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10 MOBILE MONITOR TECHNOLOGIES, LLC

ENDORSED
FILED

2014 APR -3 P 4:04

Deputy Clerk
County of Santa Clara, California
By: _____
Deputy Clerk

A. Ramirez

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF SANTA CLARA
13 UNLIMITED JURISDICTION

14 MOBILE MONITOR TECHNOLOGIES,
15 LLC, a Massachusetts limited liability
16 company,

17 Plaintiff,

18 v.

19 PRICEWATERHOUSECOOPERS, LLP, a
20 Delaware limited liability partnership,
21 HEWLETT-PACKARD COMPANY, a
22 Delaware corporation, and DOES 1 through
23 50, inclusive,

24 Defendants.

CASE NO: **114 CV 263253**

COMPLAINT (UNLIMITED)

DEMAND FOR JURY TRIAL

BY FAX

25 Plaintiff MOBILE MONITOR TECHNOLOGIES, LLC ("Plaintiff" or "MMT") seeks
26 over \$100 million in damages sustained as a result of Defendant HEWLETT-PACKARD
27 COMPANY's ("HP") and Defendant PRICEWATERHOUSECOOPERS, LLP's ("PwC")
28 anticompetitive alliance. Plaintiff seeks relief under the laws of the State of California and alleges
on personal knowledge as to itself and its own acts, and on information and belief as to all other
matters, as follows:

1 **NATURE OF ACTION**

2 1. MMT conceptualized and designed the world’s first full-sized portable computer
3 monitor in November 2009. Consistent with its strategy of marketing the monitors to the
4 accounting industry vertical, MMT worked exclusively with PwC, the largest accounting firm in
5 the world, to ensure that the monitors were responsive to its needs. During this same timeframe,
6 and without MMT’s knowledge, PwC became HP’s “Agility Alliance” partner—a jointly-styled
7 “synergistic relationship with minimal overlap or competing offerings across HP business units
8 [that] can leverage each other’s trusted relationships and brand equity with CIOs and CFOs,
9 respectively, to communicate the differentiated value of [their] joint solutions.”¹

10 2. MMT introduced its portable monitor and its company’s brand to the market—
11 coining the term “mobile monitor” to define its first of a kind solution—in early 2011. PwC was
12 first in line and began successfully piloting the mobile monitors. Other accounting firms quickly
13 took notice as the press picked up on MMT’s unique mobile monitor solution. To address the
14 ensuing manufacturing shortfall, and to prepare for a global rollout, MMT approached HP in mid-
15 April 2011 and proposed a mutually beneficial joint venture. MMT pointed out that HP could
16 gain a foothold in the rapidly expanding portable monitor market—a market HP stated it had no
17 plans to enter—and MMT could satisfy its need for scale. HP’s Chief Technology Officer agreed
18 and its Director of Commercial Displays spearheaded a four-month-long due diligence and
19 negotiating exchange with MMT. At this point, MMT had a 100% share of the full-sized portable
20 monitor market.

21 3. Now, less than three years later, HP dominates the portable monitor market having
22 stolen MMT’s market-defining knowledge, strategies, and trade secrets, under the guise of
23 partnership “negotiations,” to develop its own identically sized portable monitor. HP’s present
24 dominance began with a covenant it struck with its Agility Alliance partner. After selecting
25 MMT’s mobile monitor to fill a \$40 million order for distribution to its accounting professionals

26 _____
27 ¹ November 2009 HP press release, entitled “HP and PricewaterhouseCoopers join forces/Alliance offers end to end
28 business transformation capabilities.”

1 worldwide, PwC contacted HP in the eleventh hour to solicit a financially more advantageous
2 below-cost pricing option and/or bundled discounts and/or other anti-competitive incentives—all
3 *before* offering HP’s new product to the public. The “synergies” between the two Alliance
4 partners trumped PwC’s choice of the superior MMT product and fueled PwC’s decision to
5 transfer its global order to HP.

6 4. PwC’s and HP’s Agility Alliance continues to drive a migration of accounting
7 industry customers away from MMT, and other competitors in the portable monitor market, to
8 HP. The partners are now actively misleading consumers into believing that HP developed the
9 portable monitor technology for the accounting market leader. High level executives from both
10 PwC and HP wrote, produced, starred in and distributed an April 2013 commercial video in
11 which HP describes its “first of a kind solutions” as including its ostensible development of the
12 world’s first “mobile monitor” for PwC. The patently false advertising was designed to, and did,
13 influence other top accounting firms to follow the lead of the world’s largest accounting firm and
14 purchase HP’s portable monitor.

15 5. Defendants’ combined market dominance, anti-competitive pricing, client-sharing
16 arrangements, misappropriation of trade secrets, and fraudulent and deceptive advertising has
17 irrevocably blunted MMT’s prominence in the portable monitor market and resulted in a
18 persistent and ongoing decline in its revenues. Plaintiff seeks damages in excess of \$100 million.

19 **JURISDICTION AND VENUE**

20 6. This Court has subject matter jurisdiction over this case pursuant to section 10,
21 article VI of the California Constitution and sections 86 and 88 of the California Code of Civil
22 Procedure as the amount in controversy is over \$25,000. Venue is proper pursuant to California
23 Code of Civil Procedure section 395.5 as Defendant Hewlett-Packard Company has its principal
24 place of business in this District and a substantial part of the events or omissions giving rise to the
25 claims occurred in this District.

