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*Attorneys for Plaintiff Off Madison Ave. Inc.*

**UNITED STATES DISTRICT COURT**

**DISTRICT OF ARIZONA**

OFF MADISON AVE, INC., an Arizona  
corporation,

Plaintiff,

v.

REGEN BIOLOGICS, INC., a Delaware  
corporation,

Defendant.

Civil Action

No. \_\_\_\_\_

**COMPLAINT FOR  
PATENT INFRINGEMENT AND  
TRADEMARK INFRINGEMENT**

Plaintiff, OFF MADISON AVE., INC., alleges as follows:

**THE PARTIES**

1. Plaintiff, Off Madison Ave., Inc. (“Off Madison”) is an Arizona corporation with its principal place of business in Tempe, Arizona.

2. Upon information and belief, defendant ReGen Biologics, Inc. (“ReGen”) is a Delaware corporation with its principal place of business in East Wing Franklin Lakes, New Jersey. Upon information and belief, Defendant conducts business in this judicial district and has previously conducted business with Off Madison in this judicial district.

## **JURISDICTION AND VENUE**

3. This action arises, in part, under the patent laws of the United States, Title 35 of the United States Code. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This action further arises, in part, under the trademark laws of the United States, 15 U.S.C. §§ 1051, et seq. This Court has original jurisdiction pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over the defendant because ReGen has committed acts of patent infringement and trademark infringement in this district, and this action arises in part from ReGen's action in and connection to this district.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

## **FACTS**

7. Off Madison is owner by assignment of U.S. Patent Nos. 6,350,274; 6,042,610; 5,928,252; 5,735,902; 5,681,353; 5,677,284; 5,624,463; and 5,263,984 (collectively, "Off Madison Patents"). A copy of the assignment is attached hereto as Exhibit A. Copies of the patents are attached hereto as Exhibits B through I.

8. Off Madison is also the owner by assignment of U.S. Trademark Registrations 3,345,499; 3,308,864; 3,674,026; 2,300,495; and 2,032,386 (collectively, "Off Madison Trademarks"). A copy of this assignment is attached hereto as Exhibit A. Copies of the trademark registrations are attached hereto as Exhibits J through N.

9. ReGen is infringing, has infringed and has contributed to and induced infringement of U.S. Patent Nos. 6,350,274; 6,042,610; 5,928,252; 5,735,902; 5,681,353; 5,677,284; 5,624,463; and 5,263,984, by its own admission, by making, using, selling, and/or offering to selling its collagen scaffold technology which includes applications in orthopedics, general surgery, spine, cardiovascular and drug delivery.

10. Specifically ReGen is infringing, has infringed and has contributed to and induced infringement of U.S. Patent Nos. 6,350,274; 6,042,610; 5,928,252; 5,735,902; 5,681,353; 5,677,284; 5,624,463; and 5,263,984, by its own admission, by making, using,

1 selling, and/or offering to selling its Menaflex collagen meniscus implant (also known as  
2 CMI) and/or its SharpShooter Tissue Repair System. Off Madison reserves the right to  
3 identify other ReGen products as infringing one or more of the Off Madison Patents as is  
4 warranted by discovery and further investigation.

5 11. Off Madison acquired the Off Madison Trademarks from ReGen via  
6 assignment on August 25, 2010. Since that date, ReGen has continued to use the Off  
7 Madison Trademarks in connection with ReGen products and services. See Exhibits O  
8 through T, showing ReGen's continued use of each Off Madison Trademark.

9 12. ReGen's infringement of the Off Madison Trademarks has prevented Off  
10 Madison from using its Off Madison Trademarks or further exploiting its rights in those  
11 trademarks due to the likelihood of confusion, deception and mistake among customers due  
12 to ReGen's continued unauthorized use of the Off Madison Trademarks. The likelihood of  
13 confusion is further increased by the fact that ReGen continues to use marks identical to the  
14 Off Madison Trademarks.

