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15 CAYENNE MEDICAL, INC.

16
17
18 IN THE UNITED STATES DISTRICT COURT
19 FOR THE DISTRICT OF ARIZONA
20

21 Cayenne Medical, Inc., a Delaware
22 corporation,

23 Plaintiff,

24 v.

25 MedShape, Inc., a Georgia corporation,

26 Defendant.
27
28

) No.

) **COMPLAINT FOR PATENT**
) **INFRINGEMENT**

) (Jury Trial Demanded)

1 Plaintiff Cayenne Medical, Inc. (“Cayenne” or “Plaintiff”) hereby complains of
2 Defendant MedShape, Inc. (“Defendant” or “MedShape”) and alleges as follows:

3 **I. JURISDICTION AND VENUE**

4 1. This action arises under the Patent Laws of the United States, Title 35 of
5 the United States Code. This Court has subject matter jurisdiction in this action
6 pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7 2. Defendant is subject to personal jurisdiction in this Court. In particular,
8 this Court has personal jurisdiction over Defendant because Defendant has a
9 continuous, systematic, and substantial presence within this judicial district, including
10 substantial marketing and sale of products in this judicial district. Further, this Court
11 has personal jurisdiction over Defendant in this case, because Defendant has
12 committed the acts giving rise to Cayenne’s claim for patent infringement within and
13 directed to this district.

14 3. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b)-(d)
15 and 1400(b).

16 **II. THE PARTIES**

17 4. Cayenne is a corporation organized and existing under the laws of the
18 State of Delaware and having a principal place of business at 16597 North 92nd
19 Street, Suite 101, Scottsdale, Arizona, 85260.

20 5. Defendant is, upon information and belief, a corporation organized and
21 existing under the laws of the State of Georgia, having a principle place of business at
22 1575 Northside Drive, NW, Suite 440, Atlanta, Georgia, 30318.

23 **III. THE PATENTS AND GENERAL ALLEGATIONS**

24 6. On January 26, 2010, the U.S. Patent and Trademark Office (“Patent
25 Office”) duly and lawfully issued U.S. Patent No. 7,651,528 entitled “Devices,
26 Systems, and Methods for Material Fixation” (the “’528 Patent”). Cayenne is the
27 owner by assignment of the ’528 Patent. A copy of the ’528 Patent is attached hereto
28 as Exhibit A.

1 7. On May 7, 2013, the Patent Office duly and lawfully issued U.S. Patent
2 No. 8,435,294 entitled “Devices, Systems, and Methods for Material Fixation” (the
3 “’294 Patent”). Cayenne is the owner by assignment of the ’294 Patent. A copy of
4 the ’294 Patent is attached hereto as Exhibit B.

5 8. The ’528 and ’294 Patents claim, *inter alia*, novel devices, systems, and
6 methods for attaching soft material (*e.g.*, tendon) to bone. The device and/or method
7 can be used, for example, in reconstructing or repairing torn or diseased ligaments and
8 tendons.

9 9. Cayenne markets the AperFix® System, which is a device and method
10 for attaching tendon to a bone, *e.g.*, it can be used to reconstruct cruciate ligaments of
11 the knee such as the anterior cruciate ligament (ACL) and others. The AperFix
12 System is covered by the ’528 and ’294 Patents. The product brochure for the
13 AperFix System states that it is “covered by one or more U.S. patents pending.”

14 10. In July 2011, MedShape hired Lindsey Wolf (now Lindsey Arleth) as
15 Director of Sales for the Southeast territory. Ms. Wolf was previously employed as a
16 District Sales Manager at Cayenne from March 2010 to July 2011. During her
17 employment at Cayenne, Ms. Wolf was informed that Cayenne had patents that
18 covered the AperFix System.

19 11. In March 2012, MedShape hired Josh Ray as an employee responsible
20 for U.S. and International Sales. Mr. Ray was previously employed as a Regional
21 Sales Manager at Cayenne from April 2007 to March 2012. During his employment
22 at Cayenne, Mr. Ray was informed that Cayenne had patents that covered the AperFix
23 System.