26 **JURY DEMAND**

27 7. MMT demands trial by jury on all claims for relief.

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PARTIES TO THE ACTION

8. Plaintiff Mobile Monitor Technologies, LLC (MMT) is a Massachusetts limited liability company whose principal place of business is now, and at all times mentioned in this Complaint was, in Newton Centre, Massachusetts. One of MMT’s principals, Frederic A. Macdonald, is a resident of the State of California. The other two principals, Lawrence M. Pensack and Jeffrey J. Simmons, are residents of the Commonwealth of Massachusetts.

9. Plaintiff is informed and believes that Defendant PricewaterhouseCoopers, LLP (PwC) is a Delaware limited liability partnership whose principal place of business is now, and at all times mentioned in this Complaint was, 300 Madison Avenue, 24th Floor, New York, NY 10017-6204. PwC is the world’s largest professional services firm, providing its services to many of the world’s largest public companies.

10. Plaintiff is informed and believes that Defendant Hewlett-Packard Company (HP) is a Delaware corporation whose principal place of business is now, and at all times mentioned in this Complaint was, 3000 Hanover Street, Palo Alto, CA 94304-1185. HP is the leading imaging and printing systems provider in the world and, until recently, the world’s largest vendor of PCs.

11. Plaintiff is unaware of the true names, status, capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as Does 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the Doe defendants when ascertained. Plaintiff is informed and believes that at all times herein mentioned, each of the fictitiously named defendants was in some manner responsible for Plaintiff’s damages and injuries alleged herein.

FACTUAL ALLEGATIONS

MMT’s Background

12. Two entrepreneurs, Frederic A. Macdonald and Lawrence M. Pensack, and their accountant and business partner, Jeffrey J. Simmons, first conceptualized the notion of a full-sized portable computer monitor for accountants in 2009. They knew that the accounting industry was uniquely situated to exploit the conveniences and flexibility offered by a portable monitor as accountants commonly worked with dual monitors in the office but lacked the capacity to easily

1 mimic that functionality at their off-site engagements. Drawing on that knowledge, the MMT
2 team developed a highly specialized vertical marketing strategy that first targeted the accounting
3 industry before expanding into the broader commercial market. They formed MMT as a company
4 in March 2010 and developed MMT's first working prototype in June 2010, based, in large part,
5 on detailed feedback provided by PwC between November 2009 and July 2010. MMT went into
6 full production in August 2010 and offered its first product, Field Monitor Pro[®], to the public in
7 January 2011.

8 13. MMT's first monitor was so enthusiastically received by the accounting industry
9 that demand quickly outstripped supply and MMT began to research options for ramping up its
10 manufacturing capacity.

11 14. Within a year after MMT first introduced its portable monitor technology to the
12 public, its highest resolution product (Monitor2Go HD+) won LAPTOP Magazine's prestigious
13 award, Best of CES [Consumer Electronics Show] 2012 for PC accessories. The award put MMT on
14 the electronics industry's radar and led to a coveted invitation to the Consumer Electronic
15 Association's (CEA) 2012 CEO Summit. MMT was the only computer start-up at the 2012 event,
16 which was dominated by household names (Cisco, Sony and Vizio, among others) and was
17 viewed as the "poster child" for the future of technology companies—using direct customer input
18 for specialized product design.

19 15. The "poster child" paradigm could not withstand the HP/PwC juggernaut. MMT,
20 once the dominant leader in the portable monitor accounting vertical, has not only lost its edge in
21 attracting new customers, it is informed and believes that its existing client base continues to be
22 raided by HP through its below-cost pricing scheme, and/or bundled discounts, and/or other anti-
23 competitive incentives, and HP's false and deceptive claim that it developed a 'first of a kind,
24 new solution' for its partner—industry leader PwC. As the largest accounting firm in the world,
25 PwC has the capacity to drive the technology trends of the entire accounting industry—a fact that
26 was not lost on these Agility Alliance partners.

27 **PwC's and HP's Agility Alliance**

28 16. Just as MMT was engaging with PwC to develop the world's first full-size

1 portable computer monitor, PwC and HP were looking to strengthen and broaden their existing
2 written teaming agreement by entering into an “Agility Alliance.” HP’s November 2009 press
3 release (n. 1, above) characterized the partnership as a “unique coalition of market-leading
4 application and business services providers aligned to build and deliver seamlessly integrated
5 enterprise-wide solutions. Together, [HP’s] best-in-class, multi-sourcing approach offers the
6 applications, business processes, and IT solutions you need to meet your requirements for growth,
7 productivity, and innovation from a single business partner.” In announcing the alliance, HP and
8 PwC indicated that their business relationship dated back more than thirty years. By joining the
9 Agility Alliance, HP observed, “PricewaterhouseCoopers elevates that connection to better
10 complement HP’s IT transformation capabilities and extend the value provided to clients to
11 include true business transformation.”

12 17. The marketplace recognizes the importance of these alliances. PwC has stated that,
13 on average, fast-growing companies engage in at least 5 different types of alliances, deriving up
14 to 18% of their revenue from them.

15 18. The value of these alliances are, of course, subverted when two companies that
16 already hold dominant positions in their respective markets are incentivized to promote their
17 “synergies” at the cost of a competitive and free market.

