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13
14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION**

17
18

EDGE SYSTEMS LLC, a California
limited liability company, and AXIA
19 MEDSCIENCES, LLC, a Delaware
limited liability company,
20 Plaintiffs,
21 v.
22 IMAGE MICRODERM, INC., a Nevada
23 corporation,
24 Defendant.
25

AND RELATED COUNTERCLAIMS
26 AND COUNTERCLAIMS-IN-REPLY
27
28

) Civil Action No.
) 2:17-CV-08699-PSG-AGR
)
) [PROPOSED]
) **FINAL CONSENT JUDGMENT**
) **OF WILLFUL INFRINGEMENT**
) **AND PERMANENT**
) **INJUNCTION**

1 Plaintiffs Edge Systems LLC (“Edge”) and Axia Medsciences, LLC
2 (collectively, “Plaintiffs”) and Defendant Image Microderm, Inc. (“Defendant”)
3 hereby stipulate and jointly move for entry of final judgment as follows:

4 1. That this Court has subject matter jurisdiction over this action as well
5 as personal jurisdiction over Plaintiffs and Defendant.

6 2. That venue is proper in this judicial district.

7 3. That Edge owns each of U.S. Patent Nos. 6,641,591 (“the 591
8 Patent”), 7,789,886 (“the ’886 Patent”), 8,066,716 (“the ’716 Patent”), 8,337,513
9 (“the ’513 Patent”), 9,468,464 (“the ’464 Patent”), 9,775,646 (“the ’646 Patent”)
10 and 9,550,052 (“the ’052 Patent”) (collectively, the “patents-in-suit”).

11 4. That each of the patents-in-suit is valid and enforceable, and that
12 Defendant shall not challenge the validity or enforceability of any of the patents-
13 in-suit in any judicial, administrative, or other proceeding.

14 5. That Defendant has manufactured, used, sold, offered for sale,
15 and/or imported into the United States the BioXFusion MD product shown in
16 Exhibit A.

17 6. That Defendant has manufactured, used, sold, offered for sale,
18 and/or imported into the United States the BioXFusion Mini product shown in
19 Exhibit B.

20 7. That the manufacture, use, sale, offer for sale, and/or importation
21 into the United States of the BioXFusion MD product shown in Exhibit A
22 infringes each of the ’591 Patent, the ’886 Patent, the ’716 Patent, the ’513 Patent,
23 the ’464 Patent, the ’646 Patent, and the ’052 Patent.

24 8. That the manufacture, use, sale, offer for sale, and/or importation
25 into the United States of the BioXFusion Mini product shown in Exhibit B
26 infringes each of the ’591 Patent, the ’886 Patent, the ’716 Patent, the ’513 Patent,
27 the ’464 Patent, and the ’646 Patent.

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1 9. That through the manufacture, use, sale, offer for sale, and/or
2 importation into the United States of the BioXFusion MD product shown in
3 Exhibit A, Defendant has infringed each of the '591 Patent, the '886 Patent, the
4 '716 Patent, the '513 Patent, the '464 Patent, the '646 Patent, and the '052 Patent.

5 10. That through the manufacture, use, sale, offer for sale, and/or
6 importation into the United States of the BioXFusion Mini product shown in
7 Exhibit B, Defendant has infringed each of the '591 Patent, the '886 Patent, the
8 '716 Patent, the '513 Patent, the '464 Patent, and the '646 Patent.

9 11. That Defendant induced its customers to infringe each of the '591
10 Patent, the '886 Patent, the '716 Patent, the '513 Patent, the '464 Patent, and the
11 '646 Patent, by using the BioXFusion MD product shown in Exhibit A because
12 Defendant had knowledge of each of these patents-in-suit, Defendant knew that
13 its customers would infringe each of these patents by using the BioXFusion MD
14 product shown in Exhibit A, and Defendant had the specific intent to induce and
15 did induce its customers to infringe each of these patents-in-suit by using the
16 BioXFusion MD product shown in Exhibit A.

17 12. That Defendant induced distributors to infringe each of the '591
18 Patent, the '886 Patent, the '716 Patent, the '513 Patent, the '464 Patent, and the
19 '646 Patent, by selling and/or offering for sale the BioXFusion MD product
20 shown in Exhibit A, because Defendant had knowledge of each of these patents-
21 in-suit, Defendant knew that distributors would infringe each of these patents by
22 selling and/or offering for sale the BioXFusion MD product shown in Exhibit A,
23 and Defendant had the specific intent to induce and did induce distributors to
24 infringe each of these patents-in-suit by selling and/or offering for sale the
25 BioXFusion MD product shown in Exhibit A.

