROPTICS” to attract and maintain clientele interested in medical devices.

4 17. NeurOptics’ “NEUROPTICS” mark, by virtue of its substantial use and promotion,
5 has acquired great value as an identifier of NeurOptics’ products, distinguishing NeurOptics from
6 other medical device providers.

7 18. As a result of NeurOptics’ extensive advertising, it is readily recognized in the
8 industry and distinguished from other medical device providers by the “NEUROPTICS”
9 trademark.

10 19. NeurOptics is informed and believes, and on that basis alleges, that on November
11 29, 2006, Defendant filed an application with the USPTO for the mark “NEUROPTIX,” for use
12 with the goods and services related to optical diagnostic medical devices.

13 20. NeurOptics is informed and believes, and on that basis alleges, that on July 31,
14 2008, the USPTO informed Defendant that the “NEUROPTIX” mark created a likelihood of
15 confusion with the previously registered “NEUROPTICS” trademark.

16 21. NeurOptics is informed and believe, and on that basis alleges, that on February 3,
17 2009, Defendant abandoned its attempt to register the “NEUROPTIX” mark with the USPTO.

18 22. Despite being made aware of NeurOptics perfected rights in the trademark
19 “NEUROPTICS,” Defendant continues to advertise, market and provide products (including
20 optical medical devices) willfully using the confusingly similar mark “NEUROPTIX.”

21 23. NeurOptics is informed and believe, and on that basis alleges, that Defendant’s
22 corporate website is “www.neuroptix.com,” confusingly similar to NeurOptics’ corporate website
23 is “www.neuroptics.com.”

24 24. In June 2009, a representative from NeurOptics contacted Defendant and informed
25 Defendant of NeurOptics’ rights in the “NEUROPTICS” trademark, as well as the likelihood of
26 confusion in the industry as a result of Defendant’s use of the “NEUROPTIX” mark. NeurOptics
27 requested that Defendant cease and desist from further infringing use of its mark.

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1 25. Around July 2009, Defendant acknowledged its use of the infringing mark but
2 requested sufficient time to remove the "NEUROPTIX" mark from its corporate name, website,
3 and other marketing endeavors. To date, Defendant has failed to cease and desist its use of marks
4 confusingly similar to the federally-registered "NEUROPTICS" mark.

5 26. NeurOptics is informed and believes, and on that basis alleges, that Defendant's
6 continued use of the mark "NEUROPTIX" in marketing and advertising is designed to cause
7 confusion, mistake, or deception amongst consumers and the industry, and lead to increased
8 activity on Defendant's website based upon NeurOptics' goodwill.

9 27. By virtue of their acts and conduct alleged above, Defendant has created injury to
10 NeurOptics' business, caused by a likelihood of confusion as to the source of origin and
11 sponsorship of Defendant's goods and have otherwise competed unfairly with NeurOptics. Such
12 likelihood of confusion includes but is not limited to confusion of consumers and the general
13 public that Defendant's products, which are advertised using the "NEUROPTIX" mark are
14 somehow connected with NeurOptics and its brand.

15 28. Defendant's acts and conduct alleged above have caused damage and irreparable
16 injury to NeurOptics in an amount to be determined at trial. Said acts and conduct will result in
17 further damage and irreparable injury to NeurOptics if Defendant is not restrained by this Court
18 from further violation of NeurOptics' rights, for which NeurOptics has no remedy at law.

19 V. CLAIMS FOR RELIEF

20 FIRST CLAIM FOR TRADEMARK INFRINGEMENT

21 29. The allegations of paragraphs 1 through 28 above are repeated and re-alleged as
22 though set forth fully herein.

23 30. This is a claim for trademark infringement pursuant to 15 U.S.C. § 1051 et seq.

24 31. NeurOptics is informed and believes, and on that basis alleges that Defendant's use
25 in interstate commerce of the mark "NEUROPTIX" on its website, in its marketing, in its
26 advertisements, and on its products is likely to cause confusion, to cause mistake or to deceive
27 customers as to the affiliation, connection or association with the "NEUROPTICS" trademark of
28 Plaintiff. By the foregoing acts, and continued use of the "NEUROPTIX" mark, Defendant has

1 infringed NeurOptics' federally-registered "NEUROPTICS" trademark in violation of 15 U.S.C. §
2 1114.

3 32. NeurOptics is informed and believes, and on that basis alleges, that Defendant
4 acted willfully, with intent to trade upon the goodwill and reputation of NeurOptics, and with the
5 intent to cause confusion, to cause mistake or to deceive consumers.

6 33. NeurOptics is entitled to all of the remedies available under the Lanham Act,
7 including actual damages, and an accounting of Defendant's profits, treble damages, costs and
8 attorneys' fees.