15 13. On September 2, 2010, Off Madison offered to ReGen a discounted License  
16 Agreement, attached at Exhibit U, under which ReGen would pay Off Madison an initial  
17 license fee of \$17,000 on or before September 10, 2010 and \$5,000 a month thereafter.  
18 ReGen intentionally disregarded the offer of license and continued to intentionally infringe  
19 the Off Madison Trademarks and Off Madison Patents.

20 14. On or about January 3, 2011, ReGen made public filings of an 8-K and  
21 exhibits with the Securities and Exchange Commission, including statements indicating  
22 both that it recognized that Off Madison had effective assignment of the Off Madison  
23 Patents and Off Madison Trademarks but, amazingly, in an attachment to the same  
24 document, indicated that ReGen, in connection with a securities offering commenced in the  
25 prior month, was transferring all such intellectual property as security to a collateral agent.  
26 ReGen's own contradictory statements in such 8-K filing and exhibits are per se  
27 documentation of its intentional infringement of the Off Madison Patents and Off Madison  
28 Trademarks.

1           15. In January and February of 2011, upon information and belief, due to ReGen's  
2 inability to obtain Food and Drug Administration registration of certain of the Off Madison  
3 Patents, and the poor outlook for the future for such FDA registration, or for other reasons,  
4 ReGen was attempting to take actions to transfer its operations and the exploitation of the  
5 Off Madison Trademarks and the Off Madison Patents to ReGen's affiliates in Europe or  
6 elsewhere outside of the United States.

7           16. The attempted or actual transfer of such intellectual property and its  
8 exploitation out of the country, at a time when ReGen has publicly declared that Off  
9 Madison has secured ownership, is an intentional infringement on Off Madison's rights in  
10 the Off Madison Trademarks and the Off Madison Patents.

11  
12                   **COUNT I – INFRINGEMENT OF U.S. PATENT NO. 6,350,274**

13           17. Off Madison incorporates by reference paragraphs 1-16 as if fully set forth  
14 herein.

15           18. ReGen is infringing, has infringed and has contributed to and has induced  
16 infringement of U.S. Patent No. 6,350,274.

17           19. ReGen's infringement has been and continues to be willful and deliberate. As  
18 a result of ReGen's infringement, Off Madison has suffered and will continue to suffer  
19 substantial damages, and ReGen has caused and will continue to cause Off Madison to  
20 suffer irreparable harm for which there is no adequate remedy at law.

21                   **COUNT II – INFRINGEMENT OF U.S. PATENT NO. 6,042,610**

22           20. Off Madison incorporates by reference paragraphs 1-20 as if fully set forth  
23 herein.

24           21. ReGen is infringing, has infringed and has contributed to and has induced  
25 infringement of U.S. Patent No. 6,042,610.

26           22. ReGen's infringement has been and continues to be willful and deliberate.  
27  
28

23. As a result of ReGen's infringement, Off Madison has suffered and will continue to suffer substantial damages, and ReGen has caused and will continue to cause Off Madison to suffer irreparable harm for which there is no adequate remedy at law.

**COUNT III – INFRINGEMENT OF U.S. PATENT NO. 5,928,252**

24. Madison incorporates by reference paragraphs 1-24 as if fully set forth herein.

25. ReGen is infringing, has infringed and has contributed to and has induced infringement of U.S. Patent No. 5,928,252.

26. ReGen's infringement has been and continues to be willful and deliberate.

27. As a result of ReGen's infringement, Off Madison has suffered and will continue to suffer substantial damages, and ReGen has caused and will continue to cause Off Madison to suffer irreparable harm for which there is no adequate remedy at law.

**COUNT IV – INFRINGEMENT OF U.S. PATENT NO. 5,735,902**

28. Off Madison incorporates by reference paragraphs 1-27 as if fully set forth herein.

29. ReGen is infringing, has infringed and has contributed to and has induced infringement of U.S. Patent No. 5,735,902.

30. ReGen's infringement has been and continues to be willful and deliberate.

31. As a result of ReGen's infringement, Off Madison has suffered and will continue to suffer substantial damages, and ReGen has caused and will continue to cause Off Madison to suffer irreparable harm for which there is no adequate remedy at law.