18 **MMT’s History with PwC**

19 19. MMT implemented its vertical strategy in November 2009 by introducing a design
20 sketch of the portable monitor concept to PwC before it even began work on a prototype. PwC’s
21 Global Innovation Group, led by CTO Dr. Jonathan Reichental, responded enthusiastically and
22 worked closely with MMT over the following 19 months, reviewing and testing prototypes,
23 requesting modifications to meet PwC’s needs and testing the final first generation product. MMT
24 worked exclusively with PwC during early product development and fostered a working
25 relationship that it expected would yield significant future business. MMT also strategized that
26 once the largest accounting firm in the world validated MMT’s portable monitor—by involving
27 itself in the design process from the very beginning —MMT’s monitors would become a
28 necessary accessory for accountants everywhere.

1 20. Dr. Reichental reported back to MMT in July 2010, after receiving and working
2 with the first working prototype, that the devices worked as described: the screen was bright and
3 high quality; the options for twisting and turning the monitors worked well; and the taskbar
4 DisplayLink menu manager was easy to use. He particularly liked the option to hang the monitor
5 on the wall.

6 21. Shortly after MMT first offered its Field Monitor Pro[®] to the public, in April 2011,
7 PwC ordered 40 pilot monitors for its accounting staff. The PwC accountants involved in the
8 MMT pilot reported that they “loved” the monitors. MMT’s investment in meeting PwC’s needs
9 in this new product category had begun to show tangible results within the year.

10 22. Ray Garcia, PwC’s lead on its dual monitor task force, contacted Mr. Macdonald
11 in September 2012 and explained that PwC had decided to offer portable monitors to an initial
12 group of 15,000 PwC employees as holiday gifts. Mr. Garcia told him that PwC was evaluating
13 MMT’s products alongside Toshiba’s and Lenovo’s recently introduced, lower resolution,
14 consumer grade monitors. Mr. Macdonald was led to believe that PwC would choose MMT’s
15 professional grade product, which was available in both high and low resolutions. PwC had, after
16 all, played a significant role in configuring MMT’s product. If price were to drive PwC’s choice,
17 MMT’s lower resolution product would be competitively priced and of higher quality than
18 Lenovo’s and Toshiba’s monitors.

19 23. A month later, Mr. Garcia advised MMT that he and his team had recommended
20 MMT’s highest resolution product, Monitor2Go HD+, over Toshiba’s and Lenovo’s lower
21 resolution products, and told Mr. Macdonald to expect an immediate call from PwC procurement.
22 Expecting a call from the same commodity manager that Mr. Macdonald had known from the
23 initial pilot order, Mr. Macdonald was surprised to hear from Robert Schott, PwC’s Global
24 Managing Director Procurement. Mr. Schott, who reported to PwC’s Vice Chairman Mike
25 Burwell, asked Mr. Macdonald to prepare a tiered pricing budget based upon initial sales of
26 approximately 15,000 followed by ongoing rollouts of the monitors to PwC’s 150,000 accounting
27 professionals worldwide. Mr. Schott said that PwC would look to MMT for all reorders,
28 observing that standardization for this type of hardware was essential. In other words, MMT was

1 slated to provide the exclusive and ongoing global standard for all PwC employees.

2 24. Mr. Macdonald presented a number of tiered pricing schedules to Mr. Schott, with
3 the deepest discounts available for cumulative annual orders of at least 12,000 units. Mr.
4 Macdonald also discussed offering PwC/MMT co-branded products to PwC’s clients. Mr. Schott
5 responded to Mr. Macdonald’s tiered pricing proposal through an October 11, 2012 email in
6 which he emphasized that delivering product by the end of the year was “critical.” In anticipation
7 of PwC’s holiday gift schedule, MMT had already sent one of its executives to China to expedite
8 production of PwC’s monitors and halt the production runs of MMT’s other models. MMT
9 focused its entire business on meeting PwC’s time constraints.

10 25. Just as MMT was ramping up its manufacturing capabilities to meet the PwC
11 order, on October 18, 2012, Mr. Garcia called Mr. Macdonald to say that a “new hardware
12 company” was now in the mix and that MMT should “sharpen its pencil” for better pricing of its
13 high resolution Monitor2Go HD+. As MMT had already cut pricing to the bone, Mr. Macdonald
14 offered to extend MMT’s product warranty from 1 to an unprecedented 5 years. When PwC
15 continued to press for price reductions, Mr. Macdonald pointed out that the Monitor2Go HD+
16 was MMT’s most expensive monitor and that he could match or beat the new competitor’s lower
17 screen resolution products with MMT’s less expensive products—products with identical lower
18 screen resolution. Mr. Garcia said that PwC still wanted MMT’s higher resolution, more
19 expensive product.

20 26. MMT exacted further concessions from its display provider, LG, and offered PwC
21 a further reduced pricing schedule. Without responding to MMT’s latest offer, on November 1,
22 2012, Mr. Schott told Mr. Macdonald that PwC had chosen the “new” hardware company’s
23 product. Mr. Schott acknowledged that MMT’s Monitor2Go HD+ was a superior product and that
24 PwC’s evaluation was the business equivalent of comparing apples to oranges. Contradicting Mr.
25 Garcia’s earlier assurances, Mr. Schott indicated that a lower resolution monitor was acceptable
26 to PwC.

27 27. Mr. Macdonald pointed out that MMT’s less expensive products had screen
28 resolution specifications identical to the product being offered by MMT’s as-yet-unnamed

1 competitor. Mr. Macdonald also reminded Mr. Schott that MMT was offering a unique-to-the-
2 industry 5-year warranty. Mr. Schott observed that he had not known that MMT had other mobile
3 monitor options but stated that “the decision had already been made.” PwC’s election to forego a
4 competitive bid from MMT for its reduced resolution monitors (apples to apples) made no
5 business sense. That is, until MMT learned that the “new” hardware company was PwC’s Agility
6 Alliance partner and client, HP.