24 12. In April 2013, MedShape hired Tim Nash as its Senior Vice President of
25 Sales and Marketing. Mr. Nash was previously employed as the Vice President of
26 Marketing at Cayenne from April 2007 to April 2012. During his employment at
27 Cayenne, Mr. Nash was informed that Cayenne had obtained the ’528 Patent in
28 January 2010 and was aware that Cayenne had filed a continuation patent application

1 related to the '528 Patent (later issued as the '294 Patent). Mr. Nash was informed
2 that the '528 Patent and the pending patent application that later issued as the '294
3 Patent contained claims that covered the AperFix System.

4 13. In January 2014, MedShape announced the launch of the ExoShape®
5 FEMORAL Soft Tissue Fastener (also known as the ExoShape® Soft Tissue Fastener
6 or the ExoShape® ACL Fixation System) (hereinafter "ExoShape") in direct
7 competition with the Cayenne AperFix System. As part of their launch of ExoShape,
8 MedShape targeted its announcement at customers and users of the Cayenne AperFix
9 System. Upon information and belief, Mr. Nash and Mr. Ray were directly involved
10 in contacting Cayenne's customers and users to promote ExoShape.

11 **IV. FIRST CLAIM FOR RELIEF**

12 **(Infringement of U.S. Patent No. 7,651,528)**

13 14. Cayenne repeats, realleges, and incorporates by reference the allegations
14 set forth in paragraphs 1 through 13 of this Complaint.

15 15. This is a claim for patent infringement and arises under the Patent Laws
16 of the United States, Title 35 of the United States Code.

17 16. Defendant has been, and currently is, directly infringing the '528 Patent,
18 contributing to the infringement of the '528 Patent, and/or inducing infringement of
19 the '528 Patent by directly or indirectly making, using, selling and/or offering to sell
20 in the United States, and/or importing into the United States tissue fixation systems
21 including, but not limited to, ExoShape, that is covered by at least one claim of the
22 '528 Patent. Defendant's acts constitute infringement of the '528 Patent in violation
23 of 35 U.S.C. § 271.

24 17. Defendant has contributed to infringement of the '528 Patent by, *inter*
25 *alia*, marketing and selling ExoShape, because ExoShape is not a staple article or
26 commodity of commerce suitable for substantial non-infringing use, and is known by
27 Defendant to be especially made or especially adapted for use in infringement of the
28 '528 Patent. As a result, Defendant's customers and physicians have used ExoShape

1 in a manner that directly infringes the '528 Patent.

2 18. Defendant has knowingly and actively induced infringement of the '528
3 Patent by, *inter alia*, marketing and selling ExoShape knowing and intending that
4 Defendant's customers and physicians use it in a manner that infringes the '528
5 Patent. To that end, Defendant provides instructions and teachings to its customers
6 and physicians that such systems and devices be used in the manner claimed in the
7 '528 Patent. As a result, Defendant's customers and physicians have used ExoShape
8 in a manner that directly infringes the '528 Patent.

9 19. Defendant has been and is currently committing these acts of
10 infringement without license or authorization from Cayenne.

11 20. Defendant's infringement has been and continues to be intentional,
12 knowing, willful, and deliberate, with full knowledge of Cayenne's rights.

13 21. Upon information and belief, Defendant's infringement will continue
14 unless enjoined by this Court.

15 22. Upon information and belief, Defendant has derived and received, and
16 will continue to derive and receive, gains, profits, and advantages from the aforesaid
17 acts of infringement in an amount that is not presently known to Cayenne.

18 23. As a direct and proximate consequence of Defendant's infringement of
19 the '528 Patent, Cayenne has suffered, and will continue to suffer, damages in an
20 amount not yet determined.

21 24. Because of the aforesaid infringing acts, Cayenne has suffered and
22 continues to suffer great and irreparable injury, for which Cayenne has no adequate
23 remedy at law.

24 **V. SECOND CLAIM FOR RELIEF**

25 **(Infringement of U.S. Patent No. 8,435,294)**

26 25. Cayenne repeats, realleges, and incorporates by reference the allegations
27 set forth in paragraphs 1 through 24 of this Complaint.

28 26. This is a claim for patent infringement and arises under the Patent Laws

1 of the United States, Title 35 of the United States Code.