26 13. That Defendant induced its customers to infringe each of the '591
27 Patent, the '886 Patent, the '716 Patent, the '513 Patent, the '464 Patent, and the
28 '646 Patent by using the BioXFusion Mini product shown in Exhibit B because

1 Defendant had knowledge of each of the '591 Patent, the '886 Patent, the '716
2 Patent, the '513 Patent, the '464 Patent, and the '646 Patent, Defendant knew that
3 its customers would infringe each of the '591 Patent, the '886 Patent, the '716
4 Patent, the '513 Patent, the '464 Patent, and the '646 Patent by using the
5 BioXFusion Mini product shown in Exhibit B, and Defendant had the specific
6 intent to induce and did induce its customers to infringe each of the '591 Patent,
7 the '886 Patent, the '716 Patent, the '513 Patent, the '464 Patent, and the '646
8 Patent by using the BioXFusion Mini product shown in Exhibit B.

9 14. That Defendant induced distributors to infringe each of the '591
10 Patent, the '886 Patent, the '716 Patent, the '513 Patent, the '464 Patent, and the
11 '646 Patent by selling and/or offering for sale the BioXFusion Mini product
12 shown in Exhibit B because Defendant had knowledge of each of the patents-in-
13 suit, Defendant knew that distributors would infringe each of the patents by
14 selling and/or offering for sale the BioXFusion Mini product shown in Exhibit B,
15 and Defendant had the specific intent to induce and did induce distributors to
16 infringe each of the '591 Patent, the '886 Patent, the '716 Patent, the '513 Patent,
17 the '464 Patent by selling and/or offering for sale the BioXFusion Mini product
18 shown in Exhibit B.

19 15. That Defendant's infringement of each of the '591 Patent, the '886
20 Patent, the '716 Patent, the '513 Patent, the '464 Patent, and the '646 Patent was
21 willful.

22 16. That, pursuant to the Patent Act, 35 U.S.C. § 283, Defendant,
23 together with its officers, directors, agents, servants, employees and affiliates
24 thereof, representatives and attorneys, and all other persons acting or attempting
25 to act in concert or participation with them, are permanently enjoined and
26 restrained from making, using, selling, offering to sell, or importing into the
27 United States, the BioXFusion MD product shown in Exhibit A, the BioXFusion
28 Mini product shown in Exhibit B, or any other goods that are infringements of

1 the '591 Patent during the life of the '591 Patent.

2 17. That, pursuant to the Patent Act, 35 U.S.C. § 283, Defendant,
3 together with its officers, directors, agents, servants, employees and affiliates
4 thereof, representatives and attorneys, and all other persons acting or attempting
5 to act in concert or participation with them, are permanently enjoined and
6 restrained from making, using, selling, offering to sell, or importing into the
7 United States, the BioXFusion MD product shown in Exhibit A, the BioXFusion
8 Mini product shown in Exhibit B, or any other goods that are infringements of the
9 '886 Patent during the life of the '886 Patent.

10 18. That, pursuant to the Patent Act, 35 U.S.C. § 283, Defendant,
11 together with its officers, directors, agents, servants, employees and affiliates
12 thereof, representatives and attorneys, and all other persons acting or attempting
13 to act in concert or participation with them, are permanently enjoined and
14 restrained from making, using, selling, offering to sell, or importing into the
15 United States, the BioXFusion MD product shown in Exhibit A, the BioXFusion
16 Mini product shown in Exhibit B, or any other goods that are infringements of the
17 '716 Patent during the life of the '716 Patent.

18 19. That, pursuant to the Patent Act, 35 U.S.C. § 283, Defendant,
19 together with its officers, directors, agents, servants, employees and affiliates
20 thereof, representatives and attorneys, and all other persons acting or attempting
21 to act in concert or participation with them, are permanently enjoined and
22 restrained from making, using, selling, offering to sell, or importing into the
23 United States, the BioXFusion MD product shown in Exhibit A, the BioXFusion
24 Mini product shown in Exhibit B, or any other goods that are infringements of the
25 '513 Patent during the life of the '513 Patent.