7 28. Plaintiff is informed and believes that, after PwC’s internal evaluations had been
8 concluded and MMT was chosen to service PwC’s global portable monitor needs, Mr. Schott
9 questioned the choice and attendant expense with PwC’s Vice Chairman Mike Burwell. The
10 executives perceived yet another opportunity to exploit PwC’s symbiotic relationship with its
11 Agility Alliance partner by asking HP, dominant in the broader computer monitor market, to enter
12 the niche portable monitor market. In high-level discussions between HP and PwC, HP agreed to
13 manufacture and deploy its own portable monitor and offer the brand new product to PwC at
14 anticompetitive prices—through below-cost pricing and/or global bundling and/or by offering
15 other Agility Alliance opportunities to PwC, equally dominant in its own accounting market.
16 With these promises in place, PwC overrode its internal dual monitor task force and awarded
17 MMT’s \$40 million contract to its Alliance partner. HP hastily implemented production of its
18 monitor and strategically introduced it to the press and public *after* it was already in the hands of
19 PwC employees. HP’s monitor was identical in size, configuration, resolution, and build quality
20 to the existing Toshiba product, the same product PwC’s Ray Garcia and his dual monitor task
21 force had already rejected. At or around this same time, HP engaged PwC to audit the Autonomy
22 debacle. Six months later, HP further thanked its Agility Alliance partner for its new business
23 with its prestigious Growth Award at HP’s largest industry event, “HP Discover 2013.”

24 29. Mr. Macdonald requested an immediate in-person meeting with PwC executives
25 following the loss of the promised \$40 million mobile monitor order. PwC’s Global Vice
26 Chairman Mike Burwell, who acknowledged that PwC had mishandled the situation, said that he
27 and Mr. Schott would meet with Mr. Macdonald at PwC’s New York City headquarters. Mr.
28 Macdonald noted that an in-person discussion would permit PwC to reassess its decision to award

1 32. Mr. Robison personally introduced Mr. Macdonald to Jun Kim, head of HP's
2 Display Business Unit. In an April 8, 2011 email flagged "Confidential," Mr. Kim invited Mr.
3 Macdonald to meet at HP's Houston office to familiarize HP with MMT's new product. Mr.
4 Macdonald met with Mr. Kim in Houston on April 22, 2011. Among other things, Mr. Kim told
5 Mr. Macdonald that HP was not in the portable display business and had no plans to enter it. Mr.
6 Kim suggested that HP and MMT sign HP's Mutual Non-Disclosure Agreement (MNDA) the
7 following week. Mr. Macdonald agreed, and they both acknowledged the extreme sensitivity of
8 their discussions and the need to cloak them with strict confidentiality. Though HP only belatedly
9 proffered its promised MNDA, the parties consistently acted in accordance with the overarching
10 need for maintaining, and agreeing to observe, the confidential nature of all of their discussions
11 and written communications.

12 33. In designing and developing its portable monitors with PwC, as well as selling to
13 hundreds of accounting firms worldwide, MMT created unique customer relationships with
14 accountants, thereby formulating specialized sales strategies that were not generally known or
15 readily accessible to the public or MMT's potential competitors. MMT derived independent
16 economic value from these relationships and this information, to which it had devoted substantial
17 time, effort, expense and research.

18 34. MMT took and continues to take reasonable efforts to maintain the secrecy of this
19 proprietary information, including restricting access to, and distribution of, this confidential
20 information only to agents of MMT who require(d) it to perform services.

21 35. This confidential information includes, but is not limited to: the concept and tactics
22 of marketing portable monitors to the accounting vertical; the resulting customer lists; the
23 research, development, technical and engineering information, know-how, data processing and
24 computer software, programs, tools, data, designs, diagrams, drawings, schematics, sketches and
25 other visual representations, plans, projects, manuals, documents, files, photographs, results,
26 specifications, trade secrets, inventions, discoveries, compositions, ideas, concepts, structures,
27 improvements, products, prototypes, instruments, machinery, equipment, processes, formulas,
28 algorithms, methods, techniques, works in process, systems, technologies, disclosures, and

1 applications entailed in developing the architecture for mobile solutions; financial information
2 and materials, including, without limitation, information and materials relating to costs, vendors,
3 suppliers, licensors, profits, markets, sales, distributors, joint venture partners, customers,
4 subscribers, members and bids, whether existing or potential, entailed in developing and
5 marketing the mobile solution; and business and marketing information and materials, including,
6 without limitation, information and materials relating to future development and new product
7 concepts (collectively, the “Confidential Information”).

8 36. Mr. Kim introduced Mr. Macdonald to his point person, Commercial Segment
9 Director Ann Lai through an April 26, 2011 email, labeled “HP Confidential.” Mr. Macdonald
10 sent Ms. Lai an email in which he explained the synergistic opportunities for MMT and HP. In
11 their ensuing May 6 telephone conference, Ms. Lai conveyed HP’s excitement about the
12 opportunity, noting, in particular, MMT’s success in targeting the accounting firms’ market
13 vertical. She explained that HP did not target verticals; it was, she offered, one of the reasons that
14 HP was so interested in pursuing a partnership with MMT. Mr. Macdonald pointed out that PwC
15 was the perfect example of how MMT worked with prospective customers to meet their
16 particularized needs.

