

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

KOPP DEVELOPMENT INC.,	)	
	)	
Plaintiff,	)	Civil Action No. 1:21-cv-01216-PAB
	)	
v.	)	Judge Pamela A. Barker
	)	Magistrate Judge David A. Ruiz
	)	
METRASENS, INC.	)	
	)	
Defendant.	)	

**CONFIRMATION BY DEFENDANT OF DISCONTINUANCE OF  
USE OR DISCLOSURE OF DISPUTED REPORT**

Defendant Metrasens, Inc. ("Metrasens"), by its undersigned counsel, hereby represents and confirms to the Court that Metrasens has previously discontinued publication and use of the report prepared by Intertek Testing and Certification, Ltd., which is the basis of the complaint in this matter. As shown in the attached Declaration of Simon W. Goodyear (**Exhibit A**), Metrasens removed references to the report by September 1, 2023. As further stated in attached declaration, Metrasens expressly represents to the Court that it will not hereafter distribute the report, or any materials mentioning the report, to the public, to actual customers or to prospective customers.

Dated: June 26, 2024

Respectfully submitted,

/s/ Michael T. Smith

Michael T. Smith (Admitted *pro hac vice* 8/17/2021)

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*Counsel for Defendant Metrasens, Inc.*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 26th day of June 2024, I electronically filed the foregoing  
CONFIRMATION BY DEFENDANT OF DISCONTINUANCE OF USE OR DISCLOSURE OF  
DISPUTED REPORT with the Clerk of Court using the CM/ECF system, which will send  
notification of such filing to the following:

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Brian T. Winchester  
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/s/ Michael T. Smith  
Michael T. Smith

# **EXHIBIT A**

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	)	
Plaintiff,	)	Civil Action No. 1:21-cv-01216-PAB
	)	
v.	)	Judge Pamela A. Barker
	)	Magistrate Judge David A. Ruiz
	)	
METRASENS, INC.	)	
	)	
Defendant.	)	

**DECLARATION OF SIMON W. GOODYEAR**

Under the penalties of perjury, the undersigned hereby declares:

1. I am the Chief Executive Office ("CEO") and Co-Founder of Metrasens, Inc. I have held the position of CEO for more than ten years. I am authorized by a Board of Directors to bind Metrasens, Inc.

2. I am over the age of 18 years and make this statement based on personal knowledge, unless expressly indicated otherwise.

3. I am aware that Kopp Development Inc. has asserted in the course of the litigation brought in the Northern District of Ohio that the Intertek report dated May 2019 (the "Intertek Report") is false and/or misleading. Metrasens had previously provided a summary of the report on its website and provided a means for interested parties to request a copy of the full Intertek Report.

4. Although neither I nor Metrasens believe that the Intertek Report is misleading or incorrect, because of the litigation Metrasens decided to remove all references to the Intertek Report, as well as the means for requesting a copy, from its website. The summary and all references to the Intertek were removed from Metrasens' website at least as early as September 1, 2023.


5. In order to avoid the expense of litigation, Metrasens confirms it will not hereafter place the Intertek Report or any reference to the Intertek Report on its website. Metrasens further confirms it will not hereafter distribute the Intertek Report, or any materials mentioning or referring to the Intertek Report, to the public, to prospective customers, or to actual customers.

6. Metrasens also will not hereafter discuss with third parties or distribute to third parties the information in the report that compares the performance of the Metrasens product to the product of Kopp Development, Inc.

7. Metrasens will continue with its policy, not to disclose or use the report or the comparative information in it, even after the resolution of this litigation by Kopp, and even if the Kopp claims are dismissed.

**Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, and that I execute this declaration within the United States.**

Date: June 25<sup>th</sup>, 2024

  
\_\_\_\_\_  
SIMON W. GOODYEAR  
Chief Executive Officer  
Metrasens, Inc.