9 34. Defendant's acts, as alleged above, have caused damage and irreparable injury to
10 NeurOptics in an amount to be determined at trial. Said acts will result in further damage and
11 irreparable injury to NeurOptics if Defendant is not restrained by this Court from further violation
12 of NeurOptics' rights, for which NeurOptics has no adequate remedy at law.

13 **SECOND CLAIM FOR FALSE DESIGNATION OF ORIGIN**

14 35. The allegations of Paragraphs 1 through 28 above are repeated and re-alleged as
15 though set forth fully herein.

16 36. This is a claim for false designation of origin under 15 U.S.C. § 1125(a).

17 37. NeurOptics is informed and believes, and on that basis alleges, that Defendant's
18 use in interstate commerce of the mark "NEUROPTIX" to market and sell services and products
19 constitutes a false designation of origin, and a false description or representation of goods, tending
20 wrongfully and falsely to describe or represent a connection between NeurOptics' and Defendant's
21 goods and services. By these acts, Defendant has infringed NeurOptics' federally-registered and
22 common-law trademark in violation of 15 U.S.C. § 1125(a).

23 38. Defendant's activities are likely to lead the public to conclude incorrectly that
24 Defendant's products and services are produced or otherwise associated with NeurOptics or its
25 products or brand to the harm of NeurOptics and consumers.

26 39. NeurOptics is informed and believes, and on that basis alleges, that Defendant
27 acted willfully, with the intent to trade upon the goodwill and reputation of NeurOptics, and with
28 the intent to cause confusion, to cause mistake or to deceive customers.

1 40. NeurOptics is entitled to all of the remedies available under the Lanham Act,
2 including actual damages and an accounting of Defendant's profits, treble damages, costs and
3 attorneys' fees.

4 41. Defendant's acts, as alleged above, have caused irreparable injury to NeurOptics in
5 an amount to be determined at trial. Said acts will result in further damage and irreparable injury
6 to NeurOptics if Defendant is not restrained by this Court from further violation of NeurOptics'
7 rights, for which NeurOptics has no adequate remedy at law.

8 **THIRD CLAIM FOR STATUTORY UNFAIR COMPETITION**

9 42. The allegations of Paragraphs 1 through 28 above are repeated and re-alleged as
10 though set forth fully herein.

11 43. This is a claim for unfair competition arising under CAL. BUS. & PROF. CODE §
12 1720 *et seq.*

13 44. By reason of the foregoing acts, Defendant has intentionally caused a likelihood of
14 confusion among the public or have misled or deceived the public and have thus unfairly
15 competed with NeurOptics in violation of CAL. BUS. & PROF. CODE § 1720 *et seq.*

16 45. NeurOptics is entitled to all remedies available under CAL. BUS. & PROF. CODE
17 § 1720 including restitution, disgorgement, and injunctive relief.

18 46. By reason of Defendant's actions, Defendant has irreparably injured NeurOptics
19 and the consumer recognition and goodwill associated with Neuroptics' products, and such injury
20 will continue unless enjoined by this Court.

21 **FOURTH CLAIM FOR COMMON LAW UNFAIR COMPETITION**

22 47. The allegations of Paragraphs 1 through 28 above are repeated and re-alleged as
23 though set forth fully herein.

24 48. This is a claim for common law unfair competition under the common law of the
25 State of California.

26 49. By reason of the foregoing acts, Defendant has unfairly competed with NeurOptics
27 in violation of the common law of the State of California.

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50. Defendant's acts, as alleged above, have caused damage and irreparable injury to NeurOptics in an amount to be determined at trial. Said acts will result in further damage and irreparable injury to NeurOptics if Defendant is not restrained by this Court from further violation of NeurOptics' rights, for which NeurOptics has no adequate remedy at law.

FIFTH CLAIM FOR TRADEMARK DILUTION

51. The allegations of paragraphs 1 through 28 above are repeated and re-alleged as though set forth fully herein.

52. This is a claim for trademark infringement dilution to 15 U.S.C. § 1125(c).

53. Based on NeurOptics' extensive advertising, promotion and marketing, NeurOptics' federally-registered "NEUROPTICS" mark has become widely recognized by the consuming public of the United States as a designation of the source of products and services provided by NeurOptics.

54. NeurOptics' federally-registered "NEUROPTICS" mark became famous prior to Defendant's use of the confusingly similar, and phonetically identical, "NEUROPTIX" mark in marketing, advertising and on its website.

55. Defendant's use of the mark "NEUROPTIX" is likely to cause dilution by blurring, creating a likelihood of association between NeurOptics' famous "NEUROPTICS" mark and Defendant's products advertised bearing the "NEUROPTIX" mark, due to the similarity between the marks.