17 37. In a June 2, 2011 telephone conference, Ms. Lai conveyed HP’s minimum
18 requirements that the monitors be branded “HP” and that HP be tasked with overseeing all aspects
19 of the manufacturing process. MMT, in turn, would market to all of its existing and future
20 customers, specifically customers in the accounting vertical. MMT agreed, and expressed
21 flexibility in responding to any partnership structure that would satisfy their common needs and
22 goals.

23 38. Mr. Macdonald engaged in a lengthy telephone conference with Ms. Lai, Mr. Kim
24 and two other HP executives on June 16, 2011. The parties discussed specific sales figures and
25 sales projections. The HP team elicited information as to why the product was designed the way it
26 was, to what Mr. Macdonald attributed MMT’s success, the details of its customer service model,
27 its marketing strategy, its estimated monthly run rates, its shipping schedules, and warehouse
28 locations and logistics, among many other highly confidential business details.

1 39. In the course of the June 16 telephone conference, Mr. Kim proposed a partnership
2 structure in which the parties would split the per unit profits 50-50—a model that would embrace
3 all of HP’s future portable monitor units, not just MMT’s existing product line. When Mr.
4 Macdonald agreed to the proposed business model, Ms. Lai told him that the HP team would
5 discuss the partnership internally and get “right back” to him to finalize its contours.

6 40. Two weeks later, in a June 29, 2011 telephone call, Ms. Lai told Mr. Macdonald
7 that her team was being redirected to another, bigger, non-portable monitor project. When
8 directly asked, Ms. Lai assured Mr. Macdonald that the new project had nothing to do with
9 portable monitors. She also observed, for the first time, that MMT’s sales projections of 870,000
10 units over three years were ostensibly too low to pique HP’s interest.

11 41. Several weeks later, Mr. Macdonald learned that HP had put out a Request for
12 Information (RFI) to two or three manufacturers for an HP 15.6” portable monitor. Plaintiff is
13 informed and believes that, at or around the same time HP was transmitting the RFIs, HP met
14 with MMT’s USB chip manufacturer, DisplayLink, for the purpose of exploring the manufacture
15 of its own mobile monitor. Mr. Macdonald sent Ms. Lai a July 24, 2011 email expressing
16 confidence that the “chatter around a RFI by HP for a portable monitor” reflected positively on
17 MMT’s and HP’s contemplated partnership. Ms. Lai suggested they talk the following day.

18 42. In an hour-long July 25, 2011 telephone conference, Ms. Lai confirmed that HP
19 had sent a portable monitor RFI out to several Chinese manufacturers for HP’s own branded
20 product. Mr. Macdonald told Ms. Lai that MMT would not accept HP simply walking away to
21 develop its own portable monitor on the strength of all of the confidential and proprietary
22 information MMT had provided to HP.

23 43. Mr. Macdonald pointed out that for the purpose of advancing their joint interests
24 only, MMT had disclosed virtually every facet of its business—from current sales and future
25 projection figures to specific CAD product designs for MMT’s second generation models, from
26 explaining the details of the accounting verticals MMT was targeting to the disclosure of MMT’s
27 client lists. Mr. Macdonald had also disclosed to HP that PwC had been involved with MMT’s
28 product development feedback from the very beginning. This was all done, Mr. Macdonald

1 pointed out, with the express understanding that HP would use this Confidential Information only
2 to evaluate the size of the portable monitor market opportunity in partnership with MMT. HP had
3 maintained throughout the course of the discussions that HP would either enter the portable
4 monitor space in a partnership with MMT, or HP would not enter the space at all.

5 44. In a follow-up email, Mr. Macdonald reminded HP that at the initial meeting in
6 Houston on April 22, Mr. Kim had been “very clear about the fact that HP had no meaningful
7 understanding of the portable monitor space”—the precise reason Mr. Kim and his team had
8 pursued four months of detailed conversations with MMT.

9 45. HP cannot feign ignorance of the confidential nature of its discussions with MMT.
10 In an August 19, 2011 email to MMT, Mr. Kim expressed surprise at hearing that Mr. Macdonald
11 had learned of HP’s pending RFI’s with Chinese firms looking to create HP’s own portable
12 monitor, observing: “Given that **HP considers all of its efforts around product roadmap
13 formulation, product development, and product management to be highly confidential
14 information**, we obviously are disappointed.” Emphasis added.

15 46. HP’s and PwC’s unlawful acts, the precise contours of which will be fleshed out in
16 the course of discovery, would not have been possible without HP’s appropriation of MMT’s
17 trade secrets and/or the anticompetitive incentives that fueled HP’s and PwC’s Agility Alliance.

18 **PwC’s and HP’s Unlawful Acts in Furtherance of its Strategic Alliance**

19 47. That HP and PwC had entered into a mutually advantageous Agility Alliance in
20 2009 is now known. That HP and PwC, working at the highest executive levels, had engaged that
21 alliance to obtain an illegal end at the eleventh hour—*after* the PwC dual monitor task force had
22 chosen MMT’s product over Lenovo’s and Toshiba’s products—is now self-evident. The HP
23 monitor’s specifications were identical to those offered by the Toshiba monitor—a product that
24 PwC had already rejected in favor of MMT’s higher resolution monitor.

