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 NAOKO MARQUEZ
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15 IN THE UNITED STATES DISTRICT COURT
 16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 ULTHERA, INC., a Delaware
 18 corporation,

19 Plaintiff,

20 v.

21 NAOKO MARQUEZ, an individual,
 22 a/k/a Quena Marquez and d/b/a Vortex
 23 Advanced Esthetics & Spa, Bijoux
 Organic Spa and Ultherapy Room,
 24

25 Defendants.

Case No. 2:16-CV-07518-PSG-SS

CONSENT JUDGMENT

Honorable Philip S. Gutierrez

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1 Plaintiff Ulthera, Inc. (“Plaintiff”) and Defendant Naoko Marquez a/k/a
2 Quena Marquez and d/b/a Vortex Advanced Esthetics & Spa, Bijouxx Organic
3 Spa and Ultherapy Room (collectively, “Defendant”), in settlement of this
4 matter, consent and agree to the terms and conditions of this Final Consent
5 Judgment and Permanent Injunction.

6 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS**
7 **FOLLOWS:**

8 1. This Court has original subject matter jurisdiction over Plaintiff’s
9 claims that relate to trademark infringement, trademark counterfeiting, and false
10 designation of origin pursuant to 15 U.S.C. §§ 1116 and 1121(a). The Court
11 also has original subject matter jurisdiction over those claims pursuant to 28
12 U.S.C. §§ 1331 and 1338(a) and (b), as these claims arise under the laws of the
13 United States. This Court has supplemental jurisdiction over Plaintiff’s
14 remaining claims which arise under state statutory and common law pursuant to
15 28 U.S.C. § 1367(a).

16 2. Venue is proper in this Judicial District pursuant to 28 U.S.C.
17 § 1391(b) and (c).

18 3. Plaintiff Ulthera, Inc. is a Delaware corporation having its principal
19 place of business in Mesa, Arizona.

20 4. Defendant Naoko Marquez is also known as Quena Marquez and is
21 an individual residing in this Judicial District. Defendant Naoko Marquez is
22 doing business or has done business under or through the fictitious business
23 names Vortex Spa or Vortex Advanced Esthetics & Spa, Bijouxx Organic Spa,
24 and Ultherapy Room.

25 5. Plaintiff is the owner of the following U.S. Trademark
26 Registrations for the ULTHERA® and ULTHERAPY® marks (“the Ulthera
27 Marks”): U.S. Trademark Reg. Nos. 3,747,151 (ULTHERA®), 4,237,131
28 (ULTHERA®), and 3,890,441 (ULTHERAPY®). Only Plaintiff’s authentic

1 ULTHERA[®] System is used to perform the ULTHERAPY[®] ultrasound
2 procedure.

3 6. Without permission or consent from Plaintiff, Defendant has used
4 the Ulthera Marks in connection with advertising, selling, and performing
5 ultrasound procedures. While Defendant advertised, sold, and performed
6 procedures using the Ulthera Marks, the services advertised and provided by
7 Defendant were not, in fact, authentic ULTHERAPY[®] procedures. Defendant
8 used a non-genuine machine, marked with counterfeit copies of the ULTHERA[®]
9 mark, to perform those services. To resolve this lawsuit, the Defendant has
10 agreed and consented to the entry of this Consent Judgment with regard to all
11 claims and causes of action set forth in the Complaint (ECF Doc. No. 1).

12 **NOW, THEREFORE, IT IS FURTHER ORDERED, ADJUDGED, AND**
13 **DECREED, AS FOLLOVED:**

14 A. Final judgment is entered in favor of Plaintiff and against
15 Defendant on Plaintiff's claims for: 1) trademark counterfeiting under 15 U.S.C.
16 § 1114, 2) trademark infringement under 15 U.S.C. § 1114, 3) false designation
17 of origin under 15 U.S.C. § 1125(a), 4) unfair competition under California
18 Business & Professions Code §§ 17200 *et seq.*, and 5) unfair competition under
19 the common law of the State of California.

20 B. Defendant and all entities through which Defendant conducts
21 business, any officers, principals, agents, servants, employees, successors,
22 and/or assigns thereof, and all other persons in active concert or participation
23 with any of them who receive actual notice of this injunction by personal service
24 or otherwise, are permanently restrained and enjoined from:

- 25 i. using the Ulthera Marks without Plaintiff's written permission,
26 with Defendant's products or services, in advertising, promoting,
27 performing, selling, or offering to sell Defendant's products or
28 services, and/or using confusingly similar variations of the Ulthera

1 Marks in any manner that is likely to create the impression that
2 Defendant or Defendant's products or services originate from
3 Plaintiff, are endorsed by Plaintiff, or are connected in any way
4 with Plaintiff;

- 5 ii. distributing, shipping, reproducing, displaying, advertising,
6 marketing, promoting, transferring, selling, and/or offering to sell
7 products or services bearing the Ulthera Marks without Plaintiff's
8 written permission, and/or any confusingly similar marks;
- 9 iii. otherwise infringing the Ulthera Marks;
- 10 iv. falsely designating the origin of Defendant's products or services
11 as originating from Ulthera;
- 12 v. unfairly competing with Plaintiff in any manner related to the
13 Ulthera Marks; and
- 14 vi. causing a likelihood of confusion or injury to Plaintiff's business
15 reputation.

16 C. Within five (5) business days after entry of this Final Consent
17 Judgment and Permanent Injunction, Defendant shall deliver to counsel for
18 Plaintiff all literature, advertising, goods (including, but not limited to, the
19 device shown in Paragraph 29 of Plaintiff's Complaint), and other materials
20 displaying any of the Ulthera Marks.

21 D. Defendant shall serve on Plaintiff within fourteen (14) business
22 days after the date of this Order, a report, in writing, under oath, setting forth in
23 detail the manner and form in which it has complied with this injunction.

24 E. This Court shall retain jurisdiction over this matter for all purposes,
25 including for the purpose of enforcing the terms and provisions of this Final
26 Consent Judgment and Permanent Injunction.

27 F. The parties agree to submit to the personal jurisdiction of this Court
28 and to venue in this Court in connection with this matter for all purposes,

1 including for the purpose of enforcing the terms and provisions of this Final
2 Consent Judgment and Permanent Injunction.

3 G. This is a final judgment. Any other remaining claims and defenses,
4 to the extent not otherwise addressed above by this Consent Judgment, are
5 hereby dismissed.

6 H. Each party shall bear their own costs and attorneys' fees.

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8 **IT IS SO ORDERED.**

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10 Dated: 12/5/17



11 Hon. Philip S. Gutierrez
12 United States District Judge
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1 APPROVED AS TO FORM:

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KNOBBE, MARTENS, OLSON & BEAR, LLP

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Dated: November 28, 2017 By: /s/ Matthew S. Bellinger

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John B. Sganga, Jr.

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Matthew S. Bellinger

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Justin J. Gillett

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Attorneys for Plaintiff

ULTHERA, INC.

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12 Dated: November 28, 2017 By: /s/ SongFong Tommy Wang (with permission)

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SongFong Tommy Wang

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Leontyne Fan

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Attorneys for Defendant,

NAOKO MARQUEZ

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