2 27. Defendant has been, and currently is, directly infringing the '294 Patent,
3 contributing to the infringement of the '294 Patent, and/or inducing infringement of
4 the '294 Patent by directly or indirectly making, using, selling and/or offering to sell
5 in the United States and/or importing into the United States tissue fixation systems,
6 including, but not limited to, ExoShape, that is covered by at least one claim of the
7 '294 Patent. Defendant's acts constitute infringement of the '294 Patent in violation
8 of 35 U.S.C. § 271.

9 28. Defendant has contributed to infringement of the '294 Patent by, *inter*
10 *alia*, marketing and selling ExoShape, because ExoShape is not a staple article or
11 commodity of commerce suitable for substantial non-infringing use, and is known by
12 Defendant to be especially made or especially adapted for use in infringement of the
13 '294 Patent. As a result, Defendant's customers and physicians have used ExoShape
14 in a manner that directly infringes the '294 Patent.

15 29. Defendant has knowingly and actively induced infringement of the '294
16 Patent by, *inter alia*, marketing and selling ExoShape knowing and intending that
17 Defendant's customers and physicians use it in a manner that infringes the '294
18 Patent. To that end, Defendant provides instructions and teachings to its customers
19 and physicians that such systems and devices be used in the manner claimed in the
20 '294 Patent. As a result, Defendant's customers and physicians have used ExoShape®
21 in a manner that directly infringes the '294 Patent.

22 30. Defendant has been and is currently committing these acts of
23 infringement without license or authorization from Cayenne.

24 31. Defendant's infringement has been and continues to be intentional,
25 knowing, willful, and deliberate, with full knowledge of Cayenne's rights.

26 32. Upon information and belief, Defendant's infringement will continue
27 unless enjoined by this Court.

28 33. Upon information and belief, Defendant has derived and received, and

1 will continue to derive and receive, gains, profits, and advantages from the aforesaid
2 acts of infringement in an amount that is not presently known to Cayenne.

3 34. As a direct and proximate consequence of Defendant's infringement of
4 the '294 Patent, Cayenne has suffered, and will continue to suffer, damages in an
5 amount not yet determined.

6 35. Because of the aforesaid infringing acts, Cayenne has suffered and
7 continues to suffer great and irreparable injury, for which Cayenne has no adequate
8 remedy at law.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Cayenne seeks relief as follows:

11 A. That the Defendant be adjudged to have infringed the '528 Patent.

12 B. That the Defendant be adjudged to have infringed the '294 Patent.

13 C. That the Defendant be adjudged to have willfully and deliberately
14 infringed the '528 and '294 Patents.

15 D. That Defendant, its respective officers, directors, agents, servants,
16 employees and attorneys, and all those persons in active concert or participation with
17 them who receive actual notice of the Order, be preliminarily and permanently
18 enjoined from directly or indirectly infringing the '528 and '294 Patents.

19 E. That a judgment be entered against the Defendant awarding Cayenne all
20 damages proven at trial, and in no event less than a reasonable royalty for
21 infringement of the '528 and '294 Patents.

22 F. That the damages in this judgment be trebled for Defendant's knowing,
23 intentional, and willful infringement of the '528 Patent and '294 Patent pursuant to 35
24 U.S.C. § 284.

25 G. That there be an assessment of pre-judgment and post-judgment interest
26 and costs against the Defendant and in favor of Cayenne, and an award of this interest
27 and costs to Cayenne.

28 H. That this be judged an "exceptional" case within the meaning of 35

1 U.S.C. § 285, and that Cayenne be awarded its attorneys' fees pursuant thereto,
2 recoverable from the Defendant.

3 I. For such other and further relief as this Court may deem just.

4 **DEMAND FOR JURY TRIAL**

5 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff
6 Cayenne Medical, Inc. demands a trial by jury of all issues raised by the pleadings
7 which are triable by jury.

8 Respectfully submitted,

9
10 SNELL & WILMER

11 Dated: March 6, 2014

12 By: /s Trisha D. Farmer

13 Charles F. Hauff Jr.

14 David G. Barker

15 Trisha D. Farmer

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20 Attorneys for Plaintiff

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