25 48. PwC and HP continue to exploit their strategic alliance to achieve unlawful ends.
26 In an April 2013 HP/PwC marketing video entitled “HP and PwC, A Multi-Faceted Strategic
27 Relationship,” co-written and hosted by PwC’s “Partner, Advisory,” Vicki Huff, and HP’s
28 “Account General Manager, PwC,” Charlie Latch, Latch describes HP’s “first of a kind

1 solutions” as including its purported development of the first portable monitor: “When [PwC’s]
2 assurance and tax [departments] wanted to enhance productivity for their staff through a **mobile**
3 **monitor** program, HP brought a **new solution** to bear and PwC was first in line.” Emphasis
4 added. By referencing the term “mobile monitor”, which was used exclusively by MMT (**Mobile**
5 **Monitor** Technologies), and not using the industry standard term “portable monitor,” HP
6 implicitly acknowledged that not only did MMT’s product already exist but also that HP’s
7 product was not a new solution.

8 49. The strategic partners wrote, produced, starred in and distributed the video in an
9 apparent attempt to attract PwC’s clients and other accounting firms to HP’s inferior product by
10 its false and deceptive suggestion that HP had pioneered the mobile monitor solution: “By
11 providing an agile IT environment for PwC, we also have a great depth of knowledge that we
12 bring to third-party clients that we serve through the alliance.”

13 50. Plaintiff is informed and believes and on that basis alleges that PwC and HP
14 produced the commercial video to be shown, among other venues, to existing and potential
15 customers as well as at international all-hands meetings with PwC and HP employees.

16 51. At its April 2013 Discover event in Las Vegas, HP bestowed its Global Alliance
17 “Growth Award” on PwC, where 3,200 companies attended from over 90 countries around the
18 world. HP characterized the Discover event as “the most extensive and intensive exchange of IT
19 expertise on the planet.” Plaintiff is informed and believes that the commercial video was shown
20 at this event and/or at other events with comparably broad dissemination.

21 **FIRST CAUSE OF ACTION**

22 **AGAINST DEFENDANTS HP AND PwC**

23 **(UNFAIR COMPETITION)**

24 52. Plaintiff hereby restates each and every allegation contained in paragraphs 1
25 through 51 of this Complaint, and fully incorporates them by this reference.

26 53. PwC’s and HP’s acts, as alleged above, constitute unlawful and/or unfair and/or
27 fraudulent business acts or practices and/or unfair, deceptive, untrue or misleading advertising in
28 violation of the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 *et*

1 *seq.*

2 54. PwC's and HP's acts are unlawful and/or unfair and/or fraudulent under the UCL
3 because, among other things: PwC and HP, in furtherance of their Agility Alliance, produced and
4 published a commercial video that was likely to confuse consumers as to the nature,
5 characteristics and qualities of HP's portable monitor and/or to deceive or have a tendency to
6 deceive a substantial segment of consumers into believing that HP developed a "first-of-its-kind"
7 portable monitor for the accounting industry, at PwC's request, and that HP's portable monitor
8 was the industry standard, endorsed, as it purportedly was, by the industry leader, PwC; and PwC
9 and HP, in furtherance of their Agility Alliance, entered into an agreement whereby HP sold its
10 portable monitors to PwC at below-cost prices and/or bundled discounts in order to offer
11 anticompetitive rates to PwC; and/or engaged in other unlawful acts.

12 55. PwC's and HP's acts of unfair competition in the State of California have caused
13 Plaintiff irreparable injury. Plaintiff is informed and believes that unless said conduct is enjoined
14 by this Court, PwC and HP will continue and expand those activities to the continued and
15 irreparable injury of Plaintiff. Plaintiff is entitled to a permanent injunction restraining and
16 enjoining PwC and HP, their agents, servants, employees and all persons acting thereunder, in
17 concert with, or on their behalf, from offering its portable monitors at anticompetitive rates and
18 falsely advertising the nature and quality of HP's portable monitor.

19 56. As a direct and proximate result of PwC's and HP's statutory unfair competition,
20 PwC and HP have been unjustly enriched in an amount to be determined at trial, and for which
21 Plaintiff is entitled to restitution and attorneys' fees.

22 **SECOND CAUSE OF ACTION**

23 **AGAINST DEFENDANTS HP AND PwC**

24 **(FALSE ADVERTISING)**

25 57. Plaintiff hereby restates each and every allegation contained in paragraphs 1
26 through 56 of this Complaint, and fully incorporates them by this reference.

27 58. This claim arises under California's False Advertising Law, Cal. Bus. and Prof.
28 Code §§ 17500 *et seq.*

1 59. Defendants have, in connection with goods or services, used a false or misleading
2 description of fact, or a false or misleading representation of fact, which in commercial
3 advertising or promotion, misrepresents the nature, characteristics and/or qualities of Defendants'
4 goods and services. Specifically, Defendants' intentional and deliberate mischaracterization of
5 HP's portable monitor as a "mobile monitor" that provides a "new solution" for PwC's search for
6 enhanced productivity misrepresents the nature, characteristics and/or quality of HP's portable
7 monitor and PwC as being the "first in line" to avail itself of the "new solution." Defendants'
8 representations of fact are demonstrably false as MMT developed and manufactured the "first of
9 its kind" portable computer monitor a full two years before HP's portable monitor was introduced
10 to the market, and HP's monitor's configuration, size and quality were identical to the Toshiba
11 portable monitor that had been introduced to the market a full year ahead of HP's monitor. PwC
12 was "first in line" to avail itself of Plaintiff's "new solution," *not* HP's late-entry and inferior
13 product.