**COUNT V – INFRINGEMENT OF U.S. PATENT NO. 5,681,353**

32. Off Madison incorporates by reference paragraphs 1-31 as if fully set forth herein.

33. ReGen is infringing, has infringed and has contributed to and has induced infringement of U.S. Patent No. 5,681,353.

34. ReGen's infringement has been and continues to be willful and deliberate.

35. As a result of ReGen's infringement, Off Madison has suffered and will continue to suffer substantial damages, and ReGen has caused and will continue to cause Off Madison to suffer irreparable harm for which there is no adequate remedy at law.

**COUNT VI – INFRINGEMENT OF U.S. PATENT NO. 5,677,284**

36. Off Madison incorporates by reference paragraphs 1-35 as if fully set forth herein.

37. ReGen is infringing, has infringed and has contributed to and has induced infringement of U.S. Patent No. 5,677,284.

38. ReGen's infringement has been and continues to be willful and deliberate.

39. As a result of ReGen's infringement, Off Madison has suffered and will continue to suffer substantial damages, and ReGen has caused and will continue to cause Off Madison to suffer irreparable harm for which there is no adequate remedy at law.

**COUNT VII – INFRINGEMENT OF U.S. PATENT NO. 5,624,463**

40. Off Madison incorporates by reference paragraphs 1-39 as if fully set forth herein.

41. ReGen is infringing, has infringed and has contributed to and has induced infringement of U.S. Patent No. 5,624,463.

42. ReGen's infringement has been and continues to be willful and deliberate.

43. As a result of ReGen's infringement, Off Madison has suffered and will continue to suffer substantial damages, and ReGen has caused and will continue to cause Off Madison to suffer irreparable harm for which there is no adequate remedy at law.

**COUNT VIII – INFRINGEMENT OF U.S. PATENT NO. 5,263,984**

44. Off Madison incorporates by reference paragraphs 1-43 as if fully set forth herein.

45. ReGen is infringing, has infringed and has contributed to and has induced infringement of U.S. Patent No. 5,263,984.

46. ReGen's infringement has been and continues to be willful and deliberate.

1           47. As a result of ReGen's infringement, Off Madison has suffered and will  
2 continue to suffer substantial damages, and ReGen has caused and will continue to cause  
3 Off Madison to suffer irreparable harm for which there is no adequate remedy at law.

4           **COUNT IX – INFRINGEMENT OF U.S. TRADEMARK REG. NO. 3,345,499**

5           48. Off Madison incorporates by reference paragraphs 1-47 as if fully set forth  
6 herein.

7           49. ReGen is infringing and has infringed Off Madison Trademark Reg. No.  
8 3,345,499.

9           50. By reason of ReGen's infringement, Off Madison has sustained and will  
10 continue to sustain substantial injury, loss and damage to its ownership rights.

11           51. ReGen's infringement has been and continues to be willful and deliberate.

12           52. As a result of ReGen's infringement, Off Madison has suffered and will  
13 continue to suffer substantial damages, and ReGen has caused and will continue to cause  
14 Off Madison to suffer irreparable harm for which there is no adequate remedy at law.

15           **COUNT X – INFRINGEMENT OF U.S. TRADEMARK REG. NO. 3,308,864**

16           53. Off Madison incorporates by reference paragraphs 1-58 as if fully set forth  
17 herein.

18           54. ReGen is infringing and has infringed Off Madison Trademark Reg. No.  
19 3,308,864.

20           55. By reason of ReGen's infringement, Off Madison has sustained and will  
21 continue to sustain substantial injury, loss and damage to its ownership rights.

22           56. ReGen's infringement has been and continues to be willful and deliberate.

23           57. As a result of ReGen's infringement, Off Madison has suffered and will  
24 continue to suffer substantial damages, and ReGen has caused and will continue to cause  
25 Off Madison to suffer irreparable harm for which there is no adequate remedy at law.

26           **COUNT XI – INFRINGEMENT OF U.S. TRADEMARK REG. NO. 3,674,026**

27           58. Off Madison incorporates by reference paragraphs 1-57 as if fully set forth  
28 herein.