26 20. That, pursuant to the Patent Act, 35 U.S.C. § 283, Defendant,
27 together with its officers, directors, agents, servants, employees and affiliates
28 thereof, representatives and attorneys, and all other persons acting or attempting

1 to act in concert or participation with them, are permanently enjoined and
2 restrained from making, using, selling, offering to sell, or importing into the
3 United States, the BioXFusion MD product shown in Exhibit A, the BioXFusion
4 Mini product shown in Exhibit B, or any other goods that are infringements of the
5 '464 Patent during the life of the '464 Patent.

6 21. That, pursuant to the Patent Act, 35 U.S.C. § 283, Defendant,
7 together with its officers, directors, agents, servants, employees and affiliates
8 thereof, representatives and attorneys, and all other persons acting or attempting
9 to act in concert or participation with them, are permanently enjoined and
10 restrained from making, using, selling, offering to sell, or importing into the
11 United States, the BioXFusion MD product shown in Exhibit A, the BioXFusion
12 Mini product shown in Exhibit B, or any other goods that are infringements of the
13 '646 Patent during the life of the '646 Patent.

14 22. That, pursuant to the Patent Act, 35 U.S.C. § 283, Defendant,
15 together with its officers, directors, agents, servants, employees and affiliates
16 thereof, representatives and attorneys, and all other persons acting or attempting
17 to act in concert or participation with them, are permanently enjoined and
18 restrained from making, using, selling, offering to sell, or importing into the
19 United States, the BioXFusion MD product shown in Exhibit A or any other
20 goods that are infringements of the '052 Patent during the life of the '052 Patent.

21 23. That Defendant is enjoined from inducing others from undertaking
22 any of the actions prohibited by any of Paragraphs 16-22 of this Final Consent
23 Judgment and Permanent Injunction.

24 24. That Defendant has breached Paragraph 5 of the Parties' August
25 2014 Settlement Agreement attached as Exhibit C ("2014 Agreement").

26 25. That the covenant not to sue granted to Defendant by Plaintiffs in
27 Paragraph 5 of the 2014 Agreement is null and void, but that all other provisions
28 of the 2014 Agreement remain in effect.

1 26. That Final Judgment be entered in favor of Plaintiffs and against
2 Defendant on all claims, counterclaims, and defenses in this action.

3 27. That Defendant has not paid any compensation for the infringing acts
4 described herein.

5 28. That no other or further relief, monetary or otherwise, be granted to
6 Plaintiffs or Defendant with respect to each other, and that Plaintiffs will not seek
7 any further relief, monetary or otherwise, from Defendant and/or from any of
8 Defendant's officers, directors, agents, servants, employees and affiliates,
9 representatives and attorneys, and/or any and all other persons and/or entities
10 acting and/or attempting to act in concert and/or participation with them,
11 including but not limited to, any and all of Defendant's distributors and/or
12 customers, for any acts and/or omissions relating to the allegations of the
13 Complaint in this matter. Plaintiff's agreement not to seek further relief from
14 Defendant's distributors and/or customers shall be void against any distributor or
15 customer who files an action for declaratory relief against Plaintiff relating to any
16 of the patents in suit. For the avoidance of doubt, no license or release is hereby
17 created in favor of Defendant's distributors or customers, who are receiving only
18 a conditional personal immunity from suit.

19 29. That Defendant affirmatively waives any and all rights to appeal this
20 Final Consent Judgment and Permanent Injunction.

21 30. That this Court retain jurisdiction over this matter to enforce
22 compliance with the Permanent Injunction.

23 31. That each party will bear its own costs and attorneys' fees for this
24 action.

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1 **IT IS SO STIPULATED AND AGREED**

2 Respectfully submitted,
3 KNOBBE, MARTENS, OLSON & BEAR, LLP

4
5 Dated: May 20, 2019 By: /s/ Paul A. Stewart
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10 Attorneys for Plaintiffs
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13 HANKIN PATENT LAW, APC

14 Dated: May 20, 2019 By: /Marc E. Hankin/ (with permission)
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19 Attorneys for Defendant,
20 IMAGE MICRODERM, INC.

21 **IT IS SO ORDERED AND DECREED, AND FINAL JUDGMENT IS**
22 **HEREBY ENTERED**

23 Dated: 5/23/19



24 Honorable Philip S. Gutierrez
25 United States District Judge

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