14 60. Defendants' statements have actually deceived or have the tendency to deceive a
15 substantial segment of their audience as evidenced by their persistent solicitation, and the
16 resulting migration, of portable monitor consumers, particularly in the accounting industry, from
17 MMT to HP.

18 61. Defendants' deception is material and is likely to influence the purchasing
19 decisions of portable monitor customers as the accounting industry, in particular, highly values
20 the opinion of the largest accounting firm in the world and PwC's endorsement of the HP product
21 will likely influence the decision of other accounting firms in deciding which portable monitor to
22 purchase.

23 62. Defendants' wrongful activities have caused Plaintiff irreparable injury. Plaintiff
24 is informed and believes that unless Defendants' conduct is enjoined by this Court, Defendants
25 will continue and expand those activities to the continued and irreparable injury of Plaintiff. This
26 injury includes a lessening of the goodwill associated with MMT's mobile monitors and injury to
27 MMT's reputation that cannot be remedied through damages, and Plaintiff has no adequate
28 remedy at law. Plaintiff is entitled to a permanent injunction restraining and enjoining

1 Defendants, their agents, servants, employees and all persons acting thereunder, in concert with,
2 or on their behalf, from continuing to broadcast their false and misleading statements.

3 63. As a direct and proximate result of Defendants' statutory false advertising, HP and
4 PwC have been unjustly enriched in an amount to be determined at trial, and for which Plaintiff is
5 entitled to restitution and reasonable attorneys' fees.

6 **THIRD CAUSE OF ACTION**

7 **AGAINST DEFENDANT HP**

8 **(MISAPPROPRIATION OF TRADE SECRETS)**

9 64. Plaintiff hereby restates each and every allegation contained in paragraphs 1
10 through 63 of this Complaint, and fully incorporates them by this reference.

11 65. This claim arises under the California Uniform Trade Secrets Act, Cal. Civ. Code
12 §§ 3426 *et seq.*

13 66. At all relevant times the Confidential Information identified in Paragraph 35,
14 above, represents MMT's trade secrets within the meaning of California Civil Code §§3426 *et*
15 *seq.*

16 67. Plaintiff is informed and believes, and on that basis alleges that Defendant HP, in
17 furtherance of its strategic relationship with Defendant PwC, exploited its confidential
18 discussions and negotiations with MMT to obtain and misappropriate the Confidential
19 Information. HP has used and is using the Confidential Information with the intent and desire to
20 use and profit from it.

21 68. As a proximate result of HP's trade secret misappropriation, MMT has suffered
22 damages to its business, reputation, and goodwill. As a further proximate result of HP's trade
23 secret misappropriation, HP has been unjustly enriched.

24 69. Plaintiff is informed and believes, and on that basis alleges that the acts of HP in
25 misappropriating MMT's trade secrets were willful and oppressive, fraudulent, and/or malicious.
26 Plaintiffs are accordingly entitled to punitive damages and their reasonable attorneys' fees and
27 costs.

28 70. Unless and until enjoined by order of this Court, HP will continue its illegal efforts

1 and schemes to exploit the Confidential Information for its own profit. MMT has no adequate
2 remedy at law for the irreparable injuries HP has caused and continues to cause including, but not
3 limited to, damage to MMT's Confidential Information, business, reputation, and goodwill.

4 **FOURTH CAUSE OF ACTION**
5 **AGAINST DEFENDANTS PwC AND HP**
6 **(FRAUD/CONCEALMENT)**

7 71. Plaintiff hereby restates each and every allegation contained in paragraphs 1
8 through 70 of this Complaint, and fully incorporates them by this reference.

9 72. Defendants, and each of them, entered into their 2009 Agility Alliance in order to
10 promote their own joint interests and control the market, over the interests of other entities with
11 which Defendants contracted and/or negotiated, including Plaintiff. Defendant HP concealed this
12 material fact from Plaintiff when it commenced confidential discussions with Plaintiff regarding a
13 potential joint venture. Defendant PwC did not disclose this material fact to Plaintiff during the
14 two-year period when it was giving ongoing positive feedback to Plaintiff on its monitor design
15 and functionality nor when it advised Plaintiff that it had chosen MMT to fill its global portable
16 computer monitor needs in the Fall of 2012. Nor did Defendant PwC later disclose to Plaintiff
17 that the "new" portable monitor manufacturer against which Plaintiff was "bidding" was PwC's
18 Agility Alliance partner, HP.

19 73. Defendants knew that their agreement to promote their joint interests over the
20 interests of Plaintiff, and their failure to disclose the identity of the "new" contender for supplying
21 PwC's global portable monitor needs, were material facts that would have influenced Plaintiff's
22 decision to enter into the discussions with HP and its decision to take steps to design and develop
23 the mobile monitor for PwC and fulfill PwC's global order for MMT's mobile monitors.

24 74. Had Plaintiff known of these material fact, it would not have entered into
25 discussions with HP nor would it have engaged in a multi-year relationship with PwC to fill
26 PwC's global portable computer needs.

27 75. Defendants withheld these material facts from Plaintiff with the intent to defraud
28 Plaintiff, to induce Plaintiff's reliance, and the resulting damages to MMT's business, reputation

1 and goodwill.