59. ReGen is infringing and has infringed Off Madison Trademark Reg. No. 3,345,499.

60. By reason of ReGen's infringement, Off Madison has sustained and will continue to sustain substantial injury, loss and damage to its ownership rights.

61. ReGen's infringement has been and continues to be willful and deliberate.

62. As a result of ReGen's infringement, Off Madison has suffered and will continue to suffer substantial damages, and ReGen has caused and will continue to cause Off Madison to suffer irreparable harm for which there is no adequate remedy at law.

**COUNT XII – INFRINGEMENT OF U.S. TRADEMARK REG. NO. 2,300,495**

63. Off Madison incorporates by reference paragraphs 1-62 as if fully set forth herein.

64. ReGen is infringing and has infringed Off Madison Trademark Reg. No. 2,300,495.

65. By reason of ReGen's infringement, Off Madison has sustained and will continue to sustain substantial injury, loss and damage to its ownership rights.

66. ReGen's infringement has been and continues to be willful and deliberate.

67. As a result of ReGen's infringement, Off Madison has suffered and will continue to suffer substantial damages, and ReGen has caused and will continue to cause Off Madison to suffer irreparable harm for which there is no adequate remedy at law.

**COUNT XIII – INFRINGEMENT OF U.S. TRADEMARK REG. NO. 2,032,386**

68. Off Madison incorporates by reference paragraphs 1-67 as if fully set forth herein.

69. ReGen is infringing and has infringed Off Madison Trademark Reg. No. 2,032,386.

70. By reason of ReGen's infringement, Off Madison has sustained and will continue to sustain substantial injury, loss and damage to its ownership rights.

71. ReGen's infringement has been and continues to be willful and deliberate.



72. As a result of ReGen's infringement, Off Madison has suffered and will continue to suffer substantial damages, and ReGen has caused and will continue to cause Off Madison to suffer irreparable harm for which there is no adequate remedy at law.

## REQUEST FOR RELIEF

A. Enter judgment in favor of Off Madison on each of its claims against ReGen.

B. Adjudge that ReGen is infringing, has infringed, has contributed to and has induced infringement of each of the Off Madison Patents, U.S. Patent Nos. 6,350,274; 6,042,610; 5,928,252; 5,735,902; 5,681,353; 5,677,284; 5,624,463; and 5,263,984.

C. Adjudge that such infringement of the Off Madison Patents, U.S. Patent Nos. 6,350,274; 6,042,610; 5,928,252; 5,735,902; 5,681,353; 5,677,284; 5,624,463; and 5,263,984 has been willful and deliberate.

D. Issue such Orders as necessary to enjoin ReGen, its affiliates, subsidiaries, officers, directors, employees, agents, licensees, successors, and assigns and all persons in concert with them from further infringement of the Off Madison Patents, U.S. Patent Nos. 6,350,274; 6,042,610; 5,928,252; 5,735,902; 5,681,353; 5,677,284; 5,624,463.

E. Award Off Madison all damages, with interest, that Off Madison has sustained in consequence of ReGen's infringement of the Off Madison Patents, U.S. Patent Nos. 6,350,274; 6,042,610; 5,928,252; 5,735,902; 5,681,353; 5,677,284; 5,624,463, but in the event of default, no less than the sum certain amount of \$17,000 plus \$5,000 per month discounted license fees it offered to ReGen from September 10, 2010 and for the 6.5 months through the date of filing of this Complaint, for a total of \$49,250, and ongoing thereafter until full and final collection of all amounts due hereunder at the rate of \$5,000 per month.

F. Award treble damages to Off Madison for ReGen's willful infringement of the Off Madison Patents, U.S. Patent Nos. 6,350,274; 6,042,610; 5,928,252; 5,735,902; 5,681,353; 5,677,284; 5,624,463, but in the event of default, no less than the sum certain amount of treble the amount of \$49,250 for a total treble damages of

1 \$147,750, and ongoing thereafter until full and final collection of all amounts due hereunder  
2 at treble the rate of \$5,000 per month total ongoing treble damages amount of \$15,000 per  
3 month.