56. Defendant's use of the mark "NEUROPTIX" is likely to impair the distinctiveness of NeurOptics' "NEUROPTICS" mark.

57. In violation of 15 U.S.C. § 1125(c), Defendant willfully intended to trade upon or harm the recognition and reputation of NeurOptics.

58. NeurOptics is entitled to all of the remedies available under the Lanham Act, including injunctive relief, an accounting of Defendant's profits, treble damages, costs and attorney's fees.

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1 **VI. PRAYER FOR JUDGMENT**

2 WHEREFORE, NeurOptics prays for judgment against Defendant as follows:

3 **First Claim of Relief**

4 1. That NeurOptics' "NEUROPTICS" mark be deemed valid and willfully infringed
5 by Defendant in violation of 15 U.S.C. § 1114 *et seq.*;

6 2. That Defendant be required to account to NeurOptics for any and all profits derived
7 by it by reason of Defendant's acts complained herein;

8 3. The Defendant be ordered to pay to NeurOptics all damages which it has sustained
9 as a consequence of the acts complained herein, subject to proof at trial;

10 4. That such damages and profits be trebled and awarded to NeurOptics pursuant to
11 15 U.S.C. § 1117;

12 5. That Defendant be ordered to pay to NeurOptics attorney's fees and costs; and

13 6. That Defendant, its agents, servants, employees and attorneys, and all those persons
14 in active concert or participation with them, be forthwith preliminarily and thereafter permanently
15 enjoined, pursuant to 15 U.S.C. § 1116, from:

16 a. Manufacturing, selling distributing, marketing, advertising, licensing or authorizing
17 the manufacture or sale of any products or marketing and advertising materials
18 bearing the mark "NEUROPTIX";

19 b. Otherwise infringing NeurOptics' trademark rights; and

20 c. Causing a likelihood of confusion in the public as to the source or endorsement of
21 Defendant's products.

22 **Second Claim of Relief**

23 1. That Defendant be adjudged to have violated the provisions of 15 U.S.C. § 1125(a)
24 by falsely designating the origin of their products;

25 2. That Defendant be required to account to NeurOptics for any and all profits derived
26 by it by reason of Defendant's acts complained herein;

27 3. The Defendant be ordered to pay to NeurOptics all damages which it has sustained
28 as a consequence of the acts complained herein, subject to proof at trial;

4. That such damages and profits be trebled and awarded to NeuroOptics pursuant to 15 U.S.C. § 1117;

5. That Defendant be ordered to pay to NeuroOptics attorney's fees and costs; and

6. That Defendant, its agents, servants, employees and attorneys, and all those persons in active concert or participation with them, be forthwith preliminarily and thereafter permanently enjoined, pursuant to 15 U.S.C. § 1116, from:

- a. Manufacturing, selling distributing, marketing, advertising, licensing or authorizing the manufacture or sale of any products or marketing and advertising materials bearing the mark "NEUROPTIX";
- b. Otherwise infringing NeuroOptics' trademark rights;
- c. Falsely designating the origin of Defendant's products and services; and
- d. Causing a likelihood of confusion in the public as to the source or endorsement of Defendant's products.

Third Claim of Relief

1. That Defendant be adjudged to have unfairly competed with NeuroOptics under CAL. BUS. & PROF. CODE § 1720 *et seq.*;

2. That Defendant be required to account to NeuroOptics for any and all profits derived by it by reason of Defendant's acts complained herein;

3. The Defendant be ordered to pay to NeuroOptics restitution to restore NeuroOptics any lost profits and to deter future misconduct by Defendant;

4. That Defendant be ordered to pay to NeuroOptics attorney's fees and costs; and

5. That Defendant, its agents, servants, employees and attorneys, and all those persons in active concert or participation with them, be forthwith preliminarily and thereafter permanently enjoined, pursuant to CAL. BUS. & PROF. CODE § 1720 *et seq.*, from:

- a. Manufacturing, selling distributing, marketing, advertising, licensing or authorizing the manufacture or sale of any products or marketing and advertising materials bearing the mark "NEUROPTIX";
- b. Otherwise infringing NeuroOptics' trademark rights; and

- c. Causing a likelihood of confusion in the public as to the source or endorsement of Defendant's products.

Fourth Claim of Relief

1. That Defendant be adjudged to have unfairly competed with NeuroOptics under the common law of the State of California;
2. That Defendant be required to account to NeuroOptics for any and all profits derived by it by reason of Defendant's acts complained herein;
3. The Defendant be ordered to pay to NeuroOptics all damages which NeuroOptics has sustained as a consequence of the acts complained of herein, subject to proof at trial;
4. That Defendant be ordered to pay to NeuroOptics attorney's fees and costs; and
5. That NeuroOptics recover punitive damages pursuant to CAL. CIVIL CODE § 3294.