2 76. Plaintiff reasonably relied on Defendants' representations as conveying all
3 material information when it elected to enter into the joint venture discussions with HP and to act
4 upon PwC's disclosure that it had chosen MMT to fill its global portable computer needs.

5 77. As a proximate result of Defendants' fraud, MMT has suffered damages to its
6 business, reputation and good will.

7 78. Plaintiff is informed and believes, and on that basis alleges, that the acts of HP and
8 PwC in concealing their Agility Alliance from Plaintiff were willful and oppressive, fraudulent,
9 and/or malicious. Plaintiffs are accordingly entitled to punitive damages and their reasonable
10 attorneys' fees and costs.

11 **FIFTH CAUSE OF ACTION**
12 **AGAINST DEFENDANTS HP AND PwC**
13 **CIVIL CONSPIRACY**

14 79. Plaintiff hereby restates each and every allegation contained in paragraphs 1
15 through 78 of this Complaint, and fully incorporates them by this reference.

16 80. Defendants, and each of them, entered into a conspiracy whereby they sought to
17 elicit Plaintiff's trade secrets and marketing strategies in order to permit HP to fill PwC's order
18 for its global portable computer monitor needs at anticompetitive prices and to enable HP to
19 dominate the portable computer monitor market. They agreed with one another to engage in a
20 fraud that violated state statutory and common law.

21 81. Defendants, and each of them, owed independent duties to Plaintiff by virtue of the
22 confidential negotiations in which Plaintiff and each of the Defendants had engaged.

23 82. In furtherance of the conspiracy, HP accepted Plaintiff's invitation to engage in,
24 and did engage in, discussions exploring a possible joint venture whereby HP would manufacture
25 MMT's mobile monitors. In so proceeding, HP had no intention of entering into a joint venture
26 with Plaintiff but sought to elicit Plaintiff's trade secrets and marketing strategies so it would
27 have the capacity to manufacture its own portable computer monitor for sale at anticompetitive
28 prices to PwC.

1 91. As a proximate result of Defendant's intentional interference with Plaintiff's
2 prospective business advantage, MMT has suffered damages to its business, reputation, and
3 goodwill.

4 92. Plaintiff is informed and believes, and on that basis alleges that the acts of HP in
5 intentionally interfering with MMT's prospective business advantage with PwC were willful and
6 oppressive, fraudulent, and/or malicious. Plaintiffs are accordingly entitled to punitive damages
7 and their reasonable attorneys' fees and costs.

8 **SEVENTH CAUSE OF ACTION**

9 **AGAINST DEFENDANT HP**

10 **(NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE)**

11 93. Plaintiff hereby restates each and every allegation contained in paragraphs 1
12 through 92 of this Complaint, and fully incorporates them by this reference.

13 94. An economic relationship existed between Plaintiff and PwC in the Fall of 2012 in
14 that PwC had chosen Plaintiff's highest resolution monitor to distribute, first, to 15,000 of its
15 United States accounting professionals, then, to its 150,000 accounting professionals worldwide.

16 95. HP had known about Plaintiff's economic relationship with PwC since at least
17 April 2011 or, at the very least, should have been aware that if it did not act with due care its
18 actions might interfere with Plaintiff's economic relationship with PwC and cause Plaintiff to
19 lose, in whole or in part, the probable future economic benefit or advantage of the relationship.

20 96. HP did not use due care.

21 97. HP succeeded in actually interfering with or disrupting Plaintiff's economic
22 relationship with PwC in that Plaintiff lost the global portable monitor order.

23 98. As a proximate result of Defendant's negligent interference with Plaintiff's
24 prospective business advantage, MMT has suffered damages to its business, reputation, and
25 goodwill.

26 /////

27 /////

28 /////

**EIGHTH CAUSE OF ACTION
AGAINST DEFENDANT PwC
(PROMISSORY ESTOPPEL)**

99. Plaintiff hereby restates each and every allegation contained in paragraphs 1 through 98 of this Complaint, and fully incorporates them by this reference.

100. PwC made a clear promise to Plaintiff in October 2012 that it would purchase an initial order of 15,000 of Plaintiff's highest resolution monitor, followed by a purchase of the monitor for distribution to its 150,000 accounting professionals worldwide. PwC stressed that Plaintiff needed to fill the initial order by the end of the year.

101. Plaintiff reasonably relied on PwC's promise and its need for expedited delivery by postponing production of its other products, and thus forgoing sales to existing and future customers.

102. As a proximate result of Defendant PwC's breach of its promise to Plaintiff, MMT has suffered damages to its business, reputation and good will.

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Enter a permanent injunction requiring PwC and HP, and their agents, servants, employees, and all persons acting thereunder, in concert with, or on their behalf, to immediately cease from engaging in the anticompetitive conduct and unfair business practices alleged in this Complaint;

B. Award Plaintiff its ascertainable damages, including lost profits, lost goodwill and reputational damages;

C. Award Plaintiff all amounts by which PwC and HP have been unjustly enriched;

D. Award Plaintiff punitive damages in an amount sufficient to punish Defendants, and each of them, and deter them and others similarly situated from engaging in comparable conduct in the future;

E. Award Plaintiff all attorneys' fees allowed by law, expert fees, costs, pre-judgment interest and post-judgment interest; and

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F. Award such other and further relief as appropriate.

Dated: April 3, 2014

SAGY LAW ASSOCIATES

By: 

RONY SAGY
Attorneys for Plaintiff
MOBILE MONITOR TECHNOLOGIES, LLC