4 G. Require ReGen to pay Off Madison its costs and reasonable attorneys'  
5 fees under 35 U.S.C. § 285.

6 H. Adjudge that ReGen is infringing, has infringed, has contributed to and  
7 has induced infringement of each of the Off Madison Trademarks, U.S. Trademark  
8 Registrations 3,345,499; 3,308,864; 3,674,026; 2,300,495; and 2,032,386.

9 I. Adjudge that ReGen's infringement of the Off Madison Trademarks,  
10 U.S. Trademark Registrations 3,345,499; 3,308,864; 3,674,026; 2,300,495; and 2,032,386,  
11 has been willful and deliberate.

12 J. Issue such Orders as necessary to enjoin ReGen, its affiliates,  
13 subsidiaries, officers, directors, employees, agents, licensees, successors, and assigns and  
14 all persons in concert with them from further infringement of the Off Madison Trademarks,  
15 U.S. Trademark Registrations 3,345,499; 3,308,864; 3,674,026; 2,300,495; and 2,032,386.

16 K. Require ReGen to deliver to the Court for impoundment and  
17 destruction all materials that infringe any of the Off Madison Trademarks, U.S. Trademark  
18 Registrations 3,345,499; 3,308,864; 3,674,026; 2,300,495; and 2,032,386.

19 L. Award Off Madison all damages, with interest, that Off Madison has  
20 sustained in consequence of ReGen's infringement of the Off Madison Trademarks, U.S.  
21 Trademark Registrations 3,345,499; 3,308,864; 3,674,026; 2,300,495; and 2,032,386, but in  
22 the event of default, no less than the sum certain amount of \$17,000 plus \$5,000 per month  
23 discounted license fees it offered to ReGen from September 10, 2010 and for the 6.5  
24 months through the date of filing of this Complaint, for a total of \$49,250, and ongoing  
25 thereafter until full and final collection of all amounts due hereunder at the rate of \$5,000  
26 per month.

1 M. Award Off Madison all profits obtained by ReGen as a consequence of  
2 its use and infringement of the Off Madison Trademarks, U.S. Trademark Registrations  
3 3,345,499; 3,308,864; 3,674,026; 2,300,495; and 2,032,386.

4 N. Award treble damages and multiple profits for ReGen's willful  
5 infringement of the Off Madison Trademarks, U.S. Trademark Registrations 3,345,499;  
6 3,308,864; 3,674,026; 2,300,495; and 2,032,386, but in the event of default, no less than the  
7 sum certain amount of treble the amount of \$49,250 for a total treble damages of \$147,750,  
8 and ongoing thereafter until full and final collection of all amounts due hereunder at treble  
9 the rate of \$5,000 per month total ongoing treble damages amount of \$15,000 per month.

10 O. Award Off Madison its costs and reasonable attorneys' fees.

11 P. Adjudge that all of ReGen's actions in attempted transfer, licensing,  
12 exploitation or other disposition of the Off Madison Patents and the Off Madison  
13 Trademarks to a collateral agent as a part of its December 2010 securities offering are *void*  
14 *ab initio* and invalid, and enjoining any collateral agent or other person or entity from  
15 taking any action with respect to the furtherance of such attempts.

16 Q. Adjudge that all of ReGen's actions in attempted transfer, licensing,  
17 exploitation or other disposition of the Off Madison Patents and the Off Madison  
18 Trademarks to any of ReGen's affiliates in Europe or elsewhere outside of the United  
19 States, are *void ab initio* and invalid, and enjoining any affiliate or non-affiliated person or  
20 entity from taking any action with respect to the furtherance of such attempts.

21 R. Award all such other and further relief as the Court deems just and  
22 proper.

23 DATED: April 1, 2011.

24 POLSINELLI SHUGHART PC

25 *s/ Gregorio M. Garcia*

26 By: \_\_\_\_\_

27 Edward R. Gladys  
Gregorio M. Garcia  
Christine M. McAuliffe

28 Attorneys for Off Madison Ave., Inc.