Fifth Claim of Relief

1. That Defendant be adjudged to have violated the provisions of 15 U.S.C. § 1125(c) by diluting the value of NeuroOptics' trademark;
2. That Defendant be required to account to NeuroOptics for any and all profits derived by it by reason of Defendant's acts complained herein;
3. The Defendant be ordered to pay to NeuroOptics all damages which it has sustained as a consequence of the acts complained herein, subject to proof at trial;
4. That Defendant be ordered to pay to NeuroOptics attorney's fees and costs; and
5. That Defendant, its agents, servants, employees and attorneys, and all those persons in active concert or participation with them, be forthwith preliminarily and thereafter permanently enjoined, pursuant to 15 U.S.C. § 1125(c), from:
 - a. Manufacturing, selling distributing, marketing, advertising, licensing or authorizing the manufacture or sale of any products or marketing and advertising materials bearing the mark "NEUROPTIX"; and
 - b. Otherwise infringing NeuroOptics' trademark rights.

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On All Claims of Relief

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2 1. That Defendant be directed to file with this Court and serve on Neuroptics within
3 thirty (30) days after the service of any injunction a report in writing, under oath, setting forth in
4 detail the manner and form in which Defendant has complied with such injunction;

5 2. That Neuroptics be awarded its costs, attorneys' fees and expenses in this suit
6 under 15 U.S.C. § 1117, CAL. BUS. & PROF. CODE § 1720 *et seq.*, and as otherwise provide by
7 law; and

8 3. That the Court award such other and further relief as it may deem just.
9

10 Dated: August 2, 2012

SCHWARTZ SEMERDJIAN
BALLARD & CAULEY LLP

11
12 By: 
13 John Schena, Esq.

14 Attorneys for Plaintiff Neuroptics, Inc.
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16

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff Neuroptics, Inc. hereby demands trial by jury in this action.

19 Dated: August 2, 2012

SCHWARTZ SEMERDJIAN
BALLARD & CAULEY LLP

20
21 By: 
22 John Schena, Esq.

23 Attorneys for Plaintiff Neuroptics, Inc.
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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Neuroptics, Inc., a California corporation	DEFENDANTS Neuroptix Corporation, a Delaware corporation
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) John A. Schena Schwartz Semerdjian Ballard & Cauley LLP 101 West Broadway, Suite 810 San Diego, CA 92101 619.236.8821	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table border="1" style="width:100%"><thead><tr><th></th><th>PTF</th><th>DEF</th><th></th><th>PTF</th><th>DEF</th></tr></thead><tbody><tr><td>Citizen of This State</td><td><input type="checkbox"/> 1</td><td><input type="checkbox"/> 1</td><td>Incorporated or Principal Place of Business in this State</td><td><input checked="" type="checkbox"/> 4</td><td><input type="checkbox"/> 4</td></tr><tr><td>Citizen of Another State</td><td><input type="checkbox"/> 2</td><td><input type="checkbox"/> 2</td><td>Incorporated and Principal Place of Business in Another State</td><td><input type="checkbox"/> 5</td><td><input checked="" type="checkbox"/> 5</td></tr><tr><td>Citizen or Subject of a Foreign Country</td><td><input type="checkbox"/> 3</td><td><input type="checkbox"/> 3</td><td>Foreign Nation</td><td><input type="checkbox"/> 6</td><td><input type="checkbox"/> 6</td></tr></tbody></table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. ORIGIN (Place an X in one box only.)
☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT:** \$ _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
15 U.S.C. section 1114, et seq.; trademark infringement, unfair competition

VII. NATURE OF SUIT (Place an X in one box only.)					
OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: **SACV 12 - 01253 AG (MLGx)**
AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETVIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

- ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Massachusetts

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): John A. Schena Date August 1, 2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Andrew Guilford and the assigned discovery Magistrate Judge is Marc Goldman.

The case number on all documents filed with the Court should read as follows:

SACV12 - 1253 AG (MLGx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT
for the
Central District of California

Neuroptics, Inc., a California
corporation

Plaintiff

v.

Neuroptix Corporation, a Delaware
corporation

Defendant

Civil Action No.

SACV 12 - 01253 AG (MLGx)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Neuroptix Corporation, a Delaware corporation
20 Main Street
Action, MA 07120

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: John A. Schena, Esq.

Schwartz Semerdjian Ballard & Cauley LLP
101 West Broadway, Suite 810
San Diego, CA 92101

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 8/3/12

DENISE VO

Signature of Clerk or Deputy Clerk



Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4(l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: